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Human rights bodies and mechanisms

### Study of the Human Rights Council Advisory Committee on the enhancement of international cooperation in the field of human rights\*

#### *Summary*

In the present study, undertaken pursuant to Human Rights Council resolution 13/23, the Advisory Committee explores ways and means to enhance cooperation in the field of human rights, taking into account the views contained in the report of the United Nations High Commissioner for Human Rights on the enhancement of international cooperation in the field of human rights (A/HRC/13/19) and those of States and relevant stakeholders, and submits proposals thereon.

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\* Late submission.

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## 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 initial responses received 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.

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 drafting 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 that revolve 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. At the Advisory Committee's seventh session, Ms. Boisson de Chazournes was appointed Rapporteur of the drafting group. The Chairperson of the drafting group, Mr. Seetulsingh, presented the report that the group had drafted. After discussing the report, the Advisory Committee tasked the drafting group with submitting a final report to the Advisory Committee at its eighth session. On 1 September 2011, the secretariat of the Advisory Committee sent out a questionnaire, and by October 2011 about 10 responses had been received. Eight Member States (Cameroon, Cuba, France, Greece, Honduras, Iraq, Serbia and Uruguay) and a number of NGOs sent their observations and comments to the United Nations High Commissioner for Human Rights.

6. At its eighth session, the Advisory Committee considered and endorsed the present study for submission to the Human Rights Council at its nineteenth session.

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

7. 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 practices of other international organizations, particularly at the regional level, and on experience gleaned from the development of multilateral and bilateral cooperation agreements.

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

8. 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.”

9. Similarly, Chapter IX of the Charter, on “international economic and social co-operation”, provides, in Articles 55 and 56, that “Members pledge themselves to take joint and separate action in co-operation with the Organization” (Art. 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” (Art. 55 (c)). The Chapter also provides for coordination between the

specialized agencies (Arts. 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 (Art. 71).

10. 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.

11. 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 addressed to both Member States and the United Nations system itself, while highlighting the complex relationship between the United Nations and States, given that States have the obligation to work in cooperation with the United Nations on both a bilateral and multilateral basis. It can therefore be concluded 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 opportunity for 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 general documents of the General Assembly**

12. The General Assembly, in its resolution 2625 (XXV) of 24 October 1970, adopted, in the context of promoting peaceful coexistence, the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” (hereafter referred to as the “1970 Declaration”). Seven basic principles are set out, including the principle of refraining from the threat or use of force, the principle of the peaceful settlement of disputes, the principle relating to “duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter”, the principle of equal rights and self-determination of peoples, the principle of the sovereign equality of States and the principle that States are 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.

13. This “duty” is described in the text of the Declaration as follows: “States have the duty to co-operate 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 co-operation free from discrimination based on such differences.” To this end, *inter alia*: “(b) States shall co-operate 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 — in view of the fact that the Human Rights Council, in resolution 6/30, calls for the integration of a gender perspective — that the 1970 Declaration, which, for the most part, 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 specific human rights documents

### (a) International Bill of Human Rights

14. The Universal Declaration of Human Rights, which is itself based on the obligations set forth in the Charter, states 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 the human rights of the individual, it does state, 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.” Thus, it is only when the two covenants are taken together that the full extent of the commitment to cooperation for the promotion of human rights is made clear.

15. 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 co-operation, 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 co-operation, based upon the principle of mutual benefit, and international law”. In addition to the “international assistance and cooperation” expressly provided for in respect of the promotion of economic, social and cultural rights, should not all human rights be promoted through 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

16. 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. However, it is primarily 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 co-operation 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 co-operation in the field covered by the Convention”, the specialized agencies, such as UNICEF, have the right to participate in the work of the Committee on the Rights of the Child.

17. This wording in the preamble to the Convention on the Rights of the Child is echoed 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, in a very broad sense rather than solely as it relates 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.”

