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## ON SOLIDARITY IN INTERNATIONAL LAW

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# ON SOLIDARITY IN INTERNATIONAL LAW

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## ABSTRACT

*The scope of this reflection is on the actual and possible function of the concept of solidarity in international law. The discussion has both a descriptive aim, to examine the place of solidarity within international law today, and a normative aim that looks at the desirable evolution of this concept. Although increasingly invoked in the international sphere generally, the concept of solidarity has an uncertain status in international law. Despite having a longer history especially in Christian thought and certain earlier juridical and political antecedents (some quite contradictory to its use today), its advent in international law is relatively new. Solidarity today could be understood in the abstract as a basic observable condition of the international environment, as a principle of international law, as a (human) right, or as a fundamental moral value. Seen from within the practical experience of international law today, it is best understood as a relatively weak legal principle, which rarely if ever outweighs the international legal system's continuing foundation in the principles of sovereignty and state consent. Solidarity does, however, have stronger underpinnings as a moral value. The place of solidarity in Catholic social teaching deepens our understanding of the possible significance of subsidiarity in the international legal system. In Catholic thought, subsidiarity is both a virtue and a moral principle that calls all men and women to commit themselves "to the good of all and of each individual." It is closely related to charity and fraternity, and finds its fullest expression in gratuitousness, or freedom. This in turn leads to a need to reconcile solidarity with the freedom of states in the international sphere, including through the mediating principle of subsidiarity.*

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The scope of this reflection is on the actual and possible function of the concept of solidarity in international law. In this sense, this research will have both a descriptive aim, to examine the place of solidarity within international law today, and a normative aim, that looks at the possible, or desirable, evolution of this concept. In addition to the most relevant international legal practice and doctrine and the work of the Office of the High Commissioner for Human Rights, special regard will be given to the social teaching of the Catholic Church, in which the principle of solidarity has a prominent place.

## ON SOLIDARITY IN GENERAL

### On the term “solidarity”

*Solidum* in Latin meant hard, strong, solid, and also whole, full,<sup>3</sup> and it was used in law in the expression *in solidum obligari* to indicate the obligation in which all common debtors committed themselves to pay to the creditor the whole debt.<sup>4</sup> This concept is still used nowadays in civil law systems, as, for example, in the Italian legal expression “*obbligazione in solido*”,<sup>5</sup> in Canadian Quebec,<sup>6</sup> and in France.<sup>7</sup> The word used in France, already in the 17<sup>th</sup> century, to describe the common responsibility of a group of debtors was first *solidité*,<sup>8</sup> and then *solidarité*.<sup>9</sup> If *solidum* was both a generic and legal term in Latin, in old modern French *solidarité* originated as a legal term.

During the French Revolution the term appears to have been used in a more general, not specifically legal way,<sup>10</sup> and by the first half of the 19<sup>th</sup> century the more general meaning of *solidarité* appears to have been established to the point that, in 1848, it was used to describe a political party: “*Solidarité républicaine*”.<sup>11</sup> Then, with Émile Durkheim, at the end of the 18<sup>th</sup> century, the term became part of a sociological theory.<sup>12</sup> Since then it has come to be commonly used in several languages in this more general meaning: “*solidaridad*” in Spanish, “*solidarietà*” in Italian, “*solidariedade*” in Portuguese, “*Solidarität*” in German, and “solidarity” in English.

<sup>3</sup> Entry *Solidum* (adj.), *Oxford Latin Dictionary* (2<sup>nd</sup> ed. rev.), Oxford University Press, 2012.

<sup>4</sup> See the complete account given in the monographic work L. Parenti, «*In solidum obligari*», Edizioni Scientifiche Italiane, Napoli, 2012. From the same term derives the contemporary term “*soldo*”, a strong coin created during the 4<sup>th</sup> century the value of which should be stable over time, and later the professional combatants for hire (paid “with the coin”, “*al soldo*”), from which derives the contemporary “*soldato*” and “soldier”.

<sup>5</sup> Arts 1292 and 2055(1) of the Italian *Codice civile*.

<sup>6</sup> Arts 1480 and 1526 of the 1991 *Code civil* of Québec.

<sup>7</sup> Arts 203, 1382 and 1384(1) of the French *Code civil*.

<sup>8</sup> Entry *Solidité*, *Dictionnaire de l'Académie française*, 1<sup>ère</sup> éd., Paris, 1694, p. 485.

<sup>9</sup> “Solidité, ou Solidarité, signifie en termes de Pratique, Engagement par lequel plusieurs personnes s’obligent les unes pour les autres, et chacune pour toutes, s’il est nécessaire... On dit communément Solidarité”, Entry *Solidité*, *Dictionnaire de l'Académie française*, 5<sup>ème</sup> éd., Paris, 1798, p. 580, emphasis in the original.

<sup>10</sup> Mirabeau in 1789 and Danton in 1793 used the terms *solidarité* and *solidaire* at the National Assembly in a more general way, cf. F. Brunot, *Histoire de la langue française des origines à 1900*, tome 9, partie II, Paris, 1937, pp. 669 and 745. On the evolution of the term *Solidarietà* see R. Zoll, *Enciclopedia delle scienze sociali*, Treccani, 1998, available at [http://www.treccani.it/enciclopedia/solidarieta\\_%28Enciclopedia-delle-scienze-sociali%29/](http://www.treccani.it/enciclopedia/solidarieta_%28Enciclopedia-delle-scienze-sociali%29/). All the websites referred in the paper have been last visited on 28 February 2014.

<sup>11</sup> See R. Zoll, above at fn. 8; P. Leroux, *De l'humanité, de son principe et de son avenir*, Paris, 1840, p. xxi: “Or donc, ce point fixe, que je crois démontrable... c’est la *communion du genre humain*, ou, en d’autres termes, la *solidarité mutuelle des hommes*” (“the reciprocal solidarity among men”, emphasis in the original); A. Comte, *A Discourse on the Positive Spirit* (1844), William Reeves, London, 1903, p. 118: “The tendency of the new philosophy as a whole will always be to bring into prominence, in active no less than in speculative life, the tie which unites us to each all, in a multitude of different ways. Thus shall we become unconsciously but deeply imbued with the feeling of social solidarity suitably extended to all times and spaces.”

<sup>12</sup> *De la division du travail social* (1893), Paris, PUF, 2007.





In 19<sup>th</sup> century France the term was used to indicate the bond among individuals in a republic under the same nation, in the same social group, or as part of humanity as a whole,<sup>13</sup> while today we can also consider it in reference to states and organizations of different kinds operating at the global level.<sup>14</sup> But this difference over time should not be considered absolute, since even in its 19<sup>th</sup> century usage, solidarity could be used to talk about the relationship between nations. For example, the French intellectual and politician Frédéric Bastiat, in a letter in 1844, wrote about “the solidarity between all the parts of the territory,” adding: “I even think that this solidarity embraces all nations.”<sup>15</sup> However, it is not surprising that in the last two centuries solidarity has been used in very different, and even contradictory, ways. It was a key concept in grounding transnational alliances in the communist struggle of workers, “slaves” against “masters”,<sup>16</sup> or from utopians preaching a new world order in the aftermath of World War I.<sup>17</sup> It has frequently served to affirm the existence of a common political goal and to strengthen the bonds among certain nations to the exclusion of others. For example, in the past solidarity featured in both the “duty” of European colonial powers to help each other in controlling the colonized world<sup>18</sup> and also in the assertion of “Third World solidarity” against colonial imperialism.<sup>19</sup> Solidarity then reinforced the alliances of Western liberal states and also the global relations of socialist ones, each in opposition to the other. In 1914 Robert Michels noticed that “in order to establish a group of solidarity it is *a priori* necessary to have a sharp contraposition: one is sympathetic to another only against somebody else... a universal solidarity of a society – solidarity in its purest form... can exist only before certain natural disasters...”<sup>20</sup>

While the word was newly minted, in western tradition the concept has had a longstanding place in Christian thought, embodied in the doctrines of charity and the common good.<sup>21</sup> In fact, the new term was in part introduced to mark a (often explicit) discontinuity with this tradition, by affirming the equality of all human beings not as brothers under the same father, God, but either as members of the same humanity,<sup>22</sup> or under the same nation.<sup>23</sup>

<sup>13</sup> See R. Zoll, above at fn. 8.

