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CHAPTER

17 Solidarity

Rüdiger Wolfrum Author Notes

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Abstract

This article examines the role and influence of the principle of solidarity on international human rights law. It analyses the pronouncement of the United Nations on solidarity and the impact of solidarity on some international legal regimes concerned with peace, trade law and environmental law. This article argues that solidarity not only facilitated the internationalization of human rights concerns but also significantly influenced modern doctrines of reparations for human rights victims, the responsibility to protect and humanitarian assistance.

Keywords: solidarity, human rights law, United Nations, international legal regimes, reparations, human rights victims, responsibility to protect, humanitarian assistance

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1. Introduction

AN acknowledgement that the principle of solidarity exists in international law and is having an impact on the structure of the law reflects the transformation of the international system from a network of bilateral commitments into a value-based global legal order. This development stands in stark contrast to the traditional view of public international law of the nineteenth and early twentieth centuries.[1]

p. 402 Traditionally, public international law developed to define areas of jurisdiction for states in respect of others and to coordinate state activities, when such ↳ activities might interfere with the interests of other states. Positing the existence of a structural principle of solidarity among states seems totally alien to a legal system devoted merely to the coordination of independent state activities. The introduction of the principle of solidarity as a structural principle of international law reorients international law from a set of rules for preserving the present state of existing international relations, into a regime for fulfilling a certain mission, namely the promotion of international social justice among states. This is because, at its heart, solidarity strives for the amelioration, or at least the acknowledgement, of inequalities among states.

The reference to the principle of solidarity as a structural principle is actually not a new one. As Ulrich Scheuner has pointed out in his contribution to the *Festschrift for Eberhard Menzel*,[2] the idea that the principle of solidarity should guide states in their relations was discussed between the sixteenth and nineteenth centuries. The perception of a *universitas christiana* based upon common Christian values significantly influenced the early development of international law.[3] After the severance of international law's connection with its religious roots, attempts were made in the eighteenth century to construe a state community on the basis of a common perception of the human being. For example, Samuel von Pufendorf (1632–94) refers to the obligations each individual has towards all other human beings in his book, *De Officio Hominis et Civis (On The Duty of Man and Citizen According to the Natural Law)*.[4] From there, he deduces obligations among states. Christian Wolff (1679–1754) further elaborated upon this concept in his book, *Ius Gentium Methodo Scientifica Pertractatum (The Law of Nations Treated According to Scientific Method)*.[5] He argued that each individual had obligations with respect to him or herself and to others, and that obligations among states developed from there. This obligation existed in particular as between g*entes doctae et cultae* and *gentes barbarae et incultae*.[6] Finally, Emer de Vattel (1714–67) advocated the same ideas.[7]
p. 403 While referring to ↳ a *société civile* (civil society), he formulates that: 'Un Etat doit à tout autre Etat, ce qu'il se doit à soi-même, autant que cet autre a un véritable besoin de son secours, et qu'il peut le lui accorder sans négliger ses devoirs envers soi-même.'[8] As an example, Emer de Vattel referred to assistance in the case of aggression or famine.

It is evident that international law has not reached this stage of development. However, the principle of solidarity in fact governs certain areas of international law. Looking at them from this point of view may open new ways to interpret the respective legal regimes. Furthermore, it is worth considering whether the principle of solidarity may also be used for other international legal regimes.

The principle of solidarity may serve different objectives. It is particularly relevant in regulating concerns common to the international community. Such matters include, for example, commons areas (the high seas, outer space); the environment (the atmosphere, the availability of safe drinking water); the protection and implementation of internationally agreed upon human rights standards; economic development; social justice; and the preservation of international peace and security.[9] All such concerns can only be successfully managed by the common action of all members of the international community—which means, by their cooperative efforts—and not by the individual actions of one or more states. Hence, one can say that solidarity operates to achieve common objectives through common action.

The changes international law is undergoing, or has undergone in recent years, are due to the transformation of international relations from a system governed by the coexistence of states[10] and in which the acceptance that all forms of government are considered equal, into a system following the law of cooperation,[11] and then, in a third stage, into a legal system based upon common values. The latter development has transformed the society of states (*Staatengesellschaft*) into a community of states (*Staatengemeinschaft*).[12] This is why the principle of solidarity has emerged (or rather re-emerged) and is gaining relevance.

Solidarity may mean that a state has to sacrifice, or at least limit, its individual interests, in favour of the overarching interest of the international community; however, because every member of the international community, including the self-sacrificing ones, accrues the benefits of such cooperation, the term self-
p. 404 centred ↳ solidarity has been coined.[13] Sacrificing individual interests does not necessarily mean, however, that the contributions of all states are bound to be equal. The relative capacities of the individual states may be of relevance when trying to achieve a common goal. This means that, the contributions of some states may exceed the contributions of others.

In certain cases, solidarity-based actions may be designed to benefit some states or particular groups of states, or even a single state. This type of solidarity may be described as altruistic, although the realization

of the benefit is also, in the long term, in the interest of the international community.[14] Such balancing seems to be contrary to the traditional understanding of the general matrix of international law but, as will be shown, it has become reality in a few international legal regimes. However, for these regimes, the principle of solidarity is quite determinative.

