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Enhancement of international cooperation in the field of human rights

## Report on enhancement of international cooperation in the field of human rights

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the Advisory Committee

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. Basic texts on international cooperation in the field of human rights.....	6–24	4
A. International cooperation in the Charter of the United Nations.....	7–10	4
B. International cooperation in the general texts of the General Assembly .....	11–12	5
C. International cooperation in the specific human rights texts .....	13–24	6
III. The challenges of international cooperation in the field of human rights .....	25–50	10
A. The many aspects of international cooperation .....	27–38	10
B. International cooperation in the field of human rights.....	39–45	13
C. International cooperation and human rights .....	46–50	15
IV. Possible future work .....	51–59	16
A. Limits of the exercise .....	52–54	16
B. Working methods .....	55–59	17

## I. Introduction

1. The Human Rights Council, in resolution 13/23, on enhancement of international cooperation in the field of human rights, which was submitted by Egypt on behalf of the Non-Aligned Movement and adopted without a vote, “reaffirms that it is one of the purposes of the United Nations and also the primary responsibility of Member States to promote, protect and encourage respect for human rights and fundamental freedoms through, *inter alia*, international cooperation” (para. 1). Addressing all actors on the international scene, the resolution highlights the legal dimension of “international cooperation in the field of human rights, in conformity with the purposes and principles set out in the Charter of the United Nations and international law” (para. 6) with regard to prevention, capacity-building and technical assistance (para. 8). Finally, the Council specifically requests “the Human Rights Council Advisory Committee to explore ways and means to enhance cooperation in the field of human rights” (para. 14), to facilitate exchanges of information and best practices in this regard, taking into account the “views” of “States and relevant stakeholders”, and to submit proposals to the Council at its nineteenth session.

2. To this end, on 30 December 2009, the United Nations High Commissioner for Human Rights submitted her report on enhancement of international cooperation in the field of human rights (A/HRC/13/19), pursuant to Human Rights Council resolution 10/6. However, it must be acknowledged that, at this exploratory stage, the consultation has been fairly limited, notwithstanding the valuable responses received to date from eight Member States (Algeria, Bahrain, Burkina Faso, Iraq, Jordan, Monaco, Serbia and Ukraine) and from the Holy See, the United Nations Children’s Fund (UNICEF), and the International Labour Organization (ILO), two national institutions (Jordan and Qatar) and a number of NGOs – a total of 15 responses in all. There seems to be a need not only for broader and more systematic consultation among all stakeholders, starting with States and international organizations, including regional organizations, but also for more targeted consultation, based on a frame of reference to be drawn up by the Advisory Committee. Moreover, regional organizations and specialized institutions, which have a wealth of experience in this area, could also carry out in-depth consultations. Efforts should be made to encourage “non-governmental organizations to contribute actively to this endeavour”, as recommended in paragraph 12 of resolution 13/23. The participation of the network of national institutions could also be enlisted at the annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

3. In order to give effect to resolution 13/23, the Advisory Committee, pursuant to its recommendation 5/4, set up a drafting group, to be chaired by Mr. Seetulsingh, which it tasked with undertaking preparatory work on the topic before the in-depth discussion to be held at its sixth session, in January 2011. Mr. Decaux, Rapporteur of the working group, prepared a working paper (A/HRC/AC/6/CRP.4), which attempted to clarify the legal bases for international cooperation in the field of human rights and discuss the key issues of a subject that revolves around the dialectic between the two concepts. At its sixth session, the drafting group held an informal meeting with the sponsor of resolution 13/23 in order to clarify the nature of its mandate. The drafting group considered the working paper submitted by the Rapporteur, and the document was subsequently discussed by the Advisory Committee in a public meeting. The Advisory Committee adopted recommendation 6/4 on 21 January 2011. In it, the Committee took note of the preliminary discussions and requested that a revised document should be presented to the Committee at its seventh session. The Advisory Committee also noted that the drafting group would

prepare a questionnaire to facilitate broad consultation with all stakeholders at the appropriate time.

4. At its sixteenth session, the Human Rights Council adopted resolution 16/22 of 25 March 2011 without a vote. The text had been submitted by Egypt on behalf of the Non-Aligned Movement. In this resolution, which reproduces the broad thrust of resolution 13/23, States and United Nations human rights mechanisms and procedures are invited to continue to pay attention to the importance of “mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights” (para. 14). In its resolution, the Human Rights Council furthermore takes note of the discussions held in the Advisory Committee, in fulfilment of its mandate, to explore “ways and means to enhance international cooperation in the field of human rights, in accordance with Council resolution 13/23 of 26 March 2010 (para. 15). Without setting the Advisory Committee a specific deadline, the Human Rights Council states that it will continue its consideration of the matter in 2012.