<sup>14</sup> L. Casini, *Solidarity between States in the Global Legal Space*, Working Paper of 15 December 2013, pp. 1–2, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2368209](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2368209).

<sup>15</sup> Letter to A. M. Laurence, Mugron, 9 November 1844, in *The Collected Works of Frédéric Bastiat*, Vol. 1 (*The Man and the Statesman: The Correspondence and Articles on Politics*), Liberty Fund, Indianapolis, 2011, p. 369, at <http://oll.libertyfund.org/titles/2393>>2011.

<sup>16</sup> W. Münzenberg, *Solidarität. Zehn Jahre Internationale Arbeiterhilfe 1921–1931*, Neuer Deutscher Verlag, Berlin, 1931.

<sup>17</sup> E. H. Carr, *The Twenty Years' Crisis, 1919–1939. An Introduction to the Study of International Relations*, II ed., Macmillan, London, 1946, especially pp. 50–53, 75–80, and the critics at p. 85.

<sup>18</sup> “On le voit, nous admettons pleinement en faveur des États civilisés un droit de direction et de tutelle sur le reste de l’humanité. Ce droit dérive de leur devoir. Tous les peuples sont solidaires les uns des autres... La terre nous a été donnée avec ses ressources; mais celles-ci peuvent s’épuiser et par conséquent elles doivent être aménagées avec intelligence. Cet ensemble d’intérêts communs suffirait pour motiver la solidarité humaine... L’humanité a été remise à sa propre garde. De même qu’à l’intérieur de chaque État les forts sont responsables des faibles, ainsi, dans l’ensemble de l’espèce, les États le plus intelligents et le plus libéraux doivent protéger et diriger les autres,” J. Hornung, *Civilisés et barbares*, in *Revue de droit international et de législation comparée*, 18, 1886, p. 204. On the spirit of Berlin and solidarity as harmony among European civilizing nations see, in the same review, F. de Martens, *La Conférence du Congo à Berlin et la politique coloniale des états modernes*, *ibidem*, pp. 113–150 and pp. 244–280, and the preliminary report by Alphonse Rivier, in *Annuaire de l’Institut de droit international*, 8, 1885–86, p. 21 ff.

<sup>19</sup> V. Prashad, *The Darker Nations: A People’s History of the Third World*, New Press, New York, 2008; D. C. Thomas, *The Theory and Practice of Third World Solidarity*, Praeger, Westport, 2001; see also the *Address Delivered by Mr. Anwar el Sadat at the First Afro-Asian people’s Solidarity Conference, December 26, 1957*, at <http://www.fordham.edu/halsall/mod/1957sadat-afroasian1.asp>.

<sup>20</sup> R. Michels, *Zum Problem: Solidarität und Kastenwesen*, in *Probleme der Sozialphilosophie*, Leipzig-Berlin, 1914, p. 55.

<sup>21</sup> See Section 3 below; see also Casini, above at fn. 12, p. 5 ff.

<sup>22</sup> Leroux, above at fn. 9, which explains the superiority of solidarity among men over Christian charity.



## International law and solidarity: a look at the past

### *On solidarity and early 20<sup>th</sup> century international law*

There is no longstanding tradition of solidarity in international law.<sup>24</sup> As noted by Philip Dann in a presentation given a few years ago, “solidarity” is hardly used even in legal documents that concern development cooperation.<sup>25</sup> During the last several centuries international law has been based principally on the idea of *sovereignty*, affirming the independence of the rising nation states and empires after and against the previously united theological and imperial frameworks.<sup>26</sup> With the term “sovereignty” we intend *grosso modo* the ability of a political entity to have primary, and in many cases exclusive, jurisdiction within its own territory, and the ability to freely maintain or reject international relationships with other political entities.<sup>27</sup> This is the traditional framework of modern international law based on the liberal paradigm of *states* represented as free legal entities meeting in the international arena, without any superior authority.<sup>28</sup>

International law scholars have reflected on whether the deep changes in the life of international society are leading to a new international law, no longer based only on nation(alism)s and sovereignty, but on superior principles, goals, and authorities. Such theorizing is as old as modern international law itself, if we consider the debate between natural lawyers and voluntarist positivists of the past<sup>29</sup> (the voluntaristic being those theories of international law which dominated in the late 19<sup>th</sup> and 20<sup>th</sup> centuries and recognized the existence of international law inasmuch as it was explicitly accepted by states through their will, through their consent<sup>30</sup>). As Philip Allott noted in regard to the similarities and differences between the thought of Vattel and Wolff, both working on a theory of international law in the mid-18<sup>th</sup> century, contemporary global society would be significantly different if, instead of the sovereigntist construction of Emer de Vattel, the *civitas maxima* vision of Christian Wolff had prevailed.<sup>31</sup>

More recently, strict voluntarism and sovereignty have both been challenged both in political terms, with globalization taking the place of the previous politics of nations and then blocks, and in legal terms,

<sup>23</sup> Cf. R. Zoll, *ibidem* at fn. 8; L. Wilde, *Global Solidarity*, Edinburgh University Press, Edinburgh, 2013, pp. 18–67. pp. 80–81. H. Brunkhorst, *Solidarity. From Civic Friendship to a Global Legal Community*, MIT Press, Cambridge, 2005, at p. 11 ff., and 55–77.

<sup>24</sup> R. B. Dos Santos Alves, *Human rights and international solidarity*, Working paper, 15 June 2004, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Doc. E/CN.4/Sub.2/2004/43.

<sup>25</sup> P. Dann, *Solidarity and the Law of Development Cooperation*, in R. Wolfrum, C. Kojima (eds), *Solidarity: A Structural Principle of International Law*, Springer, Heidelberg, 2010, p. 56.

<sup>26</sup> E.-W. Böckenförde, *La formazione dello Stato come processo di secolarizzazione*, Morcelliana, Brescia, 2006 (Die Entstehung des Staates als Vorgang der Säkularisation und Utopie, 1967).

<sup>27</sup> T. Treves, *Diritto internazionale generale*, Giuffrè, Milano, 2005, chap. 1. J. Crawford, *Sovereignty as a Legal Value*, in J. Crawford, M. Koskeniemi (eds), *The Cambridge Companion to International Law*, Cambridge University Press, Cambridge etc., 2012, pp. 117–133.

<sup>28</sup> E. Vattel, *Droit des gens*, Neuchâtel, 1758. On the concept of sovereignty throughout history see M. Loughlin, *Foundations of Public Law*, Oxford University Press, Oxford etc., 2010, especially pp. 50–90.

<sup>29</sup> On this debate is particularly concise and well-argued R. Kolb, *Doctrines sur le fondement du droit des gens*, Pedone, 2007 (Réédition augmentée et mise à jour de l'ouvrage de A. Truylol y Serra, *Doctrines contemporaines du droit des gens*, Pedone, 1951).

<sup>30</sup> H.G. Jellinek, *System des Subjektiven öffentlichen Rechts*, Freiburg, 1892; H. Triepel, *Völkerrecht und Landesrecht*, Leipzig, 1899; D. Anzilotti, *Teoria generale della responsabilità dello stato nel diritto internazionale*, Firenze, 1902.

<sup>31</sup> P. Allott, *The Health of Nations: Society and Law Beyond the State*, Cambridge University Press, Cambridge etc., 2002, p. 418: “If Christian Wolff had written in simple and lucid French like Vattel, or in excited and exciting French like the other Swiss citizen of great influence, Jean-Jacques Rousseau, the world’s conception of itself might have been different, the story of the twentieth century might have been different.”



with international cooperation integrated into widely institutionalized regimes. These shifts raised a new wave of re-conceptualization of international law and its structure. In a famous course given at The Hague, Professor Bruno Simma, later a Judge at the International Court of Justice, highlighted the shift of the international legal paradigm from bilateral to community interest based.<sup>32</sup> Many authors are working on various theories of *constitutionalization* of international law,<sup>33</sup> and others on its “humanization”, with this term marking a stark discontinuity with the previous centrality of the state in international law.<sup>34</sup> In these shifts the concept of solidarity plays little role as such, although it can be found in the background.