On the basis of the foregoing, one may distinguish three different aspects to solidarity: the achievement of common objectives, the achievement of common objectives through differentiated obligations, and the adoption of actions to benefit particular states or groups thereof.

Accepting the existence of the principle of solidarity in the matrix of international relations means that, generally speaking, states should consider not only their own individual interests, but also the interests of other states, the community of states as a whole, or both, when shaping their positions. This is true for both types of solidarity.

Some international treaties contain legal norms, which explicitly refer to the principle of solidarity. One example may suffice as an introduction. Article 3 of the UN Convention to Combat Desertification states:

> In order to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following: ...(b) the Parties should, in a spirit of international solidarity and partnership, improve cooperation and coordination at subregional, regional and international levels, and better focus financial, human, organizational and technical resources where they are needed....[15]

15 Article 3.

This chapter examines United Nations pronouncements on solidarity and the impact that solidarity has had on the specific international legal regimes concerned with peace, environmental law, and trade law, before turning to its role in relation to human rights law, where it not only provides a theoretical underpinning for the very internationalization of concern for human rights, but also has shaped modern doctrines of humanitarian assistance, the responsibility to protect, and reparations for human rights violations. ↳

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2. United Nations Pronouncements on Solidarity

The UN Millennium Declaration refers to solidarity as a fundamental value, stating:

> Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.[16]

16 United Nations Millennium Declaration, para 6.

Several resolutions of the UN General Assembly reaffirmed the principle of solidarity. Resolution 64/157 of 18 December 2009 on the 'Promotion of a Democratic and Equitable Democratic Order' is of particular relevance.[17] It mentions the principle of solidarity twice, namely solidarity among states[18] and solidarity as a right of peoples and individuals.[19] The context in which it refers to the principle of solidarity is remarkable, namely the protection of human rights; the preservation of peace, social, and economic development; and the protection of the environment.[20] The forerunner to this resolution was the 2006 UN General Assembly Resolution on the 'Promotion of a Democratic and Equitable International Order'.[21] Its emphasis was different, because it did not mention the right of peoples and individuals to solidarity, but rather reiterated the Millennium Declaration.[22]

3. Solidarity in the International System

3.1 The protection of peace

The most significant change to international law was the prohibition of resorting to armed force in the Kellogg–Briand Pact of 27 August 1928, which entered into force on 25 July 1929,[23] and whose prohibition
p. 406 Article 2(4) of UN Charter has expanded. ↳ The principle of non-use of force in international relations is also rooted in customary international law.[24] There are two exceptions to this prohibition which are of relevance to the issue of this contribution, namely the right to self-defence and the right to military actions that the UN Security Council undertakes or mandates under the system of collective security. Article 51 of the UN Charter recognizes that every state has the inherent right to individual or collective self-defence. This is not the place to delve into the intricacies of the scope of the right to self-defence;[25] it is sufficient to state that the right to self-defence reflects the inherent right of each state to preserve its existence and its position as a sovereign and equal member in the community of states.

It is important to examine, however, the underlying rationale of Article 51 of the UN Charter when it refers to an 'inherent right of…collective self-defence'. Historically, the roots of this provision lay in the desire to protect regional pacts of mutual assistance in cases of armed attack. According to Stephen C Schlesinger (1942–),[26] the first version of this provision, which Latin American states endorsed, tried to immunize the Chapultepec Pact and the Monroe Doctrine from veto in the Security Council. On the insistence of the US delegation in particular, at the Conference of San Francisco, the direct reference to regional pacts was dropped, and the more neutral terminology was introduced. The accomplishment inherent to Article 51 of the UN Charter, in retrospect, was providing the legal framework for the establishment of a series of security pacts around the world, such as the North Atlantic Treaty Organization or the South East Asia Treaty Organization.

Article 51 of the UN Charter goes beyond preserving the rights of such security pacts, however. Apart from being a mechanism to preserve the existence of a particular state, self-defence is a mechanism for countering armed attacks in general. Since the state that is lending support to another state that has been the victim of an armed attack, does not have to pursue an interest of its own, it performs an act of solidarity by making the second state's case its own, when it intervenes for the second state's protection. That such intervention may qualify as an act of solidarity is well expressed in Article 5 of the North Atlantic Treaty,[27]
p. 407 as well as in ↳ other safety pacts. Technically speaking, the provision creates the legal fiction that an attack launched against one of the parties is an attack against all of them. The rationale for this construction of the notion of collective self-defence is, first and foremost, the promotion of a common value, namely the prohibition of armed force in international relations. The altruistic aspect of solidarity is also relevant, though, because security pacts, in particular, may shield states that are less powerful militarily against military action from more powerful neighbours.

