

The relevance of the recognition of the right to international solidarity in relation to the promotion of a Democratic and Equitable International Order

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Dear Msgr. Jurkovic, dear Virginia, Maria Mercedes, Jorge,

Virginia and I started our mandates almost at the same time. I congratulate Virginia for her work as an Independent Expert. She has produced fine reports and a Draft Declaration on the right to international solidarity that will inspire many. Article 3 of the Draft Declaration is of particular relevance to my mandate, as it defines the general objective of international solidarity as the creation of an enabling environment for:

“(a) Preventing and removing the causes of asymmetries and inequities between and within States, and the structural obstacles and factors that generate and perpetuate poverty and inequality worldwide;

(b) Engendering trust and mutual respect between States and non-State actors to foster peace and security, development and human rights;

(c) Promoting a social and international order in which all human rights and fundamental freedoms can be fully realized.”

Indeed, in all of my previous reports and current reports to the HR Council and General Assembly, I address these issues from the perspective of an international order that corresponds to the Purposes and Principles of the United Nations, to the object and purpose of the UN Charter, and to the progressive development of international law and in particular human rights law. Global challenges require global solutions, which are best negotiated at UN Summits and have engendered the Human Rights Covenants, the sustainable development goals, the Paris Agreement on the Environment, etc. Multilateral cooperation and solidarity are essential to give effect to these agreements.

I would like to draw attention to article 9, paragraph 3, of the Draft Declaration, which stipulates that *“States shall give effect to the establishment of a fair, inclusive, participatory and human rights-based international trade and investment regime where all States shall act in conformity with their obligation to ensure that no international trade agreement or policy to which they are a party has any adverse impact on the protection, promotion and fulfilment of human rights both within and beyond their borders.”* As has been documented by several rapporteurs, States have largely failed to ensure that bilateral investment treaties and free trade agreements do not result in human rights retrogression. Article 8, paragraph 4, stipulates further that *“States shall take appropriate, transparent and inclusive action to ensure the meaningful participation of individuals and peoples in decision-making processes at the national, bilateral, regional and international levels on matters that affect their lives.”* Here again, the negotiating history of more than 3000 bilateral investment treaties and the mega-treaties CETA, TPP, TTIP and TISA all show the systematic exclusion of key stakeholders, including labour unions, consumer unions, environmental protection groups and health professionals.

As we all know, prevention of human rights violations is more important than *post hoc* correction of errors, putting band aids here and there, seeking reparation for victims, condemning impunity. Virginia and I have made pragmatic recommendations how to advance on matters of prevention and cure, but it is up to the

States that created our mandates to take appropriate measures to give effect to our recommendations so as to achieve tangible results. Otherwise we rapporteurs will be perceived as a mere assembly of Cassandras, whose reports are politely received, filed away and forgotten.

The Associazione Comunità Papa Giovanni XXIII, the Spanish Society for International Human Rights Law, and hundreds of civil society organizations have been working for years toward the adoption of another important declaration, which is very much related to international solidarity, the declaration on the human right to peace. As we all know, peace is a condition for the enjoyment of civil, cultural, economic, political and social rights, it is a condition for the realization of all facets of human dignity. GA Resolution 71/189 of 19 December 2016 contains the text of a watered-down declaration on the right to peace, which seems to me less than GA Resolution 39/11 of 12 November 1984. It is rather sad to admit that States demonstrated very little international solidarity during the entire drafting process. But let us not abandon our gritty optimism and continue pushing for further negotiations toward the adoption of a text more in conformity with the aspirations of humanity.

This lack of international solidarity is manifested in the failure of the international community to tackle many of the root causes of armed conflict, including propaganda for war disseminated by politicians, government and private sector media, the constant sabre-rattling, the arms race, weapon sales to governments engaged in gross violations of human rights, denial of self-determination of peoples, and the ruthless search for and exploitation of natural resources. I have covered these issues extensively in my past reports to the Human Rights Council and the General Assembly.

My 2014 report to the Human Rights Council was devoted to the danger posed by ever increasing military expenditures to world peace and to human rights, which the Draft Declaration also underlines by stating that international solidarity is *“a key approach to peace and disarmament”*. My 2014 report to the General Assembly focused on the realization of self-determination as a conflict-prevention strategy and reminded us that many of the armed conflicts of the past 70 years had their origin in the denial of self-determination. In this context, I fully support the inclusion of the right of self-determination in the Draft Declaration, which enshrines in its Article 1 that *“the principle of international solidarity is based on justice, equity, peace, non-interference, self-determination”*, amongst others. In 2015, I presented reports to the Council and GA on the adverse impacts of bilateral investment treaties and free trade agreements on the enjoyment of human rights in many countries, particularly developing countries, which is also reflected in Article 7 of the Draft Declaration. In particular, my 2016 report to the Council focused on the dangers to the rule of law posed by the creation of a parallel system of dispute settlement, the very toxic investor-state-dispute-settlement mechanism, that has led to abstruse arbitral awards that significantly encroach on the ontological functions of the State and result in a serious regulatory chill. My 2016 report to the General Assembly analysed the human rights impacts of tax havens and secret jurisdictions, the facilitation of corruption, bribery and money laundering, the collusion of accounting firms, law-firms, banks and governments in creating shell companies and other phoney entities with the sole purpose of defrauding the State of sorely needed tax revenue. In a few months, I will present my 2017 report to the Human Rights Council on the World Bank and international order, while my report to the General Assembly, to be presented in October, will focus on the IMF and human rights.