### French solidarity

However, both in the past and today, there have been some attempts to characterize the international community under “solidarity”. In the past, the only notable example is the so-called “solidarism” of Léon Duguit and George Scelle.<sup>35</sup> This latter author,<sup>36</sup> influenced by the solidarist work of Léon Bourgeois<sup>37</sup> in the preface of his manual of international law, wrote:

Every international lawyer relies on a certain philosophical-legal doctrine that dominates his thought... in the Law of Nations, doctrines not only change, but also oppose each other... The evolution of the social constructs, of economic conditions, of the media, have turned upside down the equilibrium of the groups of human peoples. Universal solidarity leans on new bases. The interdependence of States, which classical theory had observed, has needs that it had barely intuited. The contraposition among political societies is not the essential phenomenon anymore: they overlap, interpenetrate, mix, in a world every day more shrunken and excited, so much so that the old deductions coming from the individuality of peoples and their exclusive psychology are contested today. *Internationalism* is today the capital fact. Therefore, the mentality of individuals and of groups can never be against it.<sup>38</sup>

Then he goes on to explain that the use of power to regulate international relations is fundamentally against the spirit of an international solidarity regulated by the law of nations:

If it is necessary to consider power, it is only to submit it to the Law or to use what it has in conformity with solidarity, and that is indispensable to the social organization. When we consent, under the excuse of realism, to consider the compromise allegedly necessary

<sup>32</sup> B. Simma, *From bilateralism to community interest in international law*, *Recueil des Cours*, Vol. 250, 1994, pp. 217–384, in particular p. 223 ff., warning that “bilateralist international law still constitutes the basis on which the new developments are taking shape”, but noting that “rising awareness of the common interests of the international community, a community that comprises not only States, but in the last instance all human beings, has begun to change the nature of international law profoundly”, p. 234. See also before M. Lachs, *The development and general trends of international law in our time*, *Recueil de Cours*, Vol. 169, 1980 (IV), p. 72 ss. and N. Politis, *La morale internationale*, La Bâconnière, Neuchâtel, 1943, p. 84 ss.

<sup>33</sup> See among many J. Klabbers, A. Peters, and G. Ulfstein, *The Constitutionalization of International Law*, Oxford University Press, Oxford etc., 2009.

<sup>34</sup> Cf. A.A. Cançado Trindade, *International Law for Humankind: Toward a New Jus Gentium*, (2<sup>nd</sup> rev. ed.), Nijhoff, Leiden etc., 2013, and T. Meron, *The Humanization of International Law*, Nijhoff, Leiden etc., 2006, assessing the impact of human rights on international law.

<sup>35</sup> For a comprehensive summary of this movement see M. Koskenniemi, *The Gentle Civilizer of Nations*, Cambridge University Press, Cambridge etc., 2001, pp. 284–316.

<sup>36</sup> For an overview on his thought see H. Tierry, *The European Tradition of International Law: Georges Scelle*, in *European Journal of International Law*, 1, 1990, pp. 190–207.

<sup>37</sup> L. Bourgeois, *Solidarité*, 3<sup>rd</sup> ed., A. Colin, Paris, 1902.

<sup>38</sup> Preface of G. Scelle, *Précis du droit du gens*, Vol. 1, 1932, p. viii (translation by the authors).





between the aspirations of power and the rules of solidarity as an element of positive law, we stop doing legal realism, and we just confuse law and politics.<sup>39</sup>

Then he completes the circle of its reasoning referring to a federal world system in which local solidarity among citizens and general solidarity among nations are both preserved.<sup>40</sup> Even if these words were written in the early 20<sup>th</sup> century, the many points on globalization and the description of society (with the emphasis on media and change) may as well have been written today. Notwithstanding this attempt to frame international law with the concept of solidarity, this doctrine did not give rise to a prolific school. As observed by the distinguished international law scholar Jean-Pierre Cot, former international judge at the International Tribunal for the Law of the Sea: “The fuzzy legal construction of Léon Duguit and Georges Scelle did not survive... [H]is concept of solidarity, based on the “*droit objectif*”, has not survived. I cannot quote a contemporary French international scholar operating within that legal framework.”<sup>41</sup>

### *Solidarity and international law today*

Today the panorama of international legal thought remains fairly sparse, as other ideas are more deeply explored by legal scholars. However, certain authors with experience in international courts have presented their ideas on this concept, such Professor Karen Wellens, Ronald St.J. MacDonald, professor and former Judge at the European Court of Human Rights, Rüdiger Wolfrum, former director of the Max Planck Institute of International Law in Heidelberg and former President of the International Tribunal for the Law of the Sea, and the Judge of the International Court of Justice A. G. Koroma.<sup>42</sup> In addition to these authors, the UN Commission on Human Rights has found many references to the concept, mostly implicit, and more recently also explicit.<sup>43</sup>

Nevertheless, the place of solidarity in international law remains uncertain.<sup>44</sup> Mostly, the scholars mentioned above consider it to be a constitutive principle of the international community. However, the concept has several other facets that can be explored, as we will do in the following pages. An overlap of meanings is frequently evident in writings on the topic. For example, in the preliminary report on solidarity in international law, elaborated by Rui Baltazar Dos Santos Alves in 2004 for the Sub-Commission on the Promotion and Protection of Human Rights of the Commission on Human Rights of the UN Economic and Social Council (UN Commission on Human Rights) the concluding six paragraphs use, in a variety of different contexts, the expressions: “principle of international solidarity”,

<sup>39</sup> *Ibidem*, pp. xix–x (translation by the authors).

<sup>40</sup> *Ibidem*, p. 188.

<sup>41</sup> *Discussion Following the Presentation by Philip Dann*, in Wolfrum, Kojima, above at fn. 23, pp. 81–82.

<sup>42</sup> R. St. J. MacDonald, *Solidarity in the Practice and Discourse of Public International Law*, in *Pace International Law Review*, 8, 1996, pp. 259–302. K. Wellens, *Solidarity as a Constitutional Principle: Its Expanding Role and Inherent Limitations*, in R. St. J. MacDonald and D. M. Johnston (eds), *Towards World Constitutionalism: Issues in Legal Ordering of the World Community*, Nijhoff, Leiden etc., 2005, p. 775 ff.; his opinion, evolved, appeared more recently in *Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections*, in Wolfrum, Kojima, above at fn. 23, p. 3 ff. R. Wolfrum, *Solidarity amongst States: An Emerging Structural Principle of International Law*, in *Indian Journal of International Law*, 49, 2009, pp. 8–20. A. G. Koroma, *Solidarity: Evidence of an Emerging International Legal Principle*, in H. P. Hestermeyer, D. König, N. Matz-Lück, V. Röben, A. Seibert-Fohr, P.-T. Stoll, S. Vöneky, *Coexistence, Cooperation and Solidarity. Liber Amicorum Rüdiger Wolfrum*, Nijhoff, Leiden etc., 2012, Vol. I, pp. 103–129.

<sup>43</sup> See early on Dos Santos Alves, *Human rights and international solidarity*, Working paper, 15 June 2004, Economic and Social Council, Doc. E/CN.4/Sub.2/2004/43, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights.

<sup>44</sup> R. B. Dos Santos Alves, above at fn. 22, paras 32–37.



“international solidarity”, “international solidarity ... [as] a fact of international society”, and “right/duty of international solidarity”.<sup>45</sup> Because the existent literature uses solidarity in several ways, the first point to be clarified is whether the concept of solidarity is best qualified as a fact and condition, a principle, a right, and/or a value. Second, considering the above-mentioned theories on the evolution of international law, one must ask whether the concept of solidarity adequately captures this evolution and whether (and if so, how) solidarity in international law can be reconciled with sovereignty. These are the animating questions of the following section.