The system of collective security also includes elements of solidarity. The basic idea underlying the concept of collective security is the replacement of individual states' recourse to self-help with a collective response system. The distinguishing lines between systems of collective self-defence and collective security have blurred. More generally, the regime of collective security also invokes the principle of solidarity, as it obliges states to act in the interest and defence of a common value—namely the preservation of peace. However, in this case, the principle of solidarity is of a self-centred nature only.

3.2 International environmental law

The preamble to the Rio Declaration of 1992[28] emphasizes the integral and interdependent nature of the Earth, and on this basis, calls upon states to establish a new and equitable partnership. This Declaration, which summarizes the objectives meant to guide and pre-structure the progressive development of international environmental law, clearly indicates the need for states to cooperate in order to meet common objectives. International environmental law covers various issues, such as transboundary pollution; the protection of wildlife; the use and protection of areas beyond national jurisdiction, such as the high seas or Antarctica; and the management of environmental problems of global relevance. The latter category embraces measures against climate change and for the protection of the ozone layer and biological diversity. International environmental law (treaty law, as well as customary law) has developed on the basis of several principles, two of which have a bearing on the role of solidarity in international law—namely, the
p. 408 principles of sustainable development and common but differentiated responsibility. ↳

The principle of the sustainable development of natural resources is generally considered to be comprised of four elements or needs:[29] to preserve natural resources for the benefit of future generations;[30] to exploit natural resources in a rational manner; to use natural resources equitably, which means taking into consideration the needs of other states; and to ensure that environmental considerations are integrated into development plans or policies.

In spite of the controversy over the exact meaning of the scope[31] and implications of sustainable development, it is evident that the principle embraces an element of solidarity, because intergenerational equity requests that the present generation limit its use of natural resources so as to leave future generations with equal living conditions. It goes without saying that its other aspects also imply a principle of solidarity among states, most notably the obligation to use natural resources in a way that also takes into account the needs of other states.

Similarly, the principle of common but differentiated responsibility, pervasive in climate change law and negotiations, reflects a principle built upon the principle of interstate solidarity. The first of several clearly distinguishable elements[32] is that of common responsibility for the world's climate, which means that all states have an obligation to cooperate for the preservation of the climate. A further aspect of the principle of common but differentiated responsibility is that the preservation of the world's climate is not only for the present benefit, but also for the benefit of future generations, bringing in a certain element of intergenerational equity. Moreover, the state obligations may differ[33] and entail, as some legal regimes provide, that one group of states may have to provide financial transfers to another.[34]

To summarize, it should be noted that international environmental law is based upon the structural principle of solidarity. This legal regime, in particular, combined the two aspects of this principle: the
p. 409 achievement of a common objective and the amelioration of the deficits of certain states. ↳

3.3 World trade law

In its first consideration, the preamble of the World Trade Organization Agreement[35] lists several overall and paramount objectives, namely raising standards of living, ensuring full employment, ensuring a large and steadily growing volume of real income and effective demand, and expanding the production of goods and services. The objectives contained in the World Trade Organization (WTO) preamble define a common value, namely the enhancement of economic development. Combined therewith is the second aspect of the principle of solidarity, namely the amelioration of existing deficiencies through the promotion of economic development in developing countries.

It is occasionally overlooked that the principle of solidarity has helped structure the world trade order. Although its objective, the liberalization of world trade, is pursued through individually negotiated steps on the basis of reciprocity, there are several exceptions to the concept of reciprocity. First and foremost, it must be emphasized that the WTO subjects its reciprocally negotiated concessions to most-favoured nation treatment for a multitude of reasons.[36] The most-favoured nation principle leads to a multiplication of liberalization efforts, which, as soon one state concedes them, benefit all other states.[37]

In particular circumstances, the WTO legal system provides for exceptions to the principle of most-favoured nation treatment. Particularly relevant in this respect is the preferential treatment accorded to developing countries, which the so-called Enabling Clause justifies.[38] Besides the Enabling Clause, special arrangements in favour of developing countries can also be secured by means of exceptional authorizations —the so-called waivers.[39] The preference system of the European Union vis-à-vis the ACP countries (African, Caribbean, and Pacific Group of States), as established under the Cotonou Agreement,[40] provides an example of such a waiver.[41]

It is evident that the structural principle of solidarity can be identified in the WTO legal regime. Altruistic solidarity is, however, dominant only insofar as developing countries are concerned. In this context, it even provides for a deviation from one structural mechanism of that regime—namely reciprocity.

4. Solidarity as a Basis for the Protection of Human Rights

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Since the beginning of the human rights movement, it has been recognized that the effective realization of individual rights constitutes a community interest[42] requiring international solidarity.[43] Article 1 of the *Institut de Droit International*'s (International Law Institute's) 1989 resolution on the 'Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States' states that the states' obligation to protect human rights 'implies a duty of solidarity among all States to ensure as rapidly as possible the effective protection of human rights throughout the world'.[44] Referring to the distinction which has been made between self-centred solidarity and altruistic solidarity, it should be emphasized that in the context of human rights, all attempts to safeguard and promote human rights in other countries reflect altruistic solidarity. The driving motif does not predominantly rest on the national interests of the intervening state (although occasionally the interest to avoid a flow of refugees may exist), but on the desire to uphold and consolidate a high human rights standard. This can be clearly established from the fact that states with a satisfactory human rights record are particularly interested in bringing up the standard in other states.