5. On the basis of proposals from the drafting group, the Advisory Committee should decide, at its seventh session, on appropriate methods and objectives for the fulfilment of its mandate. The purpose of the present report, which is an update of the working document submitted at the sixth session, is to facilitate discussion on the basis of input provided in a document that is available in all the working languages, and to allow for the broadest possible consultation with all stakeholders. The document incorporates the analytical information in the Rapporteur’s working paper (A/HRC/AC/6/CRP.4) and introduces some new ideas that emerged from the discussions of the Advisory Committee at its sixth session. The Rapporteur, whose three-year mandate with the Advisory Committee is coming to an end, hopes that the present report will provide the drafting group chaired by Mr. Seetulsingh with a solid basis for fulfilling its mission in a spirit of change and continuity.

## **II. Basic texts on international cooperation in the field of human rights**

6. Given the impossibility of citing all the relevant United Nations legal reference texts, a brief overview will suffice. The preamble of resolution 13/23 itself, for example, refers to many of the relevant texts. However, at this stage the main focus is on clarifying the legal framework for international cooperation in the United Nations system. It would be useful to supplement this overview with information on the practice of other international organizations, particularly regional organizations, and on experience gleaned in the context of cooperation agreements and multilateral and bilateral treaties.

### **A. International cooperation in the Charter of the United Nations**

7. International cooperation in the field of human rights has always been an important aspect of the mission of the United Nations. The Charter states that one of the purposes of the United Nations is 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” (Article 1, paragraph 3). Article 13 states that: “The General Assembly shall initiate studies and make recommendations for the purpose of: a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification; b. promoting international co-operation in the economic, social, cultural, educational, and health fields,

and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

8. Similarly, Chapter IX of the Charter, on “international economic and social cooperation”, provides, in Articles 55 and 56, that “Members pledge themselves to take joint and separate action in co-operation with the Organization” (Article 56) in order to achieve the purposes set forth in the preceding article, including “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 55 c). The Chapter also provides for coordination between the specialized agencies (Article 57 ff). Lastly, the Charter includes a specific reference to consultation with “non-governmental organizations” on matters within the competence of the Economic and Social Council (Article 71).

9. These provisions clearly show that the field of international cooperation is much broader than that of human rights, *stricto sensu*, and, at the same time, that this broad vision of “economic and social cooperation” clearly encompasses human rights. Hence, there is a need for an ongoing dialectic between solving “international problems of an economic, social, cultural, or humanitarian character” and strengthening human rights, but also between political cooperation and the “progressive development of international law”, including the codification of international human rights law. Similarly, the link between culture, education and human rights must be emphasized. This multifaceted form of cooperation reinforces and includes the human rights dimension, which is an element, not to say a condition, of that cooperation.

10. When human rights are set against the wider backdrop of international cooperation the number of actors involved multiplies. In the first instance, the Charter is aimed at both Member States and the United Nations system itself, although it highlights the complex relationship between the United Nations and States, given that States are obliged to cooperate with the United Nations, on both a bilateral and multilateral basis. One can therefore conclude that Member States also have a duty to cooperate through “joint and separate” action taken in the framework of their relations and institutions. In addition, this multilateral cooperation is open to specialized agencies and regional organizations, although it is too soon to speak of the term “multi-multilateralism” and account must also be taken of non-State actors, including civil society organizations, NGOs, foundations, the business world, companies and trade unions. International cooperation now takes place not just at the “supra-State” and “inter-State” levels or at the infra-State level, with the recent trend towards decentralization of cooperation and greater involvement of regions and local authorities, but also at the “transnational” level.

## **B. International cooperation in the general texts of the General Assembly**

11. The General Assembly, in resolution 2625 (XXXV) of 24 October 1970, adopted, in the context of promoting pacific coexistence, the “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations” (hereafter referred to as the “1970 Declaration”). Seven basic principles are set out, referring to: the obligation to refrain from the use or threat of force; the peaceful settlement of disputes; the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; the equal rights and self-determination of peoples; the sovereign equality of States; and the duty of States to fulfil “in good faith the obligations assumed by them in accordance with the Charter”. The fourth principle set out in the Declaration concerns the duty of States to cooperate with one another in accordance with the Charter.

12. This “duty” is described in the text of the Declaration as follows: “States have the duty to cooperate with one another, irrespective of the differences in their political,

economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences.” To this end, *inter alia*: “(b) States shall cooperate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance.” It should be noted — since the Human Rights Council, in resolution 6/30, calls for the integration of a gender perspective — that the 1970 Declaration, which mostly paraphrases the basic provisions of the Charter, omits all reference to gender-based discrimination and the principle of gender equality. Cooperation is envisaged “in the economic, social and cultural fields” and “in the promotion of economic growth throughout the world, especially that of the developing countries”.

## **C. International cooperation in the specific human rights texts**

### **(a) International Bill of Human Rights**

13. The Universal Declaration of Human Rights, which is itself based on the obligations of the Charter, recalls in its preamble that: “Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.” While the Declaration is mainly focused on specific individual human rights, it states, in article 26, paragraph 2, that education “shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”. In addition, 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.” However, it is in the two covenants that the full extent of the commitment to cooperation for the promotion of human rights is made clear.