## THE CONCEPT OF SOLIDARITY IN INTERNATIONAL LAW

### Qualifying solidarity

The concept of solidarity is used in international law in several ways, in particular as a fact and condition, a principle, a value, and/or a right. *Solidarity as a fact or condition* refers to the sociability of states as opposed to their autonomy or self-sufficiency. Every act of cooperation, in this light, can be taken as evidence of the sociability of states. Regarding *solidarity as a principle*, or as a structural principle, highlights the inner structure of international relations and the suitability of this principle in shaping the application of international relations, and to evaluate the scope and importance of this principle in relation to other principles of international law, such as sovereignty, subsidiarity, good faith, and equity. *Solidarity as a value* means to use it as a normative criterion for evaluating and judging the rightness of a given set of facts, and for fostering measures to strengthen cooperation. To qualify *solidarity as a right* implies how it expresses a legitimate claim (of justice), and a correlative positive duty to act or refrain from acting. As we have already seen in some of the documents cited earlier, is quite possible that solidarity could be used in more than one of these senses simultaneously, especially given the multilayer composition of international society, in which solidarity does not necessarily apply only among states, but could also affect the relationship between states and individuals of other states.

#### *Solidarity as a fact or condition*

Solidarity, as a fact or social condition, is illustrated by reference to several areas in which states cooperate today towards a common goal. Mohammed Bedjaoui, Judge Abdul Koroma, and Holger Hestermeyer, for example identified solidarity with communities working together towards common goals.<sup>46</sup> In this very broad general meaning solidarity becomes one aspect of the Aristotelian *zōn politikòn*, as synonymous with the sociability of every person and every human expression, such as states. Such a broad conception had already emerged, for example, in the preliminary report elaborated by Dos Santos Alves for the UN Commission on Human Rights, in 2004:

Solidarity implies a communion of responsibilities and interest between individuals, groups, nations and States... The notion of solidarity... corresponds with the notion of cooperation, because one only cooperates in an act of solidarity. Solidarity is one of the greatest values in the construction of human rights. Resort to the use of the word cooperation, first in the

<sup>45</sup> *Ibidem*, paras 32–37.

<sup>46</sup> Koroma, above at fn. 40, p. 103. Similarly see also M. Bedjaoui, *International Law: Achievements and Prospects*, 1991, p. 14, using solidarity in the general sense of working together towards the common good. H. P. Hestermeyer, *Reality or Aspiration? Solidarity in International Environmental and World Trade Law*, in Hestermeyer et Al., above at fn. 40, p. 45 ff., distinguishes between this kind of solidarity, coming from a political will to act together, and an altruistic solidarity.





Charter of the United Nations, later in most of the documents emanating from the Organization, is the main indication that solidarity has undergone a long and difficult journey.<sup>47</sup>

A similar, broad approach can also be read in the preliminary report elaborated by Rizki for the same Commission in 2006, where he establishes the mandate of his work:

The notion of solidarity corresponds to the notion of cooperation, because one could only cooperate in an act of solidarity.<sup>48</sup>

In such a broad meaning, solidarity becomes almost synonymous with cooperation, and as such it is coessential to law itself, international law included. Certainly nowadays international cooperation is everywhere, and the progress of cooperation of states is undeniable: there are regulations accepted and shared in widely varying areas of international law. Every international, bilateral, regional or universal treaty, from the UN Charter to the Treaty on the European Union and the World Trade Organization agreements to the Bilateral Investment Treaties, shows the cooperative nature of states today, as opposed to an isolated one. Solidarity as a common reality can also be seen in joint missions of states, as Chile and Peru recently stressed before the International Court of Justice in the dispute on the maritime delimitation between the two states culminated in a decision in 2014; both states referred to this concept to explain the fishing regime between the two states in specific common areas of the Pacific Ocean.<sup>49</sup> So if we take this broad meaning of solidarity, it is clear that it is already a reality of international law. At the same time, insofar as it is merely descriptive of a current reality and does not bear on any evaluative judgment of the international environment, this use of solidarity is not particularly useful or incisive, and does not help determine the content of any legal or moral norm of the international environment.

#### *Solidarity as a principle*

In his seminal work on solidarity,<sup>50</sup> Rüdiger Wolfrum describes a *principle* of solidarity, “based upon the consideration that there exists a community of States based upon common values and common interests which make a joint action mandatory.”<sup>51</sup> Wolfrum identifies two different aspects of the principle of solidarity. The first identifies solidarity as the principle that calls for balancing obligations in joint actions: “the achievement of common objectives through common action of states, the achievement of common objectives through differentiated obligations of States and actions to benefit particular States.”

Wolfrum also fleshes out a second facet of this principle in the form of a moral rule of action. The principle of solidarity in this way implies that states should not consider only their own national interest in their decisions, but also the consequences of their actions on other states:

Solidarity among States has become a quite common structural principle of international law. ... It means... that States in shaping their positions in international relations should not

<sup>47</sup> Above at fn. 22, para. 22.

<sup>48</sup> *Human rights and international solidarity—Note by the United Nations High Commissioner for Human Rights, 1 February 2006*, Doc. E/CN.4/2006/96, para. 13 (hereinafter Rizki Report 2006).

<sup>49</sup> *Maritime Dispute (Peru v. Chile)*, 27 January 2014, ICJ, para 151.

<sup>50</sup> Wolfrum, *Solidarity amongst States*, above at fn. 40, pp. 8–20.

<sup>51</sup> *Ibidem*, p. 8.



only take into consideration their own individual interests but also those of other States or the interests of the community of States or both.<sup>52</sup>

In support of this he points to solidarity in the UN collective system of protection of peace,<sup>53</sup> international environmental law,<sup>54</sup> Part XI of the Convention on the Law of the Sea,<sup>55</sup> and humanitarian assistance and intervention.<sup>56</sup> He notes, however, that “although some modern parts of international law are being based upon common values of the international community or have an objective to ameliorate disparities among States, the corresponding procedural rules necessary to fully implement the ensuing obligations and responsibilities are still to be developed.”<sup>57</sup>

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In its third aspect, the principle of solidarity can be seen as the basis for moderating the excesses of an exclusively sovereign conception of political power. The expression of this principle can be seen in some recent, still-ongoing developments in international law. For example, moderating the completely free use of natural resources by introducing environmental protections, in light of the responsibility of the current generation for the generations to come (intergenerational solidarity, sustainable development).<sup>58</sup> Or, to give another example, in order to prevent the rule of non-interference from allowing states to use force against their own people with impunity (as recently in Syria), or in case of ongoing massive atrocities within a state by civil society (again, as in Syria, from the rebels, or in Rwanda in 1994), proposals have emerged asserting a responsibility to protect persecuted peoples and defending the legitimacy of humanitarian military intervention.<sup>59</sup>

Solidarity, viewed in a similar way, can also become – like equity – an *ex post* criterion for moderating situations that became increasingly unfair over time. Mohammed Bedjaoui, for example, described it as a principle or a tool to mitigate the unfair consequences of the application of laws over time by implying a superior unity between the involved parties.<sup>60</sup>

### *Solidarity as a right*

In his 2006 preliminary report, Rudi M. Rizki notes that in relationship to human rights the concept of solidarity can be used in two different senses:

<sup>52</sup> *Ibidem*, p. 8; at p. 11 he quotes Pufendorf (1673), Wolff (1749) and Vattel (1758) where they speak the responsibility of each human being towards other human beings.

<sup>53</sup> *Ibidem*, pp. 8–14.

<sup>54</sup> *Ibidem*, pp. 14–16.

<sup>55</sup> *Ibidem*, pp. 16–17.

<sup>56</sup> *Ibidem*, pp. 17–19.

<sup>57</sup> *Ibidem*, p. 20, commenting on art. 48 para. 1.b of the ILC draft on state responsibility of 2001 and the difficulty of acting on behalf of a group in case of violation of international law.

<sup>58</sup> Legal literature is rich in works on this issue; among many, the chapter by D. Shelton, *Intergenerational Equity*, in Wolfrum, Kojima, above at fn. 23, p. 123 ff. is explicitly focused on solidarity. As for the papacy, see Pope Benedict XVI, Encyclical Letter *Caritas in Veritate*, 2009, paras 48–51.