We, mandate holders, collect information, convene expert consultations, exchange views with practitioners and academics, listen to civil society and proceed to formulate diagnoses and recommendations. There is no lack of good diagnoses and implementable recommendations – and yet there is lack of international solidarity to resolve the problems in a sustainable manner, which results in adverse consequences on

human rights, as well exposed by a number of Special Procedures mandate holders, including our colleague Special Rapporteur Juan Pablo Bohoslavsky, who covers the issues of foreign debt and their impact on human rights. We all have witnessed the unconscionable lack of international solidarity with developing countries and even with some developed countries.

Recently, I looked at related issues of “odious debt”, vulture funds and the inflexibility of international bankers. I issued a statement deploring the additional “austerity measures” imposed by creditors on Greece, which will aggravate the economic degradation of the population and the general sense of despair. These “austerity measures” appear to replace any vestiges of democratic governance in Greece with the rule of foreign financial institutions. The results of previous “austerity measures” imposed by the troika on Greece have been devastating for the enjoyment of human rights in the country, where unemployment is rampant, healthcare is collapsing and pensions have been cut again and again. The European countries that are imposing these conditions on the Greek population through the European Central Bank are also States parties to the International Covenant on Economic, Social and Cultural Rights, and bear responsibility for the consequent violations of these rights in Greece. The International Monetary Fund is made up of States that similarly have ratified the Covenant. It also has its own association Agreement with the United Nations, which engenders an obligation to work in conformity with the Purposes and Principles of the United Nations, including the promotion of human rights and development.

In my statement I encouraged all creditor States and financial institutions to revisit their “conditionalities” for past and future loans. Instead of demanding privatization, deregulation and reduction of social services, I firmly believe that the borrower and the lender have, not only obligations, but also a long-term interest in working together to ensure the loan does not lead to retrogression in the provision of health, pension, education or other social services. Not only would this be a valuable expression of “a spirit of unity among individuals, peoples, States and international organizations” to achieve common goods, as rightly stated by the draft declaration prepared by Virginia, but more importantly this would demonstrate a long-term commitment to place the well-being of human beings – together with the corresponding environmental protection – above any other considerations. Quite concretely I propose these human-rights-based conditionalities:

1. No loan should be awarded to any country that continues spending for military procurement and other non-essential military activities. For the duration of the crisis and until the loans are paid back, a moratorium should be called on military expenditures. (see the Independent Expert’s 2014 report to the Human Rights Council, A/HRC/27/51)
2. No loan should be awarded until the borrower has effective legislation in place outlawing the use of tax havens and other secrecy jurisdictions by individuals, local and transnational enterprises, and ensuring monitoring of its effective application. Moneys held offshore should be repatriated and subjected to regular taxation. The government must be able to count on advisory services and technical assistance by the IMF and the United Nations in devising a new tax structure that will ensure that all economic activity is fairly taxed and that tax loopholes are closed. Evidently, the creditors have an interest in ensuring that a debtor state should collect all tax revenue to which it is entitled, so as to pay back the loans. (see the 2016 report to the GA, A/71/286)
3. No loan should be awarded unless the borrower rigorously enforces its laws against corruption and money-laundering.
4. No loan should be awarded unless the borrower agrees to impose a financial transactions tax. This would enable borrowing countries to obtain an additional source of revenue which can be used to pay back existing loans.

5. No loan should be awarded until the lender has carried out human rights impact assessments, especially if the loan could lead to retrogression in the provision of health, pension, education or other social services, as per well-established international human rights standards; those groups in society which may be particularly vulnerable to policies and programmes relating to debt, including older persons, women and youth, should not be adversely impacted.
6. No loan should be awarded until both the lender and borrower have conducted transparent and public participatory processes.

In the meantime, a citizens' commission should examine the source of the existing debts and determine to what extent such debts can be repudiated as "odious debt". International financial institutions should make their expertise available so as to carry out such an investigation as a matter of urgency.

What I say about Greece also applies to many countries around the world. The peoples of these countries deserve not just nice words of compassion but concrete measures of international solidarity. The Draft Declaration presented by Virginia today is just doing that. It is now in our hands to make it happen.

I thank you