18. In addition, article 37, entitled “Cooperation between States Parties and the Committee”, states 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, entitled “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”.

19. 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, on cooperation arrangements, refers 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 entail a form of solidarity, which may encompass its North-South but also its South-South dimension. Article 32, paragraph 2, serves as a reminder that this obligation to engage in international cooperation does not exonerate the State from its primary responsibility. The particularly 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**

20. The Vienna Declaration marked a turning point in the clarification of 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 “commitment of the international community to human rights endeavours [through] an increased and sustained effort of international cooperation and solidarity”. Recalling the international commitments of States, the Conference asserts, 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 focused on promoting development, the importance of political cooperation encompassing 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).

21. 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” and include “assistance for … the conduct of … elections”, but they also concern 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**

22. The text of the Durban Declaration and Programme of Action also calls repeatedly 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 Declaration refers, more generally, to “cooperation, partnership and inclusion”, a “spirit of solidarity and international cooperation” and “cooperation among nations and … peace”. Thus, it 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**

23. The General Assembly, in its resolution 60/251, repeatedly emphasized the importance of cooperation. In the preamble to the resolution, the General Assembly recognized 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, *inter alia*, the principles of “constructive … dialogue and cooperation” (para. 4). The universal periodic review is considered to be a “cooperative mechanism, based on … 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.”

24. Human Rights Council resolution 5/1 reflects, in its turn, the broad thrust of these ideas. In accordance with this 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)). In this same resolution, the Human Rights Council also refers to 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 a “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), even though the possibility that a State might be uncooperative is acknowledged (para. 64).

25. 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 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 then 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 while retaining its original scope. 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. Challenges for international cooperation in the field of human rights**

26. This brief 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 cited above 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, and on human rights and international solidarity, pursuant to Human Rights Council resolutions 9/2, 12/9 and 15/3, and by the Independent Expert on human rights and international solidarity.

27. While it may be too soon to set up a typology, a systematic framework should be developed that will allow all the parameters involved to be taken into consideration. Only then will it be possible to envisage a dynamic, rather than static, approach to the issue with a view to identifying best practices for enhancing international cooperation in the area of human rights. These best practices are identified and disseminated through visits by experts, as well as through studies and reports. The universal periodic review, forums and other platforms for exchanging information at the national, regional and international levels, also provide a vehicle for their dissemination.

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

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

28. The first parameter to consider is the wide variety of actors involved. In the first instance, within the framework of the Charter of the United Nations of 1945, 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 inter-State law and the legal tenets of the Organization meet. This approach makes sense inasmuch as 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, by virtue of their status as such, to act as peace-loving nations that “accept the obligations contained in the present Charter and ... are able and willing to carry out these obligations” (Charter, Art. 4, para. 1). At this level of principle, cooperation is not a mere political gesture of goodwill, but a legal imperative of good faith. There is a close link between the duty to cooperate and the commitment to honour in good faith the obligations entered into under the Charter, as also stated in the 1970 Declaration referred to above.

29. At this first level, the concept concerns not only all the organizations of the United Nations family, including its financial institutions, but also other international and regional organizations. The existence of this diverse array of international organizations necessarily entails cooperative efforts among them and among their various agencies and mechanisms. 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, since so many institutional and sociological factors come into play.

30. Besides this supranational dimension, cooperation also involves States and groups of States, whether on a bilateral or a multilateral basis. This is where work to identify best practices would be the most useful. However, as noted earlier, 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.

31. National human rights institutions are a third type of stakeholder that should be recognized as a category in their own right, located as they are at the intersection between

public authorities and civil society. Given their independent nature and their influential position within their own country, these institutions make it possible to develop and implement measures to promote effective and active cooperation among the various stakeholders at the national and regional as well as the international levels.

32. International cooperation is no longer the preserve of the State alone. It has taken on a transnational dimension that encompasses economic actors, as represented by the business world and trade unions, and civil society actors, non-governmental organizations, associations, religious organizations and different schools of thought. 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 or joint responsibility.