Karel Vasak developed the concept of solidarity rights comprising inter alia the right to development, the right to a healthy environment, and the right to peace, in his inaugural lecture at the International Human Rights Institute in Strasbourg in 1979. The particularity of such rights is that they impose on states joint obligations that are structurally different—as they require positive action—from the obligations the International Covenant on Civil and Political Rights contains, which, to a large extent, are in principle obligations of abstention. Solidarity rights also recognize, as an important element, an individual obligation to contribute to the realization of such rights. While other human rights impose obligations primarily on states, solidarity rights cannot be realized 'without the concerted efforts of all the actors on the social scene', including the individual.[45]

For the protection of human rights, the concept of solidarity is particularly relevant in two areas; one is humanitarian assistance, and the other one is the responsibility to protect. A third area, which has recently developed, is reparations for ↳ victims of gross and systematic violations of human rights, as referred to in the 'UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' of 16 December 2005.[46]

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4.1 Humanitarian assistance

As indicated above, the early writings dealing with the principle of solidarity referred to assistance in cases of natural disasters. This issue has been discussed in the United Nations. For example, on 8 December 1988, the General Assembly adopted the 'Resolution on Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations'.[47] While reaffirming the sovereignty of states and their primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within their respective territories, the General Assembly:

> [u]rges States in proximity to areas of natural disasters and similar emergency situations, particularly in the case of regions that are difficult to reach, to participate closely with the affected countries in international efforts with a view to facilitating, to the extent possible, the transit of humanitarian assistance.[48]

48 UNGA Res 43/131 (n 47) para 7.

This does not give states the right to intervene, but it indicates at least a moral obligation to render assistance if the affected state so requests. General Assembly Resolution 45/100 of 14 December 1990 reaffirmed this appeal and additionally called upon the state having suffered the natural disaster to facilitate the work of states and non-governmental organizations by providing access possibilities (relief corridors) to the population in need of assistance.[49]

Beyond the context of natural disasters, the Security Council has implemented this approach in armed conflicts involving Sudan and Croatia, and involving the protection of the Kurds in Iraq.[50] There is, however, a significant difference between the resolutions of the Security Council and those of the General Assembly.[51]
p. 412 Whereas the General Assembly invokes, although not explicitly, the principle of ↳ solidarity as the basis for its call for assistance, including the call to accept assistance, the Security Council acts on the basis of its powers under Chapter VII of the UN Charter. Therefore, one may argue that one may refer only to the resolutions of the General Assembly as an indication that the structural principle of solidarity is evolving. This, however, does not sufficiently take into account that the powers of the Security Council under Chapter VII of the UN Charter are based upon the structural principle of solidarity. Therefore, it is quite pertinent to compare the actions of the General Assembly, which has to invoke solidarity as a basis of legitimacy, with the actions of the Security Council, which may act on the basis of its institutional powers.

There is, furthermore, a second lesson to learn from the General Assembly's resolutions. The principle of solidarity is embedded in international law. It cannot be used as a means to enforce an action against a state, unless, as provided under Chapter VII of the UN Charter, public international law explicitly provides for such an enforcement measure.

4.2 Responsibility to protect

Perhaps the most controversial manifestation of the notion of solidarity in the context of human rights is the emerging concept of the responsibility to protect.[52] The International Commission on Intervention and State Sovereignty developed the concept in September 2001.[53] Concerns raised by UN Secretary General Kofi Annan and debates in the General Assembly triggered the report. Secretary General Kofi Annan had referred to the great failure of the international community to handle gross and systematic violations of human rights, such as those perpetrated in Rwanda and Srebrenica, and emphasized that the international community could not stand idle while such incidents occurred.[54] The concept of the responsibility to protect
p. 413 has its roots in the concept of a *droit d'ingérence* (right to intervene) ↳ that developed in French academic literature in the 1990s.[55] The dogmatic basis of the concept of the responsibility to protect rests on states' responsibility for the well-being of their inhabitants.

According to the Commission on Intervention and State Sovereignty, the concept of the responsibility to protect embraces three different elements: the responsibility to prevent, the responsibility to respond, and the responsibility to rebuild, with prevention being considered the single most important dimension of the responsibility to protect. As far as military intervention—the most controversial aspect of the concept—is concerned, the Commission identified various thresholds, namely that the intervention must react to serious and irreparable harm that is currently happening to human beings or that is imminently likely to happen. It mentioned large-scale loss of life and large-scale 'ethnic cleansing' as examples.[56] The intention of the intervention must be to avert human suffering; it must be a means of last resort, and it must be conducted in a proper way, with a reasonable chance of achieving the desired result.[57] Although not ruling out military action by individual states, the Commission clearly advocated that actions be undertaken by the Security Council or under its authority.[58]