<sup>59</sup> See among many, D. Amnéus, *Intervention Become Part of International Law under the Responsibility to Protect Doctrine?*, in J. Hoffmann, A. Nollkaemper, I. Swerissen (eds), *Responsibility to Protect: From Principle to Practice*, Pallas, 2012, pp. 157–171. As for the papacy, see Benedict XVI, *Meeting with the Members of the General Assembly of the United Nations Organization*, New York, 18 April 2008.

<sup>60</sup> M. Bedjaoui, *Towards a New International Order*, Holmes & Meier, New York, 1979, p. 127: “This international law of participation, genuinely all-embracing and founded on solidarity and co-operation, must give great prominence to the principle of equity (which corrects inequalities) rather than to the principle of equality.”



First, it has been used in the sense of “solidarity rights”, which refer to the third-generation rights discussed later in the present report. These rights, by their nature and application, require “international cooperation and joint activity to give them effect, such as the right to peace, to a clean environment, to development, and to humanitarian assistance”, all of which have a collective and cooperative character. Secondly, the term is used in the sense of a right to solidarity, a separate right in the category of third-generation rights.<sup>61</sup>

It is worth noting that the first of these uses solidarity as a principle, not a right – it is the animating basis for several more specific claims of right, and calls for coordinated joint action by states in realizing those rights. The second sense, instead, regards solidarity as a right properly speaking. This latter use is certainly not impossible to conceptualize but is nevertheless much more difficult to reconcile with the current frameworks of international law and human rights.

The work on solidarity begun by the UN Commission on Human Rights in 2002 (Resolution 2002/73) advances the concept of a right to solidarity within the framework of human rights, yet in many ways it embodies an idea that is somewhat dissimilar to most human rights principles. It does bear some structural similarities, in this way, to the recent effort to assert a “right to peace” as well. Both suffer from a very high degree of generality and ambiguity, and draw on the rhetoric of human rights discourse but do not correspond very clearly to the classic aim and structure of more well-established and recognized principles of human rights. This approach does not consider solidarity as an obligation of states towards their own citizens, in parallel to other human rights principles, so much as an obligation of states towards humanity as a whole.<sup>62</sup> It is thus very unclear who would be understood either as the appropriate claimant of the right or as the correlative duty-bearer responsible for fulfilling that claim of right.

The recent discussions of solidarity and human rights at the United Nations also seem to link solidarity inevitably to the “right to development”. Again, however, implicitly this typically represents the invocation of solidarity as a justificatory basis for the right to development – or, in other words as a *principle*, not a right. When understood more specifically as a *right*, the concept of solidarity does not seem to add any substantive content, clarity, or force of the right to development.

The appropriateness of qualifying solidarity as a right also needs to be considered in the light of a variety of strong and growing critiques, across a wide range of different theoretical and practical perspectives, of the tendency in human rights always to multiply and expand the number and type of rights that are declared to be new human rights. It would be beyond the scope of this paper to summarize the vast literature critiquing such “rights inflation”, but it is important at least to note that the skepticism of new rights has for years now been deep and broad and casts serious doubt upon the assumption that the recognition of new rights is always a positive achievement for justice, human dignity, and the common good. More rights does not necessarily mean more justice. As Cartabia has put it, cataloguing and synthesizing many of the critiques of new rights that have been advanced,

Rights, charters of rights and institutions of rights have their place. They assume an important place because, although we can spend a whole life without claiming a single right, we enjoy them every day. But still, their place is limited. This is not to diminish the role of

<sup>61</sup> Rizki Report 2006, above at fn. 46, para. 16, citing H. Victor Conde, *A Handbook of International Human Rights Terminology*, University of Nebraska Press, Lincoln and London, 1999, p. 138

<sup>62</sup> See in particular the *Report of the independent expert on human rights and international solidarity* (R. M. Rizki), 5 July 2010, UN Doc. A/HRC/15/32.





rights, but on the contrary, to bestow on them the highest value. In a way, a tempered approach to human rights is a realistic approach ever aware that justice is an overarching goal that is always looming and never achieved.<sup>63</sup>

This skepticism of rights-talk is the most fitting language for expressing and realizing the totality of the common good and seems especially appropriate when considering the concept of solidarity. While the impulse to use the language of rights to try to encourage and realize more concretely the principle of solidarity is tempting, on careful reflection it is difficult to conceive of solidarity as a “right,” still less as a “human right,” properly speaking. Rights are best understood as specifications of the requirements of justice in interpersonal relations; and human rights are specifications of those particular requirements of justice that are always due to another person in virtue of his or her inviolable human dignity. Speaking of solidarity as a *human right* in international law has at least two basic flaws that make it very difficult to reconcile easily with this basic idea. First and very generally, it belongs conceptually not to relationships of justice but to relationships of charity and fraternity and thus to freedom – as will become clearer in Section 3 below. Thus, like the necessity of love and affection to human development, solidarity is not susceptible to legal command and coercion; this translates juridically into an inherent difficulty in giving concrete effect to the idea within a rule of law. Secondly, solidarity is so broad and open-ended that it necessarily refers to human relations at a very high level of generality, making it extremely difficult to know what action would be required by a particular duty-bearer in order to give effect to its requirements. Rights, on the other hand, are useful tools of law precisely insofar as they provide a greater degree of certainty and specificity to the obligations of justice, to what one person (or the state) cannot do or must do for another person.

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#### *Solidarity as a value*

Fourth and lastly, some scholars (and in important ways the Catholic tradition of social teaching, as will become evident in the next section) accept the principle of solidarity in a strong normative sense, as an important value to be pursued and/or a moral attitude.<sup>64</sup> That is to say, the concept does not have a legal content but belongs more to the arena of political projects adopted by individuals, states, and other actors. For instance, Laurence Boisson de Chazournes summarizes the core elements of the definition of solidarity in this way:

First, solidarity is a form of help given by some actors to other actors in order to assist the latter to achieve a goal or to recover from a critical situation. At the international level, one should that such form of assistance does not necessarily have to be understood in the context of a state-to-state relationship but it can be understood as the help provided by a State, or a group of States, to the *population* of another State. Second, solidarity takes place within a shared value system at the level of a given community (in our case the international community)... Third, solidarity entails a *moral* obligation in the sense that it is value-based, *i.e.* the moral obligation to take into account the interests of others and to provide them with assistance... Fourth, this moral obligation is owed by some members of the

<sup>63</sup> M. Cartabia, *The Age of “New Rights”*, Straus Institute for the Advanced Study of Law & Justice, Working Paper 03/10, available at <http://www.nyustrauss.org/pubs/0910/marta-cartabia.html>.

<sup>64</sup> J.-P. Cot “I believe solidarity is a guideline, a political concept and a useful political tool but not a legal principle in international law,” Wolfrum, Kojima, above at fn. 23, p. 81.



international community towards other members of the same community, and this will vary from one situation to another.<sup>65</sup>

This is not the same as regarding solidarity as a principle of international law, but rather has a much stronger normative content to it.<sup>66</sup> Nor should this be confused with solidarity as a right as described above, even though sometimes fundamental moral values can also be expressed in the language of rights (accepting the common distinction between moral rights and legal rights). When understood as a fundamental moral value, solidarity demands that we should strive to realize its content even when the principles and rights of present-day positive law are inconsistent with it, and should seek to restructure and reform law and practice in accordance with this value.

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### On solidarity in the practice of states in international law

Each of the above-mentioned facets of the concept of solidarity deserves attention not only as abstract ideas, but as measured against the practical reality and experience of international law in the world today. Some of them, already appear to be realities of international law, while others remain foreign to it (and should perhaps remain so).

Solidarity as the fact of cooperation, for example, is undeniable: it is self-evident that today, states are not isolated entities, but constantly cooperate. This does not, however, signal a clear break with the past. We should not over-exaggerate the isolationism of states during the nationalistic age; certainly their interactions were not so highly regulated as they are today,<sup>67</sup> but the level of interaction and interdependence of the markets present during the 19<sup>th</sup> century was comparable to the contemporary situation.<sup>68</sup> Notably, as in the past, there is not a necessary opposition between cooperation and state consent (or sovereignty); indeed, consent is the instrument for this cooperation insofar as it is used by states to advance their rational self-interest when they recognize the need to cooperate to achieve certain results. Only the interest that is out of reach for one state acting alone points to a solidarity by necessity; necessity because of the nature of the interest. In other domains, this principle would not be effective; it is just a principle that explains the common convergence of states in facing challenges that are bigger than their individual shoulders. In sum, solidarity as the mere observation of the fact of sociability and cooperation does not, as a general matter, help us identify the source and scope of the concept as at all distinct from state sovereignty itself.