33. One last dimension remains to be considered: the relations between non-State actors which are governed by private international law and those regulated by 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 freedoms without any discrimination or bias. There is an ongoing risk that international human rights law could be “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**

34. The aims of international cooperation are as varied as the subjects involved; hence the need for international organizations. International cooperation cuts across all aspects of international relations; it 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 may be seen from 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. Meanwhile efforts to promote cultural cooperation, a matter that falls within the purview of the United Nations Educational, Social and Cultural Organization (UNESCO), have led to progress in human rights education and training and in the fight against racism and all forms of discrimination. 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 very heart of bilateral or multilateral diplomacy.

35. The idea of international cooperation cannot be reduced to a mere juxtaposition of national interests or the logic of power relations. It is based on at least three basic assumptions. First, it assumes the existence of a genuine partnership and a shared undertaking. The partnership must be based on recognition of the equal sovereignty of States, and yet, as we know, sovereignty, by its very nature, entails making a commitment and accepting the limits of sovereignty. It is difficult to imagine cooperation without reciprocity, since otherwise, what we are discussing is a form of assistance, not an association of equals. Each State must be a full partner in a cooperative effort 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 a recognition of their respective areas of competence and responsibility. Cooperation should not detract from the neutrality and impartiality of institutional mechanisms or of procedures for consultation with independent experts.

36. Cooperation also entails participation in a process. It is true that international cooperation pays a role in emergencies, such as a humanitarian disaster or an influx of refugees. More often, however, it is a longer-term process in which the parties work together to implement a policy, an agreement, an action plan or a programme or, in any event, to take action within a general framework with well-defined stages, objectives, indicators and assessment criteria. In other words, cooperation is not an end in itself but a means to an end. It is a way of mobilizing 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. Other assessment methods include studies conducted by external bodies and periodic reports.

37. Lastly, the idea of cooperation conveys 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 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.

38. 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, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (Art. 55 (c)).

39. Other specific obligations relating to other protagonists or other forms of international cooperation have been established within this general framework. Cases in point are the obligations assumed within 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**

40. This is the first area to look to for best practices for enhancing 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 generally limited to 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 collective human rights strategy.

41. The first priority should be securing the universal application of international human rights instruments in line with the objective established at the Vienna World Conference on Human Rights. In this connection, the twentieth anniversary of the Conference could serve as an opportunity to review progress on the commitments made there. The process of achieving universal ratification should be stepped up, and awareness-raising activities should be directed towards eliminating the remaining obstacles to effective universal ratification. Moreover, a “reservations dialogue” 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, but they could also be pursued at the regional level or in the context of a political dialogue between States, such as the dialogue being carried on by the European Union and China concerning various international covenants.

42. In addition to the ratification of treaties and their optional protocols, priority should be given to ensuring the effective application of treaties in the domestic arena through awareness-raising, training and information-sharing efforts, which may include sending experts on visits and carrying out institutional capacity-building projects and educational and knowledge-sharing activities.

43. 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 (OHCHR), exchanges between rapidly developing regional systems should be encouraged by the United Nations in order to promote the exchange of experiences and the creation of synergies. Account being taken of the rule of *lis pendens*, the effectiveness of international cooperation could not but be enhanced if a system were to be established that allowed for information-sharing or coordination between global, regional and national monitoring bodies. Such a system, which should not, of course, encroach on such bodies’ respective mandates, could be modelled on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The experiences of 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 Organization for Security and Cooperation in Europe in conducting electoral and judicial monitoring that can then be used 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.

44. 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.

45. An important aspect of cooperation is the follow-up given to recommendations, which requires the involvement of the State party concerned and also of other stakeholders. Mobilization of the relevant stakeholders and consultation with them are just as important as technical and financial assistance in implementing such recommendations. To that end,

the recommendations themselves should be clearly formulated. Moreover, the procedure for dealing with cases of continued non-cooperation must be effective.