The concept of the responsibility to protect has subsequently been adopted or referred to in multiple contexts, such as the Security Council debate concerning Resolution 1556 on Darfur.[59] The representative of the Philippines made a direct reference to the concept of the responsibility to protect when he stated that sovereignty also entailed a state's responsibility to protect its people. If the state was unable or unwilling to live up to this obligation, the international community had the responsibility to assist an unable state to gain the needed capacity or to induce an unwilling state to assume its responsibility. If that proved fruitless, the international community, in extreme situations, had the responsibility to intervene.[60] The United Kingdom similarly referred to the 'most basic of a government"s [sic] obligations to its own people: the obligation to protect them—something that the Government of Sudan has so far failed to do'.[61]

Furthermore, the Report of the High-Level Panel on Threats, Challenges and Change referred to an emerging norm of collective international responsibility to protect, stating:

> [T]here is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable ↳ or unwilling to do so that responsibility should be taken up by the wider international community....[62]

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62 UN High-Level Panel on Threats, Challenges and Change (ed), *A More Secure World: Our Shared Responsibility* (2 December 2004) UN Doc A/59/565, para 201.

The Secretary General also referred to this concept in a statement to the High-Level Panel in March 2005, qualifying the concept as an emerging norm of international law.[63]

In September 2005, the World Summit Outcome Document endorsed the concept, stating:

> Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept this responsibility and will act in accordance with it...
>
> The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[64]

64 UNGA Res 60/1 (16 September 2005) UN Doc A/Res/60/1, paras 138–39.

In addition, UN Secretary General Ban Ki-moon issued three special reports on the responsibility to protect, further developing and refining the concept.[65]

4.2.1 Security Council action with respect to the responsibility to protect?

In its operative part, Security Council Resolution 1674 of 28 April 2006 on the Protection of Civilians in Armed Conflict referred to paragraphs 138 and 139 of the World Summit Outcome Document, which contain the concept of a responsibility to protect,[66] but did not instrumentalize the concept later. In its Resolution
p. 415 1769 of 31 July 2007 on the situation in Darfur,[67] the Security Council referred to Security ↳ Council Resolution 1674 without mentioning the concept of a responsibility to protect. The concept was used, at least in part, though, in the resolutions concerning Libya. In its Resolution 1970 of 26 February 2011,[68] the Security Council emphasized the Libyan authorities' responsibilities for protecting its population in its preambular paragraphs. The Security Council reiterated this statement in Resolution 1973 of 17 March 2011.[69] In a further preambular paragraph of Resolution 1973, the Security Council stated: 'Expressing its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel.' There is no explicit link to the concept of a responsibility to protect. But this paragraph fits into the concept, since the Security Council indicates that it will intervene if the government of Libya does not live up to its responsibility. In fact, the Security Council takes such action by authorizing 'Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements,...to take all necessary measures...to protect civilians and civilian populated areas under threat of attack...'.[70]

However, these few references in Security Council Resolutions are not yet conclusive evidence that the concept of a responsibility to protect has already been accepted in all its facets. It is more than doubtful whether the military intervention in Libya has—seen in the long term—fostered the acceptability of the concept of the responsibility to protect, as far as it concerns military intervention based on Chapter VII of the UN Charter. It is a matter of discussion whether the military intervention was proportional and whether the intervention has led to a better environment for the protection of international human rights standards.

4.2.2 New developments

As indicated above, a third area is developing—namely the responsibility for the treatment of victims of gross and systematic violations of human rights according to the UN Basic Principles and the Guidelines on the Right to a Remedy and Reparations.[71] These instruments provide that states should modify or amend their national law so as to ensure that victims of gross violations of human rights are treated with dignity
p. 416 and get the assistance they need. ↳

4.2.3 Assessment

It is evident that the concept of a responsibility to protect has undergone a decisive change since its original development. It has been limited in several respects. It now relates only to the most serious crimes, such as genocide, war crimes, crimes against humanity, and ethnic cleansing. Furthermore, the possible reactions are limited to a responsibility for the concerned state, international assistance and capacity-building to enable the state concerned to live up to its protection responsibilities, and a timely and decisive response by the international community.

It is not the objective of this contribution to discuss whether the responsibility to protect has already developed into positive international law.[72] The question of interest here is whether the responsibility to

protect is based on the principle of solidarity.

According to Judge Abdul G Koroma, the concept of a responsibility to protect is legally distinguishable from humanitarian intervention.[73] For him, the basis for international community intervention in favour of a suffering or suppressed population lies in the international community's solidarity with that population. In contrast thereto, humanitarian intervention derives from one state's claim of superiority over another.

In the context dealt with here, this means a significant shift in the matrix of solidarity as briefly outlined before. So far, the principle of solidarity has been accepted in the form of solidarity among states, whereas the responsibility to protect would mean the international community's solidarity with the population of a particular state. Is this change of addressee acceptable? The answer to this question should be sought in the concept of the principle of solidarity, as well as in the relevance of the protection of human rights in the matrix of international law.