Is there any principle, right, or value of solidarity in the practice of international law that goes beyond a simple observation of the sociability of states, freely meeting and engaging in reciprocal agreements? It could be more useful, for this purpose, to focus only on those expressions of the concept of solidarity that could have effect even *against*, or *beyond* state consent. Does solidarity operate as a superior

<sup>65</sup> L. Boisson de Chazournes, *Responsability to Protect: Reflecting Solidarity*, in Wolfrum, Kojima, above at fn. 23, pp. 94–95; internal fn. omitted.

<sup>66</sup> As Koroma puts it, solidarity as a fundamental value “represents more than just a principle which in many cases creates negative obligations on States not to engage in certain activities and in an increasing number of contexts establishes concrete duties on States to carry out certain measures for the common good.” A. G. Koroma, above at fn. 40, p. 103.

<sup>67</sup> J. P. Trachtman, *The Future of International Law: Global Government*, Cambridge University Press, Cambridge etc., 2013, p. 217 ff.

<sup>68</sup> The statistics on globalization of the market during the last phase of colonialism, in the late 19<sup>th</sup> century, show an impressive integration of the markets, K. H. O'Rourke, J.G. Williamson, 1999, *Globalization and History*, MIT Press, Cambridge, 1999.



principle justifying interventions against state consent; as a specific right to invoke against other states' consent; or as a general principle underlying specific rights inspired by it? The danger of abuse, violence, and instability that comes from asserting the first kind of principle, overly broad and indistinct in its application, is self-evident, and cannot be seriously considered. As a right, in the practice of international law it is in fact difficult to identify any example where it is accepted, invoked, or otherwise substantively employed by states in ways that might bind them independently of their consent. Solidarity as a right (legal, not merely moral) does not, in short, seem to have any present place in the contemporary reality of international legal practice.

Solidarity *can* be seen, however, as a general principle underlying other specific rights that would allow for action against state consent, a principle that underlies all the specific rights that: justify equitable interventions to adjust reciprocal obligations of states or to assist states in need of aid (horizontal solidarity); grant the possibility to assist foreign individuals through humanitarian relief; allow military intervention for humanitarian purposes; that grant the right to emigrate from other states (vertical solidarity); or that mitigate the exploitation of resources out of respect for future generations (intergenerational solidarity). In all these cases there would not be any joint enterprise, nor any previous consent of the interested state, but rather the intervention of a player notwithstanding the lack of consent of the interested states.

Each of these specific rights, unfortunately, has encountered difficulties in being accepted in the practice of international law today. Looking at horizontal solidarity among states, no state can avoid its own legal obligations (except within the framework envisaged by the law on state responsibility)<sup>69</sup> – even where those obligations may be inequitable or where it is facing situations of need (imagine, for instance, a state that violates the territorial sovereignty of a neighbor because it needs more water for its people). To consider otherwise would obviously be very problematic. For example, a principle of solidarity that says that developed states must help less developed states against the consent of the latter also opens the door to the request of a developed state, poor in natural resources, to have free access to natural resources from less developed states.<sup>70</sup> In other words, if we were to accept solidarity as a principle operative against the consent of states at a broad level in international law, it would be hard to make fine distinctions.

Also at the vertical level—that is, regarding a state's obligations of solidarity toward individuals against the consent of the involved states—the practice is weak, and many other principles of international law run against it. For example, states retain the power to close their borders both in case of war, where massive numbers of displaced people would need assistance, and in time of peace, when they retain the power to regulate immigration. Also the protection of human beings not protected by their own state through military intervention (i.e., the responsibility to protect) has been highly controversial so far—both because the UN system of security envisages only two cases in which the use of force is

<sup>69</sup> Draft articles on the *Responsibility of States for Internationally Wrongful Acts*, reproduced in *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two).

<sup>70</sup> Not surprisingly, at the time of decolonization the a key concept of the anticolonial movement was the permanent control over natural resources, insisting on independence rather than rights, cf. S. Moyn, *The Last Utopia. Human Rights in History*, Belknap Press, 2010, p. 84 ff. M. Bedjaoui, *Remanences de théories sur la « souveraineté limitée » sur les ressources naturelles*, in *New directions in international law: essays in honour of Wolfgang Abendroth*, Campus Verlag, Frankfurt and New York, 1982, pp. 63–77.





legitimate,<sup>71</sup> and also because it risks opening a Pandora’s box of conflicting claims. The Russian invasion of Georgia in 2008 was done in the name of “protection” of South Ossetian inhabitants.<sup>72</sup> Even in situations short of military action, the possibility to intervene in favor of the individuals within a state is still dependent on that state’s agreement rather than on a right or a principle of (vertical) solidarity. Consider for instance the disaster of Fukushima, after the Japanese Tsunami, when Japan accepted some aid from several states but refused (legitimately as a matter of international law) to receive technological assistance for the damaged nuclear plant.

In sum, when viewing the meaning and place of solidarity from the perspective of legal experience—that is, from within the reality of the practice of international law, the broader range of qualifications of solidarity comes into even sharper focus. Solidarity as a fact is present but relatively insignificant in its implications. Solidarity as a right does not exist. International legal practice suggests, rather, that we understand solidarity to be a principle of international law. All legal principles carry greater or lesser weight and in their practical application need to be balanced against other applicable principles, and the principle of solidarity is not an exception. In international law today, it can be seen to be a relatively weak principle, virtually always giving way to other principles and especially that of sovereignty and consent. One could quite reasonably argue that solidarity *should* be accorded more importance and weight as a principle of international law than it is at present. That, however, is not an argument based on the concept of solidarity as a principle of law, and still less on the concept of solidarity as a right. Rather, it is an argument implicitly relying on solidarity as a fundamental moral value, to which law ought to be responsive. The significance of this last aspect of solidarity is illumined all the more clearly when viewed from the perspective of the social teaching of the Catholic Church.

**ON SOLIDARITY IN THE SOCIAL TEACHING OF THE CATHOLIC CHURCH**

Even though the Church’s social doctrine has not taken an articulated position on the meaning and content of the concept of solidarity, the idea has featured prominently for some time. An entire section of the *Compendium of the Social Doctrine of the Church* is dedicated to the principle of solidarity.<sup>73</sup> In general, “The term ‘solidarity’ ... expresses in summary fashion the need to recognize in the composite ties that unite men and social groups among themselves, the space given to human freedom for common growth in which all share and in which they participate.”<sup>74</sup> As a moral principle, solidarity

...requires that men and women of our day cultivate a greater awareness that they are debtors of the society of which they have become part. They are debtors because of those conditions that make human existence livable, and because of the indivisible and

<sup>71</sup> Art. 51 of the UN Charter (*Self-defence*) and Chapter VII.  
<sup>72</sup> *Interview by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov to BBC, Moscow, 9 August 2008*, available online at the official web-site of the Ministry of Foreign Affairs of the Russian Federation, [http://www.mid.ru/brp\\_4.nsf/0/F87A3FB7A7F669EBC32574A100262597](http://www.mid.ru/brp_4.nsf/0/F87A3FB7A7F669EBC32574A100262597). The lack of protection of its own population was contested at Libya in 2011, during the civil war that divided and still divides Libya, Security Council Resolution 1970, 26 February 2011, S/RES/1970 (2011): “Recalling the Libyan authorities’ responsibility to protect its population”. See also Security Council Resolution 1973 (2011), 17 March 2011, S/RES/1973 (2011).  
<sup>73</sup> *Compendium of the Social Doctrine of the Church*, 2004, Chapter IV (*Principles of the Church’s social doctrine*), Sect. VI (*Principle of Solidarity*).  
<sup>74</sup> *Ibidem*, para. 194.