14. Thus, pursuant to the International Covenant on Economic, Social and Cultural Rights, “each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized ...” (art. 2, para. 1). More specifically, with regard to “the fundamental right of everyone to be free from hunger”, the Covenant provides that States “shall take, individually and through international co-operation, the measures, including specific programmes, which are needed” (art. 11, para. 2). Similarly, States “recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields” (art. 15, para. 4). The same wording is not found in the International Covenant on Civil and Political Rights, aside from article 1, which is common to both covenants and refers to the free disposal of natural resources “without prejudice to any obligations arising out of international economic cooperation”. In addition to the “international assistance and cooperation” expressly provided for economic, social and cultural rights, should not all human rights benefit from international cooperation, starting with legal cooperation and technical assistance in the area of education and vocational training of public officials?

### **(b) Other international human rights treaties**

15. In certain treaties, explicit provisions refer to “cooperation of the national authorities with the United Nations”. One example is article 35 of the Convention relating to the Status of Refugees of 1951, which specifically mentions the Office of the United Nations High Commissioner for Refugees (UNHCR). However, it is mostly in more recent treaties that explicit reference is made to cooperation. The last preambular paragraph of the Convention

on the Rights of the Child of 1989 recognizes “the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries”, thus emphasizing the close link between cooperation and development. Article 45 states that, “in order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention”, the specialized agencies, such as the United Nations Children’s Fund (UNICEF), have the right to participate in the work of the Committee on the Rights of the Child.

16. The wording of the preamble to the Convention is also found in the Convention on the Rights of Persons with Disabilities which, in turn, recognizes “the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries”. Article 32 is concerned with the subject of “international cooperation”, although in the very broad sense of the term, and no longer solely with regard to the specialized agencies:

“1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

“(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

“(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

“(c) Facilitating cooperation in research and access to scientific and technical knowledge;

“(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

“2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.”

17. In addition, article 37, entitled “Cooperation between States Parties and the Committee”, states rather bizarrely, in paragraph 2, that the Committee is to give due consideration to “ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation”. Thus it juxtaposes two very different forms of cooperation. Similarly, article 38, on the “relationship of the Committee with other bodies”, is also concerned with the question of “[fostering] the effective implementation of the present Convention and [encouraging] international cooperation in the field covered by the present Convention”.

18. In other words, all aspects of cooperation are covered: cooperation between States; cooperation between States and international organizations; cooperation between institutions; and cooperation with civil society. Article 32, furthermore, details the arrangements for affording cooperation, referring to the following in turn: “international development”, “capacity-building” and the sharing of best practices; “access to scientific and technical knowledge”; “technical and economic assistance”; and the “transfer of technologies”. Most of these terms apply to solidarity which can take the form of North-South but also South-South solidarity. Article 32, paragraph 2, serves as a reminder that this

requirement for international cooperation does not exonerate the State from its primary responsibility. This detailed approach taken in the Convention could serve as a frame of reference for the interpretation of earlier treaties.

**(c) Vienna Declaration and Programme of Action**

19. The Vienna Declaration marked a turning point, in that it clarified the role of international cooperation in the promotion and protection of human rights. After recalling Article 56 of the Charter of the United Nations, the Conference affirms in the preamble to the Declaration, the “[determination] of the international community ... in human rights endeavours by an increased and sustained effort of international cooperation and solidarity”. Recalling the international commitments of States, the Conference states, in paragraph 1, subparagraph 2, of the first part of the Declaration, that “enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations”. In addition, it affirms, in paragraph 4, that: “The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.” In addition to technical cooperation, which is essentially provided for the purposes of development, the importance of political cooperation that includes the protection of all human rights is clearly recognized in the Declaration. Paragraph 10 states that: “States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.” Elsewhere, it is specified that States and international organizations should work “in cooperation with non-governmental organizations” (para. 13).

20. In more specific terms, in section C of the second part of the Declaration, entitled “Cooperation, development and strengthening of human rights”, it is recommended that “priority be given to national and international action to promote democracy, development and human rights” (para. 66). The measures listed in paragraph 67 concern the “strengthening of a pluralistic civil society”, assistance in the conduct of elections, national structures, including penal establishments, and training of lawyers and judges. In addition, paragraph 74 states that: “Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency.”

**(d) Durban Declaration and Programme of Action**

21. The text of the Durban Declaration and Programme of Action also calls several times for international cooperation and reaffirms “the importance of the enhancement of international cooperation for the promotion and protection of human rights and for the achievement of the objectives of the fight against racism, racial discrimination, xenophobia and related intolerance”. The Durban Conference refers, more generally, to “cooperation, partnership and inclusion”, a “spirit of solidarity and international cooperation” and “cooperation among nations and ... peace”. Thus, the strategy adopted clearly acknowledges the importance of cooperation: “We recognize the importance of cooperation among States, relevant international and regional organizations, the international financial institutions, non-governmental organizations and individuals in the worldwide fight against racism, racial discrimination, xenophobia and related intolerance, and that success in this fight requires specifically taking into consideration the grievances, opinions and demands of the victims of such discrimination.” (para. 110). While “cooperation with affected communities” is recommended in the Declaration, mention is also made of cooperation to



enhance international mechanisms, “bilateral, regional and international cooperation” (para. 60), cooperation with NGOs (para. 69) and the development of national institutions (para. 91 (c)).