As has been pointed out, the structural principle of solidarity was distilled from several legal regimes that enshrined, or even explicitly referred to, it. It means, generally speaking, that states have to take into account community interests when shaping their national policies. The reference to community interests embraces interests whose realization would benefit the whole international community or a particular state or group of states, in case the international community has accepted these interests as its own. The fact is that, seen from this perspective, solidarity does not result in an infringement of the sovereignty of those states that benefit from a solidarity action. Considering solidarity as a basis for a responsibility to protect would change that situation, since any action in favour of a population bypassing, or even forcing the state concerned, definitely means an infringement on the sovereignty of the latter.

However, it has been established by now, and does not have to be argued in depth again, that the recognition
p. 417 of human rights and their protection has become one of ↳ the core elements of the present international legal order, and states can no longer claim that the treatment of their populations is an internal affair immune from international interference.[74]

5. Concluding Remarks

The legal regimes briefly analysed in this contribution are based on, or reflect, the structural principle of solidarity. This shows that international law certainly has moved away from a legal regime dedicated to merely coordinating the activities of states. The acknowledgement of this principle, and its introduction into several legal regimes dealing with different aspects of international relations, clearly show that in formulating their decisions in the respective areas, states must take into consideration that the respective legal regime aims at the protection or management of common goods. However, an assessment of modern international agreements shows that they are based upon a structural principle of solidarity that displays a further aspect, namely the amelioration of deficits, which certain states or a particular state also pursue as an objective in the interest of the community of states.

The fact that some international legal regimes are based upon the structural principle of solidarity induces the question whether different rules concerning adherence or termination may be warranted for such regimes. The respective international agreements do not point in this direction, although this would be a matter of consequence.

One may question whether a state may refrain from adhering to a treaty regime whose objective and purpose is to pursue the interests of the world community. If one were to argue that the adherence to such a regime is obligatory, one would, in fact, vest the respective State Conference with legislative power. International law has not yet developed into such a direction, making it difficult to adequately describe the

international community's formulation of values or interests, although such formulation is a fact.[75] However, it is possible to argue that states that refrain from acceding to regimes which are meant to protect the interests of the international community, are under an obligation not to undermine such efforts.

Applying the principle of solidarity to human rights means another step forward in the evolution of this principle, since it means broadening the scope of potential addressees. As far as human rights are
p. 418 concerned, the addressee of any ↳ solidarity-based action would be the population, rather than a given state. But such development is in line with the relevance of international human rights standards in public international law and with a more modern view of the meaning of statehood. States are not a means of themselves, but instead are a means of serving the well-being of their populations. This is exactly what the first pillar of the concept of the responsibility to protect emphasizes. Therefore, this concept correctly incorporates the principle of solidarity into the international human rights regime, while also adding to its means of implementation.

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Notes

1 Rüdiger Wolfrum, 'Solidarity amongst States: An Emerging Structural Principle of International Law' in Pierre-Marie Dupuy and others (eds), *Common Values in International Law: Essays in Honour of Christian Tomuschat* (Engel 2006). There is a growing literature on the principle of solidarity. See in particular Ronald St J Macdonald, 'Solidarity in the Practice and Discourse of Public International Law' (1996) 8 Pace Int'l L Rev 259; Karel Wellens, 'Solidarity as a Constitutional Principle: Its Expanding Role and Inherent Limitations' in Ronald St J Macdonald and Douglas M Johnston (eds), *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (Brill 2005); Peter Hilpold, 'Solidarität als Rechtsprinzip: Völkerrechtliche, Europarechtliche und Staatsrechtliche Betrachtungen' (2007) 55 JoR 195; Karel Wellens, 'Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections' in Rüdiger Wolfrum and Chie Kojima (eds), *Solidarity: A Structural Principle of International Law* (Springer 2010).

2 Ulrich Scheuner, 'Solidarität unter den Nationen als Grundsatz in der Gegenwärtigen Internationalen Gemeinschaft' in Jost Delbrück (ed), *Recht im Dienst des Friedens: Festschrift für Eberhard Menzel* (Duncker & Humblot 1975) 251, 265 *et seq*. See also VM Rangel, 'The Solidarity Principle, Francisco de Vitoria and the Protection of Indigenous Peoples' in Holger P Hestermeyer and others (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum* (Martinus Nijhoff 2012).

3 cf, although with objections, Wilhelm Grewe, *Epochen der Völkerrechtsgeschichte* (Nomos Verlagsgesellschaft 1984) 30 *et seq*. However, concurring, Scheuner (n 2) 256 *et seq*.

4 Samuel von Pufendorf, *De Officio Hominis et Civis Juxta Legem Naturalem* (first published 1673, OUP 1927) book I, chs 5–6. For further details see Scheuner (n 2) 266.

5 Christian Wolff, *Ius Gentium Methodo Scientifica Pertractatum* (first published 1749, Clarendon Press 1934) s 162. 'Genti unicuique constans et perpetua esse debet voluntas felicitatem aliarum Gentium promovendi' ('Each nation should be a constant and perpetual will to promote the happiness of other nations').