46. One of the available mechanisms for this purpose is the Voluntary Fund for Financial and Technical Assistance, which was established by the Human Rights Council through resolution 6/17 to help countries implement the recommendations emanating from the universal periodic review.

47. 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, the complaints procedure should be reformed in order to enable the Human Rights Council to take effective and specific steps whenever the Working Group on Communications apprises it of cases of systematic violations. The Council could then function as an early warning mechanism.

48. International cooperation in the field of human rights also takes place within the international criminal justice system. In this regard, States' cooperation with the International Criminal Court is essential to expedite the prosecution and conviction of Rome Statute crimes.

49. In order to strengthen international cooperation, a review of the consultative status of non-governmental organizations is also called for. It is difficult to speak of a partnership when the NGO committee is made up entirely of Member States, without appropriate participation by non-governmental organizations 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" does not suffice to support the vital role of non-governmental organizations in defending human rights across the world. Efforts should be made to achieve better synergies with independent non-governmental organizations in the area of information exchange and shared initiatives, and also by taking actions on the ground.

50. 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 effective the local missions of the United Nations Development Programme, the human rights centres established by OHCHR and peacekeeping operations are in protecting and promoting human rights and in upholding 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 assess results. A solemn declaration by the Secretary-General formally reaffirming the commitment of the United Nations to 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. Such a declaration could also reaffirm the importance of various forms of institutional, bilateral and multilateral cooperation in the field of human rights.

## C. International cooperation and human rights

51. No discussion of human rights in the context of international cooperation should focus solely on human rights as such. In addition to the question of strengthening international cooperation in the field of human rights, human rights issues in all areas where international cooperation takes place 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 businesses have 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 sanctioned on the basis of the binding decisions of an international organization which does not itself have to answer for its own actions points up a highly regrettable legal vacuum. The centrality of human rights in international cooperation must be reaffirmed through the mainstreaming of human rights issues in all cooperation policies.

52. 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.

53. Efforts to promote sustainable development and address the imperatives of human security must be supported. This is the thrust of the proposals made by the Secretary-General in his report entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005), in which he explored 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 efforts to reconstruct the global system in the wake of the 2008 crisis. However, too low a priority continues to be accorded to "globalization with a human face".

54. Immigration and its many aspects are currently the focus of worldwide attention. There are many historical, social and economic causes of this phenomenon. Cooperation is necessary in this domain to ensure that human rights are respected by the various States concerned.

55. Furthermore, States should foster the emergence of conditions favourable to development. Giving effect to the right to development is one means of achieving the Millennium Development Goals. The realization of this right at the international level starts with a commitment from OHCHR and continues with, *inter alia*, the establishment of partnerships and cooperation programmes, particularly for technical cooperation, as well as information and educational activities.

56. 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 Co-operation 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 be of help in identifying best practices and exploring the importance of linkages between human rights and cooperation and the limitations of this sort of conditionality.

#### **IV. Future prospects**

57. 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. The role of human rights in international aid to development would require an empirical assessment, in particular with regard to the scope and the modalities of such aid.

58. The emphasis should be on the United Nations human rights system, although coordination within the United Nations family and cooperation with other international and regional organizations have lost none of their relevance and should be used to open the way for consultations with stakeholders. 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”.

59. An examination of the main reference texts make it 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 multifaceted over the 60 years that have passed since it was established. 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. While the very notion of international cooperation in the strict sense of the term implies a willingness to work together on an equal footing in order 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 a dialogue should not be monopolized by States and should include all components of civil society, beginning with NGOs.

60. There are many methods and measures that could help to enhance international cooperation in the field of human rights. They require the participation of a broad spectrum of stakeholders at the international, national and local levels. The universal ratification of treaties and their effective application in the domestic arena should be encouraged. Dialogue between States and monitoring bodies also plays an important role, and the latter must have the necessary means made available to them.

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