**(e) Cooperation in the new mandate of the Human Rights Council**

22. The General Assembly, in its resolution 60/251, frequently emphasizes the importance of cooperation. In the preamble to the resolution, the General Assembly emphasizes that “the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings”. The Human Rights Council itself must be guided in its work by principles including “constructive ... dialogue and cooperation” (para. 4). The universal periodic review is considered to be a “cooperative mechanism, based on [a] ... dialogue” (para. 5). More generally, the task entrusted to the Council is the following: “(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies”; and “(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society.”

23. Human Rights Council resolution 5/1 reflects, in its turn, the broad thrust of these ideas. Under the resolution, the objectives of the universal periodic review include “support for cooperation in the promotion and protection of human rights” (para. 4 (e)) and “the encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights” (para. 4 (f)). The aim of the process is to enhance cooperation in the area of human rights (para. 27 (c)). The Human Rights Council, in its resolution, also mentions the possibility of “persistent non-cooperation” by a State with the universal periodic review process (para. 38). With regard to the complaint procedure, the confidential nature of which is designed to “enhance cooperation with the State concerned” (para. 86), the possibility of cases of “manifest and unequivocal lack of cooperation” is also envisaged (para. 104). However, the overall tone remains one of “constructive international dialogue and cooperation” with a view to the rationalization of mandates (para. 54). Accordingly, the country mandates are based on the principles of “cooperation and genuine dialogue” (para. 63), although the possibility of a lack of cooperation on the part of the State concerned is also acknowledged (para. 64).

24. Even more general wording is found in General Assembly resolution 60/1, which calls for efforts to “[encourage] tolerance, respect, dialogue and cooperation among different cultures, civilizations and peoples” (para. 14). This wording is echoed in the paragraph of the preamble to Human Rights Council resolution 13/23 which reaffirms that “dialogue among religions, cultures and civilizations in the field of human rights could contribute greatly to the enhancement of international cooperation in this field”, and goes on to mention “the fact that mutual understanding, dialogue, cooperation, transparency and confidence-building are important elements in all the activities for the promotion and protection of human rights”. Cooperation thus takes on an added cultural dimension, although its original scope is retained. As stated in paragraph 32 (the last paragraph) of the Millennium Declaration: “The United Nations is the indispensable common house of the entire human family, through which we will seek to realize our universal aspirations for peace, cooperation and development. We therefore pledge our unstinting support for these common objectives and our determination to achieve them.”

### **III. The challenges of international cooperation in the field of human rights**

25. This rapid overview clearly shows the wide variety of meanings that the very concept of cooperation can have. Before even starting to consider the legal scope of a “catch-all” concept that involves a wide range of actors, fields and registers, we should first distinguish it from similar terms. The texts already cited use a host of synonyms that focus on “constructive dialogue” and “participation”. What is more, the idea can be implicit, without the word “cooperation” actually being used, when the intention is to harness the efforts of all stakeholders. Of particular relevance in this regard is the work carried out in parallel by the Human Rights Council Advisory Committee, on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolution 8/5, or on human rights and international solidarity, pursuant to Human Rights Council resolutions 9/2, 12/9 and 15/3, and the work of the Independent Expert on human rights and international solidarity.

26. While it may be too soon to come up with a typology, a systematic frame of reference should be worked out to take into consideration all the parameters involved. Only then will it be possible to envisage a dynamic, rather than static, approach to the identification of best practices to enhance international cooperation in the area of human rights.

#### **A. The many aspects of international cooperation**

##### **(a) The subjects of international cooperation**

27. The first parameter to consider is the wide variety of actors involved. In the first instance, as suggested in the 1945 Charter of the United Nations, international cooperation is to be interpreted as referring to the obligations of Member States vis-à-vis the Organization, and, as a corollary, to the relations between States. It is where the law between States and the law of the Organization meet. This approach is logical, in the sense that the Organization is itself a cooperative venture, with States acting with a common purpose in the framework of the Charter of the United Nations. In this sense, cooperation is a “duty” requiring Member States, from the moment of accession, to act as peace-loving States that “accept the obligations contained in the present Charter and ... are able and willing to carry out these obligations” (Charter, Article 4, paragraph 1). At this level of principle, cooperation is not a mere political gesture of goodwill, but a legal requirement of good faith. There is a close link between the duty to cooperate and the commitment to carry out in good faith the obligations entered into in accordance with the Charter, as already stated in the 1970 Declaration referred to above.

28. This first level concerns not only all institutions of the United Nations family, including the financial organizations, but also other international organizations, including regional organizations. This diversity of international organizations means that they — and the agencies and mechanisms of the different institutions — are required to cooperate. International organizations and Member States cooperate on various levels in line with the objectives of consistency, synergy and effectiveness. The term “multi-multilateralism” highlights the difficulties involved in such an undertaking, given that so many institutional and sociological factors come into play.