indispensable legacy constituted by culture, scientific and technical knowledge, material and immaterial goods and by all that the human condition has produced.<sup>75</sup>

This understanding of solidarity as a principle that calls men and women to dedicate themselves to the good of others and to the good of their communities emerges clearly in papal pronouncements, starting in particular with Paul VI. John Paul II made solidarity a prominent theme of his pontificate. For example, his 1987 message for the celebration of the World Day of Peace uses solidarity to describe both the condition of the whole human family and the need to help each other, and addresses the relationship between solidarity, development, and peace.<sup>76</sup> He emphasizes there:

*Solidarity is ethical in nature because it involves an affirmation of value about humanity. For this reason, its implications for human life on this planet and for international relations are also ethical: our common bonds of humanity demand that we live in harmony and that we promote what is good for one another. . .*

*In the context of true solidarity, there is no danger of exploitation or the misuse of development programmes for the benefit of the few. Rather, development thus becomes a process involving different members of the same human family and enriching them all. As solidarity gives us the ethical basis to act upon, development becomes the offer that brother makes to brother, so that both can live more fully in all the diversity and complementarity that are the hallmarks of human civilization.”<sup>77</sup>*

The same theme was addressed somewhat more comprehensively and directly in John Paul II’s 1987 encyclical *Sollicitudo Rei Socialis*. That document, conceived as a follow-up to *Populorum Progressio* (Paul VI, 1967) on the 20<sup>th</sup> anniversary of the latter, stresses the moral structure of development.<sup>78</sup> It describes the opposing communist and capitalist worlds built up after the end of World War II as “rigid ideologies” in which “instead of interdependence and solidarity, different forms of imperialism hold sway”, and qualifies them in religious terms with the powerful expression “structures of sin”.<sup>79</sup> In contrast to such political systems of power, John Paul II describes solidarity as a *virtue*:

*It is above all a question of interdependence, sensed as a system determining relationships in the contemporary world, in its economic, cultural, political and religious elements, and accepted as a moral category. When interdependence becomes recognized in this way, the correlative response as a moral and social attitude, as a “virtue,” is solidarity. This then is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.<sup>80</sup>*

<sup>75</sup> *Ibidem*, para. 195.

<sup>76</sup> *Message of His Holiness Pope John Paul II for the celebration of the World Day of Peace, Development and Solidarity: Two Keys to Peace, 1 January 1987*. See also *Message of His Holiness Pope John Paul II for the celebration of the World Day of Peace, 1 January 2001, Dialogue between Cultures for a Civilization of Love and Peace*, para. 13: “the promotion of justice is at the heart of a true culture of solidarity. It is not just a question of giving one’s surplus to those in need, but of helping entire peoples presently excluded or marginalized to enter into the sphere of economic and human development.” Internal fn. omitted

<sup>77</sup> *Message of His Holiness Pope John Paul II for the celebration of the World Day Of Peace, 1 January 1987, Development And Solidarity: Two Keys To Peace*, para. 7.

<sup>78</sup> “Precisely because of the essentially moral character of development, it is clear that the obstacles to development likewise have a moral character”, Pope John Paul II, Encyclical Letter *Sollicitudo Rei Socialis*, 1987, para. 35.

<sup>79</sup> *Ibidem*, para. 36; see also para. 37

<sup>80</sup> *Ibidem*, para. 3. On solidarity as a moral virtue see also the *Compendium*, above at fn. 71, at para. 193.



Such a transformation is not possible through human effort alone, John Paul II concludes, but comes about through the help of divine grace: “These attitudes and ‘structures of sin’ are only conquered—presupposing the help of divine grace—by a diametrically opposed attitude: a commitment to the good of one’s neighbor with the readiness, in the gospel sense, to “lose oneself” for the sake of the other instead of exploiting him, and to “serve him” instead of oppressing him for one’s own advantage.”<sup>81</sup>

John Paul II’s emphasis in *Sollicitudo rei socialis* on the virtue of solidarity as a moral response to material interdependence and structures of sin was prophetic in many ways. But reality is always moving, and also the social teaching of the Church constantly renews itself in the spirit of seeking good answers to new challenges.<sup>82</sup> The Catholic Church has thus contributed new reflections on the matter of solidarity on various occasions in the decades since that encyclical, through the annual papal address to the ambassadors at the Holy See on the occasion of the World Day Peace, through several speeches addressed in political and cultural venues,<sup>83</sup> and especially through encyclical letters.

The encyclical *Caritas in Veritate*, written by Benedict XVI in 2009, bears particular significance in this trajectory. Although centered more on the idea of integral human development, *Caritas in Veritate* also arrives at an understanding of solidarity through the two key concepts of *fraternity* and *charity*. Mutual help among members of the same community, Benedict points out, produces “internal forms of solidarity and mutual trust”<sup>84</sup> that direct the market and grants of international aid toward their proper function.<sup>85</sup> Solidarity is not used here to ground the duties of a community,<sup>86</sup> but instead is used to indicate a common basis of action for a common purpose: for example, “there is a pressing moral need for renewed solidarity [regarding the problems of energy], especially in relationships between developing countries and those that are highly industrialized.”<sup>87</sup> Similar observations link solidarity to the bond of cooperation of the whole human family, to avoid isolation,<sup>88</sup> and to an approach to development that is aware of everybody, and not imposed.<sup>89</sup>

The very recent Apostolic Exhortation of Pope Francis, *Evangelii Gaudium* (November 24, 2013) is also interesting in this regard. In addressing what he calls one of the two great issues of our time, the inclusion of the poor in society, Pope Francis uses language similar to John Paul II (even though he does not use exactly the same terms) when he talks about solidarity as “moral virtue” that prevents power from becoming a “structure of sin”:

The word “solidarity” is a little worn and at times poorly understood, but it refers to something more than a few sporadic acts of generosity. It presumes the creation of a new

<sup>81</sup> *Ibidem*.

<sup>82</sup> Cf. Pope Francis, Apostolic Exhortation *Evangelium Gaudium*, 2013, para. 41: “At the same time, today’s vast and rapid cultural changes demand that we constantly seek ways of expressing unchanging truths in a language which brings out their abiding newness.”

<sup>83</sup> See M. Cartabia, A. Simoncini (eds), *La legge di Re Salomone. Ragione e diritto nei discorsi di Benedetto XVI*, Rizzoli, Milano, 2013, forthcoming translated in English by Cambridge University Press.

<sup>84</sup> *Caritas in Veritate*, above at fn. 56, para. 40.

<sup>85</sup> *Ibidem*, para. 41.

<sup>86</sup> *Ibidem*, para. 43 ff.

<sup>87</sup> *Ibidem*, para. 49, internal fn. omitted. See also para. 50: “Human beings legitimately exercise a *responsible stewardship over nature*”.

<sup>88</sup> *Ibidem*, paras 53–67.

<sup>89</sup> See the reflection on media that, given their “fundamental importance in engineering changes in attitude towards reality and the human person, we must reflect carefully on their influence, especially in regard to the ethical-cultural dimension of globalization and the development of peoples in solidarity”, *ibidem*, para. 73.





mindset which thinks in terms of community and the priority of the life of all over the appropriation of goods by a few.<sup>90</sup>

Pope Francis goes on to mention the human character of acts of solidarity, as a *spontaneous* restorative deed against an unjust situation that fosters the common good:

Solidarity is a spontaneous reaction by those who recognize that the social function of property and the universal destination of goods are realities which come before private property. The private ownership of goods is justified by the need to protect and increase them, so that they can better serve the common good; for this reason, solidarity must be lived as the decision to restore to the poor what belongs to them. These convictions and habits of solidarity, when they are put into practice, open the way to other structural transformations and make them possible. Changing structures without generating new convictions and attitudes will only ensure that those same structures will become, sooner or later, corrupt, oppressive and ineffectual.<sup>91</sup>

For Pope Francis this is true not only for individuals, but for entire peoples. Solidarity is a dedication to their freedom, as a means and as an end:

To speak properly of our own rights, we need to broaden our perspective and to hear the plea of other peoples and other regions than those of our own country. We need to grow in a solidarity which “would allow all peoples to become the artisans of their destiny”, since “every person is called to self-fulfilment.”<sup>92</sup>

More recently, Pope Francis in the message *Fraternity, the Foundation and Pathway to Peace* on the occasion of the World Day Peace, went back to the concept of fraternity as expressed by Pope Benedict XVI in the *Caritas in Veritate* (see above):

It is a fatherhood, then, which effectively generates fraternity, because the love of God, once welcomed, becomes the most formidable means of transforming our lives and relationships with others, opening us to solidarity and to genuine sharing.<sup>93</sup>

Solidarity is understood here to be the opposite of individualism (para. 3), a duty of richer nations to assist less developed countries (para. 4), an expression of Christian love for our neighbor (para. 4), and as complement of personal responsibility, keeping us from indifference (para. 8).

