SOLIDARITY: EVIDENCE OF AN EMERGING INTERNATIONAL LEGAL PRINCIPLE

Abdul G. Koroma

The notion of solidarity—both of interdependence, from which social laws and obligations can emerge, and of communities working towards a common goal or in the common interest—has long been central to international law. Indeed, to the extent that solidarity is used in the general sense to represent a commitment to work towards the common good, the idea is represented in some form in the preamble to practically every international instrument. For example, while the term ‘solidarity’ is not itself used in the United Nations Charter, the preamble lists as goals of the Organization “to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security”. Similarly Article 1(3) of the Charter provides that one of the purposes of the United Nations is “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character”. More recently, the concept of solidarity has on multiple occasions been explicitly listed by the General Assembly as a “fundamental value” required in a democratic and equitable international order, and as a principle which is “enshrined in the Charter”. The present contribution, therefore, examines the content of this fundamental value—aiming in particular to show that the concept of solidarity in current international law represents more than a general notion of ‘neighbourliness’ but in fact an emerging structural 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. To this end, the present contribution examines how the notion of solidarity has

2 GA Res. 56/151 of 19 December 2001, para. 3(f); GA Res. 57/213 of 18 December 2002, para. 4(f).
3 Preambles to these resolutions.
developed in various international legal contexts, including collective security, international humanitarian law, human rights, environmental law, international development, refugee law, the responsibility to protect, the international law of disaster relief, and the law of State responsibility.

A. Collective Security

A cornerstone of the United Nations Charter paradigm, the notion of collective security is perhaps the first and most obvious manifestation of the principle of solidarity in the post World War II era. Indeed, the system of collective security depends on the collective solidarity of United Nations member States to assure its very functioning. As Professor Wolfrum has noted, “since the State lending its support to a State which has become the victim of an armed attack does not have to pursue an interest of its own, it performs, when intervening for the protection of another State, an act of solidarity by making the case of that State its own.” Wellens even argues that “it is in the UN law on the maintenance of international peace and security that the principle of solidarity has reached its highest degree of constitutionalization” and that “[t]he principle of solidarity forms the political and legal foundation for the collective security system established by the UN Charter.”

The principle of solidarity operates both ‘negatively’ and ‘positively’ in the paradigm of collective security: In its negative form, States agree “not to commit, acquiesce in or support, directly or indirectly acts or courses of conduct which may constitute or result in a threat to international peace and security.” In other words, the motivation for the

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7 Id.