29. Besides this supranational dimension, cooperation also involves States and groups of States, and the relations between them, whether bilateral or multilateral. This is probably where work to identify best practices would be the most useful. However, as we have noted, public cooperation has itself become more diverse, as the decentralization of

cooperation arrangements has shifted the emphasis towards local authorities or parliamentary diplomacy based on cooperation between national parliaments. National human rights institutions — these “third actors” — should be recognized as a category in their own right, located as they are at the intersection between the public authorities and civil society.

30. However, international cooperation is no longer the preserve of the State alone. It has taken on a transnational dimension, involving economic actors, as represented by the business world and trade unions, and civil society actors, NGOs, associations, religions and philosophies. The increasingly structured partnership that the United Nations and other international organizations have established with these different non-State actors adds a new dimension to international cooperation. However, it must be acknowledged that international bodies view the purpose of this partnership in terms of information, consultation, participation, and even outsourcing, rather than in terms of joint decision-making, joint management and joint responsibility.

31. One last dimension remains to be considered: the relations between non-State actors, which are governed by private international law, and special systems such as those used in the world of sport. In this connection, the international crisis has only served to highlight the importance of ensuring that these private entities are governed by international standards, given that States are bound to respect, protect and implement all human rights and fundamental liberties without any discrimination or bias. There is a constant threat of international human rights law being privatized through the substitution of voluntary standards for the international *erga omnes* obligations by which the international community is bound.

**(b) Forms of international cooperation**

32. The aims of international cooperation are as varied as the subjects involved; hence, the need for the international organization. International cooperation is a subject that cuts across all aspects of international relations and is not limited to the areas of “economic and social cooperation” enumerated in the Charter. For a long time, the notion of cooperation was associated with economic development and technical assistance, as seen in the provisions of the International Covenant on Economic, Social and Cultural Rights. However, judicial cooperation has since become an important element of a broader concept linking the establishment of the rule of law, human rights and development in the context of both training and legislation. At another level, cooperation goes hand in hand with the codification and progressive development of international law. The fight against terrorism has highlighted the importance of cooperation in judicial and police matters. Moreover, progress with human rights education and training and the fight against racism and all forms of discrimination have had an influence on cultural cooperation, primarily a matter for which the United Nations Educational, Social and Cultural Organization (UNESCO) has competence. The recent calls for cooperation among civilizations, cultures and religions form part of this logic. Lastly, these various elements of international cooperation would be meaningless without political cooperation, which is at the heart of bilateral or multilateral diplomacy.

33. It is worth looking to see whether there is a common denominator — perhaps in the notion of cooperation itself — behind these different forms of international cooperation. “Cooperation” in the modern sense is a notion originating in nineteenth century social philosophy, with its focus on the sociology of organizations. According to Emile Littré, in the classical period, it originally had a theological meaning. Beyond the domestic sphere, in which cooperative and mutual societies sprang up, the idea of cooperation in the international arena came to be embodied in the movement calling for the establishment of an international organization. The pioneers of the League of Nations, such as Léon

Bourgeois, Albert Thomas and Georges Scelle, shared many of the ideas expounded in the philosophy of sociological positivism developed in France by Emile Durkheim. Hence, the preamble of the Covenant of the League of Nations refers to a desire to strengthen “cooperation among nations”. The same intention is expressed in the Charter of the United Nations. Leading jurists like Georg Schwarzenberger, Wolfgang Friedmann and Paul Reuter, elaborated theories to explain this transition from “the law of force” to the “law of coexistence” and, subsequently, “the law of cooperation”.<sup>1</sup> Indeed, this is the reasoning behind the calls by General de Gaulle for States to eschew the logic of power blocs and to move, step by step, towards the establishment of “détente, entente and cooperation”.

34. The idea of international cooperation cannot be reduced to a mere question of the juxtaposition of national interests or the logic of power relations. It is posited on at least three basic assumptions. First, it assumes the existence of a genuine partnership and a shared project. The partnership must be based on recognition of the equal sovereignty of States. However, as we know, sovereignty implies a willingness to accept the limits of sovereignty. It is difficult to imagine cooperation without reciprocity. Otherwise, what we are discussing is a form of assistance, not an association of equals. Each State must be a full stakeholder in the cooperation and must have a sense of involvement in and ownership of the undertaking. International cooperation between different kinds of entities, such as international organizations and non-State actors, involves different types of partnerships and is based on recognition of respective areas of competence and responsibility. The cooperation should not detract from the neutrality and impartiality of institutional mechanisms or of procedures for consultation with independent experts.

35. Cooperation also means participation in a process. It is true that international cooperation can become associated with emergencies, such as a humanitarian disaster or there is an influx of refugees. More often, however, it is a longer-term process requiring the parties to “work together” in the framework of a policy, an agreement, an action plan or a programme or, in any event, in a general framework with well-defined stages, objectives, indicators and assessment criteria. In other words, the cooperation is not an end in itself but a means to an end. Its function is to mobilize joint efforts with the aim of achieving an objective. Transparency, accountability and periodic assessments, which are essential features of this ongoing process, serve the purpose of measuring the results.