## CONCLUSIONS: SOLIDARITY IN INTERNATIONAL LAW – REVISED

Returning now to the role that solidarity can and should play in international law, the understanding of solidarity in Catholic social teaching is enormously important in a world where the full development of human persons and communities is so evidently unrealized and constantly under threat, where “that desire for profit and that thirst for power” that John Paul identified, and that Francis has drawn attention to again, help to maintain structures of sin that contradict human dignity and human flourishing. There is good and urgent reason to stress the need for solidarity in the relations among all the members of the human family. Without it, the universal common good cannot be realized, no

<sup>90</sup> Apostolic Exhortation, above at fn. 80, para. 188.

<sup>91</sup> *Ibidem*, para. 189.

<sup>92</sup> *Ibidem*, para. 190; internal fn. omitted.

<sup>93</sup> *Fraternity, the Foundation and Pathway to Peace, Message in the occasion of the World Day Peace, 1 January 2014*, para. 3.



matter what degree of material interdependence may come about through the processes of globalization.<sup>94</sup>

Thus, it is entirely appropriate and even imperative to regard solidarity as a broad principle that can and should inform a variety of decisions, policies, and practices in the international sphere. It should help to orient international law and relations generally toward the fulfillment of our responsibility to commit ourselves “to the good of all and of each individual,” and especially the most weak and vulnerable among us. Solidarity is an essential corollary of the recognition of the ontological unity of the human family, and a necessary component in realizing the transformation of the fact of interdependence into a genuinely universal common good.<sup>95</sup> In short, solidarity ought to be recognized as a structural principle of international law and relations.

Second, to regard solidarity as a virtue helps to situate its relationship to the fundamental principles of the international legal system. As discussed earlier, international law must (still) be realistically acknowledged to be as a system based principally on sovereignty. How is it best to make the virtue of solidarity possible and to encourage it in such a system? It might appear to be a basic contradiction, but in fact it need not be. While state sovereignty was originally conceived as a political concept able to justify the egotistic claims of Hobbesian leviathans, it nevertheless also expresses a fundamental aspect of human social life: *freedom*.<sup>96</sup> This aspect of sovereignty is not opposed to solidarity, but in fact is a condition for solidarity to be possible, as Pope Francis pointedly highlighted in *Evangelii Gaudium* (above). Solidarity, as a virtue before being a principle or a right, is an expression of the fulfillment of the human person’s proper nature as both a free and a social being, and its logic and economy have as their ultimate destination humanity as a whole. Solidarity in this sense cannot be satisfied through any merely political or legal project of bonding together one group as against some other(s). True solidarity instead requires *gratuitousness*,<sup>97</sup> the lack of a political or economic interest apart from the recognition of our responsibility to others sharing in a common humanity. Therefore “sovereignty”, removed from the absolute meaning taken in modern political thought (e.g., Hobbes, Rousseau), and re-understood as an expression of the *freedom* of peoples, is paradoxically the condition of a truly human act of solidarity. Solidarity is then not the opposite of sovereignty but the proper use and fulfillment of the freedom that human communities have in the international system and which we express through the term “sovereignty.”

There is a need, then, to mediate and structure the relationship between solidarity and freedom/sovereignty, to bring them into a harmonious relationship with one another. Here, and in conclusion, we must introduce another key structural principle of the international legal-political order repeatedly emphasized in Catholic social thought, *subsidiarity*.<sup>98</sup> As Benedict XVI affirms in *Caritas in Veritate* (paras 57–67), subsidiarity is essential to the proper orientation of both freedom and solidarity

<sup>94</sup> P. Carozza, *The Universal Common Good and the Authority of International Law*, in *Logos: A Journal of Catholic Thought and Culture*, 9, 2006, pp. 28–55.

<sup>95</sup> *Ibidem*.

<sup>96</sup> *Compendium*, above at fn. 71, para. 199 (individual freedom as one of the fundamental values of social life; *mutatis mutandis* is valid also for peoples).

<sup>97</sup> *Caritas in Veritate*, above at fn. 56, paras 36–39.

<sup>98</sup> Cf. P. Carozza, *Subsidiarity as a Structural Principle of International Human Rights Law*, in *American Journal of International Law*, 97, 2003, pp. 38–79.



in the human family, and especially in connection with efforts and initiatives aimed at advancing human development:

A particular manifestation of charity and a guiding criterion for fraternal cooperation between believers and non-believers is undoubtedly the *principle of subsidiarity*, an expression of inalienable human freedom. Subsidiarity is first and foremost a form of assistance to the human person via the autonomy of intermediate bodies. Such assistance is offered when individuals or groups are unable to accomplish something on their own, and it is always designed to achieve their emancipation, because it fosters freedom and participation through assumption of responsibility. Subsidiarity respects personal dignity by recognizing in the person a subject who is always capable of giving something to others. By considering reciprocity as the heart of what it is to be a human being, subsidiarity is the most effective antidote against any form of all-encompassing welfare state. It is able to take account both of the manifold articulation of plans — and therefore of the plurality of subjects — as well as the coordination of those plans. Hence the principle of subsidiarity is particularly well-suited to managing globalization and directing it towards authentic human development. In order not to produce a dangerous universal power of a tyrannical nature, *the governance of globalization must be marked by subsidiarity*, articulated into several layers and involving different levels that can work together. . . .

*The principle of subsidiarity must remain closely linked to the principle of solidarity and vice versa*, since the former without the latter gives way to social privatism, while the latter without the former gives way to paternalist social assistance that is demeaning to those in need.

In *Evangelii Gaudium*, following the social teaching of the Church, in several places Pope Francis recalls both the deep unity of humankind<sup>99</sup> and also the pluralistic development of several distinct cultures and people.<sup>100</sup> In fact given this situation of pluralism, the Pope, in addressing the theme of the evangelization, in many places speaks about the need to *inculturate* the announcement of the Gospel to the local cultures,<sup>101</sup> concluding that “[d]iversity must always be reconciled by the help of the Holy Spirit; He alone can raise up diversity, plurality and multiplicity while at the same time bringing about unity.”<sup>102</sup> The same approach can be found concerning social doctrine: using the words of Pope Paul VI, Pope Francis says that “It is up to the Christian communities to analyze with objectivity the situation which is proper to their own country.”<sup>103</sup>

Once again, this intention depends on the freedom of the peoples involved, as means and as ends:

To speak properly of our own rights, we need to broaden our perspective and to hear the plea of other peoples and other regions than those of our own country. We need to grow in a solidarity which “would allow all peoples to become the artisans of their destiny”, since “every person is called to self-fulfilment.”<sup>104</sup>

<sup>99</sup> See for example the Apostolic Exhortation, above at fn. 80, para. 113.

<sup>100</sup> *Ibidem*, para. 115. See also *Compendium*, above at fn. 71, paras 144–145.

<sup>101</sup> *Inter alia* see Apostolic Exhortation, above at fn. 80, paras 122 and 129.

<sup>102</sup> *Ibidem*, para. 131.

<sup>103</sup> *Ibidem*, para. 184, quoting the Paul VI’s Apostolic Letter *Octagesima Adveniens*, 14 May 1971, para. 4 (AAS 63 (1971), p. 403).

<sup>104</sup> *Ibidem*, para. 190; internal fn. omitted.