6 Wolff (n 5) ss 167–68.
7 Emer de Vattel, *Le Droit des Gens, ou Principes de la Loi Naturelle* (Paris 1758) book II, ch 1, ss 2–3.
8 de Vattel (n 7) book II, ch 1, s 3. ('A state owes to each other State that which it owes to itself, to the extent that the other states has a real need of its help and that it can help the other state without neglecting its duties to itself ').
9 Andreas L Paulus, *Die Internationale Gemeinschaft im Völkerrecht: Eine Untersuchung zur Entwicklung des Völkerrechts im Zeitalter der Globalisierung* (CH Beck 2001) 250 *et seq*.
10 Wolfgang Friedmann, *The Changing Structure of International Law* (Stevens & Sons 1964) 15 *et seq*, 60 *et seq*.
11 Rüdiger Wolfrum, 'International Law of Cooperation' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law* (Elsevier 1995) vol II, 1242–47; Georges Abi-Saab, 'Whither the International Community?' (1998) 9 EJIL 248.
12 Hermann Mosler, 'The International Society as a Legal Community' (1974) 140 RdC 1, 17 *et seq*.
13 Holger P Hestermeyer, 'Reality or Aspiration?: Solidarity in International Environmental and World Trade Law' in Holger P Hestermeyer and others (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum* (vol I, Martinus Nijhoff 2012) 45, 50 *et seq*.
14 Hestermeyer, 'Reality or Aspiration?' (n 13) 45, 50 *et seq*.
17 UNGA Res 64/157 (18 December 2009) UN Doc A/Res/64/157.
18 UNGA Res 64/157 (n 17) para 4(e). 'The right to an international economic order based on equal participation in the decision-making process, interdependence, mutual interest, solidarity and cooperation among all States.'
19 UNGA Res 64/157 (n 17) para 4(g).
20 The discussion surrounding this resolution has been controversial; it received 127 votes in its favour, but all industrialized States voted against it.
21 UNGA Res 61/160 (19 December 2006) UN Doc A/Res/61/160.
22 This resolution, too, was controversial, and it was adopted against the vote of industrialized States.
23 General Treaty for Renunciation of War as an Instrument of National Policy.
24 For more on the scope of this prohibition, see Christian Tomuschat, 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century: General Course on Public International Law' (1999) 281 RdC 13, 203 *et seq*, with further references. It is acknowledged that the prohibition on resorting to armed force is one of the central values of the community of States. The Atlantic Charter, as well as the Declaration of Four Nations on General Security of 30 October 1943, clearly emphasized that the preservation of peace was not only an end in itself, but was meant to safeguard human rights and justice, as well as life, liberty, independence, and religious freedom in general.
25 See Albrecht Randelzhofer, 'Article 51' in Bruno Simma (ed), *The Charter of the United Nations* (vol I, 2nd edn, OUP 2002).
26 Stephen C Schlesinger, *Act of Creation: The Founding of the United Nations* (Westview Press 2003) 182–83.
27 Article 5 reads: 'The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.'
28 Rio Declaration on Environment and Development.
29 Rüdiger Wolfrum, 'International Environmental Law: Purposes, Principles and Means of Ensuring Compliance' in Fred L Morrison and Rüdiger Wolfrum (eds), *International, Regional and National Environmental Law* (Kluwer 2000) 3, 20 *et seq*; Philippe Sands, *Principles of International Environmental Law* (2nd edn, CUP 2003) 252 *et seq*.
30 See, in particular, Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (Transnational Publishers 1989) 17 *et seq*.
31 Edith Brown Weiss, 'Environmentally Sustainable Competitiveness: A Comment' (1993) 102 Yale LJ 2123; U Beyerlin, 'Rio-Konferenz 1992: Beginn einer Neuen Globalen Umweltrechtsordnung?' (1994) 54 ZaöRV 124.
32 See, in detail, Bettina Kellersmann, *Die Gemeinsame, Aber Differenzierte Verantwortlichkeit von Industriestaaten und Entwicklungsländern für den Schutz der Globalen Umwelt* (Springer 2000) 35 *et seq*.
33 The Framework Convention on Climate Change refers, among other things, to the capacity of industrialized States to justify their heightened obligation to contribute to combating climate change. Article 3(1).
34 See eg Convention on Biological Diversity.
35 Marrakesh Agreement Establishing the World Trade Organization.
36 The General Agreement on Tariffs and Trade, Art I(1).
37 For details, see Peter Tobias Stoll and Frank Schorkopf, *WTO-Welthandelsordnung und Welthandelsrecht* (Heymann 2002) 46 *et seq*.
38 See Abdulqawi A Yusuf, '"Differential and More Favourable Treatment": The GATT Enabling Clause' (1980) 14 JWTL 488; John H Jackson, *The World Trading System* (2nd edn, MIT Press 1997) 164.

39 Isabel Feichtner, 'Waiver', The Max Planck Encyclopedia of Public International Law (2012) vol **X**, 747–54.

40 Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one Part, and the European Community and its Member States of the other Part (Cotonou Agreement).