36. Lastly, the idea of cooperation needs to convey some sense of a “shared ideal”. It is not just a matter of relations of good neighbourliness, coexistence or reciprocity, but rather of a willingness to look beyond mutual interests in order to advance the general interest. To cooperate is not just to choose dialogue over confrontation, it is to act together in pursuit of a common goal. The idea of international cooperation presupposes the existence of an international community that transcends the relations between States. It is in this sphere that the importance of international cooperation in the field of human rights becomes fully apparent, in that the cooperation becomes inseparable from the realization of the common ideal set out in the Charter of the United Nations of 1945 and the Universal Declaration of Human Rights of 1948. In the absence of an embryonic international community, it is Member States that assume responsibility, jointly and severally, for guaranteeing the rights so solemnly proclaimed in these instruments.

37. It remains to be seen how these principles of legal argument, which are derived from the notion of international cooperation itself, carry over into positive law. Article 56 of the Charter calls on all Member States to pledge themselves “to take joint and separate action in co-operation with the Organization” for the achievement of the purposes set forth in the preceding Article, particularly those of ensuring “universal respect for, and observance of,

<sup>1</sup> Emmanuel Decaux, *Droit international public*, Dalloz, Paris, 7th edition, 2010.

human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 55 *c*). The 1970 Declaration refers in general terms to the “duty to cooperate”, although the legal obligation with respect to human rights is unequivocal. The preparatory work done on the drafting of Articles 55 and 56 sheds little light on how the scope of these provisions is to be interpreted. If anything, it suggests that there was some reticence on the part of the United States to revisit the question of the sovereignty of States.<sup>2</sup> International case law does, however, offer an analogy in the obligation to negotiate in good faith. In an advisory opinion of 8 July 1996, the International Court of Justice stated: “The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result [...] – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith.”<sup>3</sup>

38. It is in this general framework that it has been possible to define other specific obligations relating to other protagonists or other forms of international cooperation. Cases in point are the obligations assumed within parts of other international organizations, particularly at the regional level, or through networks that are established after bilateral friendship or cooperation treaties are concluded. The strict definition of international cooperation and related legal obligations should not be allowed to obscure a broader vision of the notion of cooperation. As already indicated, cooperation cannot be reduced to a call for dialogue and coexistence or to the contrast between mutual understanding and confrontation. The establishment of dialogue can be a first step towards genuine cooperation, however.

## **B. International cooperation in the field of human rights**

39. It is in this area that priority must be given to the identification of best practices to enhance international cooperation, even if these practices do not necessarily encompass all the different elements of the ideal model just described and even if their focus is more often on ensuring the overall “effectiveness” of the system in place. The idea is not just to promote but also to ensure the effective protection of human rights. Indeed, it is the entire system of human rights diplomacy, including the legal policies of States and the action programmes of international organizations, on which attention must be focused with a view to the development of a truly joint strategy on human rights.

40. The first priority should be securing the universal application of international human rights instruments in line with the objective adopted at the Vienna World Conference. In this connection, the twentieth anniversary of the Conference could serve as an opportunity to review progress on the commitments made. The process of universal ratification should be stepped up and awareness-raising activities should be directed towards eliminating the remaining obstacles to effective universal ratification. Moreover, a “dialogue on reservations” should be launched to persuade States to withdraw reservations that serve no purpose and, above all, to refrain from entering reservations that are contrary to the purposes and objectives of the treaty concerned. These initiatives could be undertaken in the framework of the United Nations or at the regional level or in the context of the political dialogue between States, as in the case of the dialogue between the European Union and China on the international covenants. Besides the ratification of treaties and their optional

<sup>2</sup> Jean-Pierre Cot, Alain Pellet and Mathias Forteau, *La Charte des Nations Unies: Commentaire article par article*, 3rd edition, Economica, Paris, 2005.

<sup>3</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *I.C.J. Reports 1996*, vol. 1, p. 263, para. 99.

protocols, priority should be given to ensuring the effective application of treaties in the domestic arena, drawing on awareness-raising, training and information-sharing.

41. An aspect of international cooperation that is still all too often neglected is the role of regional systems. In addition to the reports submitted by the Office of the United Nations High Commissioner for Human Rights, exchanges between fully-developed regional systems should be encouraged by the United Nations so as to allow for sharing of experiences and the creation of synergies. Account being taken of the rule of *lis pendis*, the effectiveness of international cooperation could not but be enhanced if a system were to be established that allowed for information-sharing or even coordination between global, regional and national monitoring bodies but without any encroachment on their respective mandated functions. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could be taken as a model in this regard. The experiences of the International Labour Organization (ILO) and UNESCO in carrying out certain joint monitoring activities should be evaluated systematically and then applied to regional organizations, if and where appropriate. Lessons should be learned from the experience of the Organisation for Security and Co-operation in Europe (OSCE) in conducting electoral and judicial monitoring to strengthen international standards and facilitate coordination of field operations. Lastly, more emphasis should be placed on active participation by regional organizations in the work of United Nations bodies.

42. States furthermore have a duty to cooperate fully with monitoring bodies. It is surprising that there are still Member States that have not issued a standing invitation to the special procedures and that quite a number of States do not respond to urgent appeals or requests for information submitted by mandate holders. States should take joint responsibility for strengthening the human resources on which the treaty bodies can draw to carry out their work, whether with regard to State party reports or the consideration of individual communications. A finding that a failing or violation has occurred should result not only in a declaration of culpability — a measure that in too many cases seems to be simply a matter of form — but also in legal action being taken and technical assistance provided to improve the situation on the ground; this is the procedure in effect at ILO. A fortiori, reform of the complaints procedure should enable the Human Rights Committee to take effective and specific steps whenever the Working Group on Communications apprises it of cases of systematic violations. In this way, the Committee could exercise a vital rapid alert function.

43. The strengthening of international cooperation also calls for a review of the consultative status of NGOs. It is difficult to speak of a partnership when the NGO committee is made up entirely of Member States, without any appropriate participation by NGOs themselves. A mixed parity-based system or a system of genuine tripartism, which includes independent experts serving as a neutral party, would be a definite improvement. The ritual call for the participation of all “stakeholders” cannot dilute the vital role of NGOs in defending human rights across the world. Efforts should be made to achieve better synergies with independent NGOs in the area of exchanges of information and sharing of initiatives.

44. This process also calls for a more detailed examination of the notion of expertise. The impression that has been given is that the 2006 reform resulted in greater responsibility being given to the representatives of States and international civil servants at the expense of independent experts, whose status is becoming increasingly uncertain and whose activities are subject to close scrutiny. Moreover, the criteria of independence, impartiality and availability that States themselves proposed are not always taken into account in the election process. The mixed composition of certain investigation commissions often means that they end up performing a set of mismatched functions, a combination of diplomatic cooperation, good offices and fact-finding. Moreover, one can only deplore, yet again, the

fact that the human rights system has no central, independent, collegial body — similar to the former Sub-Commission on Human Rights and, in a different way, to the International Law Commission — with a general mandate and the power to launch joint initiatives. Such a body could fill the gaps in human rights protection and carry out comprehensive studies on the development of international law, whether in the area of primary rules, secondary rules or soft law, based on interpretations of derived law. If international cooperation in the field of human rights is to be strengthened, the role of the Advisory Committee as a “testing ground” must furthermore be recognized.

45. Lastly, international cooperation in the field of human rights is not the exclusive domain of multilateral diplomacy; it also relates to the work of the United Nations on the ground. In this connection, systematic assessments should be undertaken to determine how effectively the local missions of the United Nations Development Programme (UNDP), the human rights centres established by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and peacekeeping operations protect and promote human rights, including with respect to humanitarian law. It is vitally important to define compliance objectives from the outset so as to ensure that respect for human rights is fully integrated into United Nations activities and, in particular, to allow for the evaluation of results. A solemn declaration by the Secretary-General of the United Nations formally reaffirming the Organization’s commitment to honouring international human rights principles and obligations would be an important step towards making the Organization a full stakeholder in the application of rules adopted under its auspices.

### **C. International cooperation and human rights**

46. No discussion of human rights in the context of international cooperation can be allowed to focus solely on human rights. In addition to the question of strengthening international cooperation in the field of human rights, the issue of the place of human rights in all areas where international cooperation is at stake should be examined using a cross-cutting approach — a form of mainstreaming. The existing situation remains somewhat paradoxical: on the one hand, States have undertaken international obligations and made voluntary pledges in the framework of the Global Compact, on the other hand, international organizations remain in a kind of limbo, bound by no authoritative body of human rights law. The fact that States are sometimes ordered to comply with the binding decisions of an international organization which does not itself have to answer for its own actions constitutes an unacceptable legal vacuum. The centrality of human rights in international cooperation must be reaffirmed through the mainstreaming of human rights issues in all cooperation policies.

47. This must be seen first and foremost as a positive step. To that end, it would be very helpful if the technical organizations of the United Nations system were to proclaim their commitment to the International Bill of Human Rights. It might even be possible to set up a system of periodic reports to allow for a public assessment of the impact that these organizations’ decisions and activities have on the human rights situation. Perhaps a complaints system presided over by mediation mechanisms or independent bodies could even be established. The universal periodic review process could thus be extended, in a properly structured framework and on a voluntary basis, to encompass all stakeholders, including international organizations.

48. The negative impact of certain policies on human rights must not be ignored. The Committee on Economic, Social and Cultural Rights has expressed its views, in a general comment, on the impact of sanctions on the effective enjoyment of economic, social and cultural rights. This issue needs to be addressed more broadly to allow for a systematic examination of the impact of structural adjustment strategies, international cooperation

policies or certain forms of conditionality on the effective enjoyment of human rights, particularly by vulnerable groups and marginalized individuals.

49. By sidelining the Economic and Social Council and thus undermining the original mission that it had pursued throughout the period of post-war reconstruction, the 2006 reform made it all the more necessary to establish an international forum to promote sustainable development and address the imperatives of human security. This is the thrust of the proposals made by Kofi Annan in his 2004 report, *In Larger Freedom*, which recognized the close link between security, development and human rights. A joint initiative of the United Nations and ILO would be particularly worth pursuing in order to ensure that human rights are given a proper place in projects to reconstruct the global system that was shaken by the 2008 crisis. However, “globalization with a human face” remains a very low priority for the Organization for Economic Cooperation and Development (OECD) and the World Trade Organization (WTO).