41 Stoll and Schorkopf (n 37) 58 *et seq*.

42 This is particularly evident for the movement on the suppression of slaves and the slave trade.

43 Abdul G Koroma, 'Solidarity: Evidence of an Emerging International Legal Principle' in Holger P Hestermeyer and others (eds), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum* (Martinus Nijhoff 2012) 108.

44 Institut de Droit International, 'The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States' (1989) 63 Annuaire 338, art 1.

45 Carl Wellmann, 'Solidarity, the Individual, and Human Rights' (2000) 22 Hum Rts Q 639, 642–43.

46 UNGA Res 60/147 (21 March 2006) UN Doc A/Res/60/147. See Theo van Boven, 'The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Inernational Humanitarian Law' (United Nations 2010).

47 UNGA Res 43/131 (8 December 1988) UN Doc A/Res/43/131.

49 UNGA Res 45/100 (14 December 1990) UN Doc A/Res/45/100, paras 4, 8.

50 UN Security Council (UNSC), Res 688 (5 April 1991) UN Doc S/Res/688. See also UNSC Res 733 (23 January 1992) UN Doc S/Res/733; UNSC Res 770 (13 August 1992) UN Doc S/Res/770; UNSC Res 1590 (24 March 2005) UN Doc S/Res/1590.

51 See also Pierre-Marie Dupuy, *Droit International Public* (10th edn, Dalloz 2010) 135.

52 As to the development of this concept and its potential consequences for the Security Council, see Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (CUP 2006); Gareth Evans, 'From Humanitarian Intervention to the Responsibility to Protect' (2006) 24 Wis Int'l LJ 703; Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Brookings Institution Press 2008); Alex J Bellamy, *The Responsibility to Protect: The Global Effort to End Mass Atrocities* (Polity Press 2009); Anne Peters, 'The Responsibility to Protect: Spelling Out the Hard Legal Consequences for the UN Security Council and Its Members' in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma* (OUP 2011); Ramesh Thakur, *The Responsibility to Protect: Norms, Laws, and the Use of Force in International Politics* (Routledge 2011). See also Thakur, Chapter 32 in this *Handbook*.

53 International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect' in UNGA 'Letter Dated 26 July 2002 from the Permanent Representative of Canada to the United Nations Addressed to the Secretary-General' (14 August 2002) UN Doc A/57/303 Annex (2002).

54 UNGA 'Report of the Secretary-General on the Work of the Organization' (2007) UN Doc A/62/1, 48. See also UNGA 'Report of the Secretary-General Pursuant to General Assembly Resolution A53/35' (15 November 1999) UN Doc A/54/549, para 501.

55 See eg Mario Bettati and Bernard Kouchner (eds), *Le Devoir d'Ingérence: Peut-on Les Laisser Mourir?* (Denoël 1987).

56 International Commission on Intervention and State Sovereignty (n 53) 31–32.

57 International Commission on Intervention and State Sovereignty (n 53) 37.

58 International Commission on Intervention and State Sovereignty (n 53) 47–55.

59 UNSC 'Report of the Secretary-General on the Sudan' (30 July 2004) UN Doc S/2004/453.

60 UNSC 'Verbatim Record of the 5015th Meeting' (30 July 2004) UN Doc S/PV 5015, 10–11.

61 UNSC 'Verbatim Record' (n 60) 5.

63 UNGA 'In Larger Freedom: Towards Development, Security and Human Rights for All' (21 March 2005) UN Doc A/59/2005, para 135.

65 UNGA 'Report of the Secretary-General: Implementing the Responsibility to Protect' (12 January 2009) UN Doc A/63/677; UNGA 'Report of the Secretary-General: Early Warning, Assessment and the Responsibility to Protect' (14 July 2010) UN Doc A/64/864; UNGA/UNSC 'Report of the Secretary-General: The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect' (27 June 2011) UN Doc A/65/877–S/2011/393.

66 UNSC Res 1674 (28 April 2006) UN Doc S/Res/1674, para 4.

67 UNSC Res 1769 (31 July 2007) UN Doc S/Res/1769.

68 UNSC Res 1970 (26 February 2011) UN Doc S/Res/1970.

69 UNSC Res 1973 (17 March 2011) UN Doc S/Res/1973.

70 UNSC Res 1973 (n 69) para 4. In this context, it should be noted that UN Secretary General Ban Ki-moon called on Libya to respect the concept of a responsibility to protect human rights, and the obligations under international humanitarian law. UNSC 'Press Statement on Lybia' (22 February 2011) UN Doc SC/10180, AFR/2120 <http://www.un.org/News/Press/docs/2011/sc10180.doc.htm> accessed 15 April 2012.

71 See UNGA Res 60/147 (n 46).

72 On this see Peters (n 52) 300 *et seq*, who answers this question in a differentiated manner, but as for the responsibility of

the state in question, affirmatively.

73 Koroma (n 43) 122–23.

74 Tomuschat (n 24) 220 *et seq*.

75 See Paulus (n 9) 254 *et seq*, who proceeds on the basis that such common values are based upon consent.