50. There is also a need for a clearer delineation of the relationship between human security and international cooperation in relation to confidence-building, security measures, arms controls, the implementation of humanitarian law and the workings of the criminal justice system. The experience of the Conference on Security and Cooperation in Europe which, from the very beginning, established that there was a close link between security, cooperation and the “human dimension”, would repay further study as it could help with identifying best practices and exploring the importance of linkages between human rights and cooperation and the limits of such conditionality.

#### **IV. Possible future work**

51. This inventory suffices to show how vital it is for the drafting group to make some choices and to identify priorities, in a timely manner and in keeping with the spirit of its mandate, if the mandate conferred upon it by the Human Rights Council in resolution 13/23 is to be fulfilled and confirmed in resolution 16/22. The first round of consultations and discussions within the drafting group resulted in some initial choices being made on methodology.

##### **A. Limits of the exercise**

52. The intention is to focus on international cooperation in the field of human rights without at this stage addressing the question of the place of human rights in international cooperation, including the sensitive issue of conditionality. In this case, cooperation should be understood *stricto sensu* and distinguished from other notions such as mutual understanding or “dialogue among civilizations”. The working group will have to monitor the evolution of parallel issues, including that of the mandate of the Independent Expert on human rights and international solidarity, which was extended until June 2011 pursuant to Human Rights Council decision 16/118 (adopted by 32 votes to 14). It will also be necessary to define precisely the interaction between “international cooperation and international assistance”, since the words are yoked together in practice and in law, as exemplified in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

53. The decision was taken to concentrate on the United Nations human rights system, even if coordination within the United Nations family and cooperation with other international and regional organizations have lost none of their relevance and should open the way for consultations with the stakeholders concerned. Moreover, priority should be given to relations between States, bearing in mind their obligations under the Charter,



particularly Articles 55 and 56, in which “Members pledge themselves [...] to take joint and separate action in co-operation with the Organization” for the achievement of the purposes set forth in the preceding article, particularly those of ensuring “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. These provisions are of such central importance that the commentary by Hans Kelsen on the Charter of the United Nations presents all human rights developments, beginning with the Universal Declaration of Human Rights of 1948, under the rubric of “international cooperation”.

54. From a study of the main reference texts, it is clear that the legal obligation of Member States to “take joint and separate action in co-operation with the Organization” has become more diverse and multi-layered over the 60 years of its existence. All the stakeholders in the contemporary human rights protection process are called upon to participate in this system of international cooperation, which involves a multiplicity of actors, while bearing in mind the respective functions and responsibilities of the different stakeholders. If the very notion of international cooperation in the strict sense of the term expresses a commitment to working together on an equal footing to realize a common ideal, more loosely defined forms of dialogue, communication and information-sharing could be useful preliminary steps in building mutual trust, provided that they are not considered as ends in themselves. Such dialogue should not be monopolized by States and should include all components of civil society, beginning with NGOs.

## **B. Working methods**

55. With regard to proposals to strengthen international cooperation in the field of human rights, the first suggestion would be to launch a broad consultation exercise that is open to all stakeholders, including States, national institutions, intergovernmental organizations and NGOs, and based on a well-defined form of reference to be established by the drafting group. Questionnaires for this exercise should be drawn up to:

- Identify the “legal bases”, whether with respect to institutions or treaties, that underpin international cooperation in the field of human rights
- Define the forms of and modalities for pursuing international cooperation in the field of human rights in the bilateral or multilateral context or in international institutions
- Identify the content of obligations concerning resources and the results of international cooperation in the field of human rights
- Identify “best practices” suggested by the different stakeholders, together with objectives, criteria and methods for evaluating the results of international cooperation in the field of human rights
- Identify, if relevant, the legal consequences of non-cooperation and possible remedies

56. The Advisory Committee, with the support of the Office of the United Nations High Commissioner for Human Rights, should disseminate these questionnaires very widely after its seventh session, to enable it to draw up preliminary guidelines at its eighth session, which will be held at the beginning of 2012.

57. Ad hoc studies could also be conducted by the drafting group beginning, following the practice of international institutions, with the treaty bodies or the independent experts responsible for international cooperation with a country. It would be helpful if a representative of the drafting group were able to attend inter-committee meetings and the meeting of the special procedures for the purpose of engaging in direct consultations in Geneva.

58. At the same time, official consultations with the network of national institutions would allow for relevant institutional experiences at the international and regional levels to be harnessed. Intergovernmental organizations could furthermore be consulted on specific issues by the drafting group and invited to run seminars or workshops that would provide the Advisory Committee as a whole with further food for thought.

59. Lastly, the drafting group should consider the feasibility and acceptability of the different approaches outlined in the present report so as to allow the Advisory Committee to consider what specific follow-up action, if any, to take.

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