

Chapter 15

Operationalizing the Right to Development: Realizing Global Solidarity, Shared Responsibility and the Duty of International Cooperation in the Fight Against COVID-19

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Learning Objectives:

- To understand the mutually reinforcing relationship between global solidarity, shared responsibility and the duty of international cooperation inherent in the right to development.
- To analyse how realizing global solidarity and shared responsibility based on the normative framework of the right to development, including the duty of international cooperation, can strengthen the global fight against COVID-19.
- To understand the importance of activating the Means of Implementation of the SDGs and a global partnership for realizing the 2030 Agenda in the fight against COVID-19.
- To evaluate selected current global actions/inactions specifically related to the issue of access to COVID-19 vaccines in the aforesaid context.

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*As humanity faces the unprecedented crisis of COVID-19, “more than ever before, we need solidarity, hope and the political will and cooperation to see this crisis through together”.*¹

I. Introduction

This chapter reflects on realizing global solidarity, shared responsibility,² and the duty of international cooperation through operationalizing the right to development in the global fight against the ongoing coronavirus disease (COVID-19) pandemic and its disruptive, profound and unprecedented impacts. As of 25 February 2021, over 111 million people had been infected with SARS-Cov-2. Over 2.4 million people had died³ due to the pandemic.⁴

Since its break-out, the COVID-19 pandemic is relentlessly exposing and exacerbating multiple inequalities within and among nations, which go to the heart of the human right to development (RtD).⁵ Within countries, with the loss of livelihoods on a scale unprecedented in living memory, many people the world over seek meagre means of survival as they find themselves pushed over the cliff to extreme poverty. Globally, poorer countries are facing ‘a perfect storm’ of collapsing global trade, falling remittances, sharp reversals of capital flows, and currency depreciation (as has been analysed in Chapter 14). The debt burdens and debt servicing obligations of many developing countries – low and middle income countries and emerging economies – deny them of breathing space,⁶ undermining their ability to respond, and reducing their fiscal space to deliver on economic and social rights including food and water, housing, health and education.⁷ Legacies of structural adjustment through decades of

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This chapter draws substantially on a previous chapter by Shyami Puvimanasinghe, “International Solidarity in an Interdependent World” in *Realizing the Right to Development: Essays in Commemoration of the 25th Anniversary of the United Nations Declaration on the Right to Development*, New York and Geneva, 2012, p.179–194. (The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations).

¹ United Nations, “Shared responsibility, global solidarity: responding to the socioeconomic impacts of COVID-19”, p. 2, March 2020, https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf.

² The notions of “shared responsibility” and “global solidarity” have formed the bedrock for the UN’s policy guidance on responding to the socioeconomic impacts of the COVID-19 pandemic. See: United Nations, “Shared responsibility, global solidarity: responding to the socioeconomic impacts of COVID-19”, p. 2, https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf; United Nations, “A UN framework for the immediate socio-economic response to COVID-19”, April 2020, available at www.un.org/sites/un2.un.org/files/un_framework_report_on_covid-19.pdf

³ SUNS #9293, 25 February 2021.

⁴ United Nations, “Science Succeeding But Solidarity Failing, Warns Secretary-General, Citing ‘Vaccine Vacuum’ in Poor Nations, as COVID-19 Death Toll Hits 2 Million”, 15 January 2021, available at <https://www.un.org/press/en/2021/sgsm20534.doc.htm>

⁵ See: 1986 United Nations Declaration on the Right to Development, A/RES/41/128.

⁶ United Nations, “Debt and COVID-19: A Global Response in Solidarity”, 17 April 2020, https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_debt_relief_and_covid_april_2020.pdf

⁷ In general, the term used to denote the freedom that each State needs to choose the best mix of policies possible for realizing sustainable and equitable development given their unique and individual social,

austerity in resource-constrained countries have left public health systems unable to cope, and have curtailed labour rights and weakened social protection schemes. Worldwide, millions continue to suffer from the multiple effects of the pandemic – particularly women, who are heavily concentrated in the informal and service sectors.

Global solidarity and shared responsibility underlie the duty of international cooperation which, in turn, underscores the human right to development and is key to its realization. An urgent call for strengthened international cooperation,⁸ global solidarity and shared responsibility has been made at the highest levels of global leadership and governance as they are among the most critical criteria for any effective response to the pandemic for all people in all countries. This makes it imperative to operationalize the RtD underpinned by global solidarity, shared responsibility and cooperation, and integrating peace, human rights and development in one holistic framework. This chapter will thus consider ways to operationalize the RtD to advance global solidarity, shared responsibility and international cooperation in response to the pandemic. It will also discuss how operationalizing the RtD can strengthen a global partnership for sustainable development and activate the means of implementation of the SDGs. The chapter briefly traces the evolution of the idea of international solidarity, connecting it to emerging conceptions of shared responsibility. It explores the duty of international cooperation which underlies the RtD. After having demonstrated the importance of operationalizing the RtD, this Chapter then highlights the gap between current practices and the trajectory needed. It illustrates this by analysing existing evidence and policies related to access to the COVID-19 vaccines. The Chapter concludes by reiterating the significance of operationalizing the RtD in Building Better for Recovery with Resilience from the pandemic.

II. Global Solidarity, Shared Responsibility and the Right to Development

International solidarity is not limited to international assistance and cooperation, aid, charity or humanitarian assistance; it is a broader concept and principle that includes sustainability in international relations, especially international economic relations, the peaceful coexistence of all members of the international community, equal partnerships and the equitable sharing of benefits and burdens, refraining from doing harm or posing obstacles to the greater well-being of others, including in the international economic system and to our common ecological habitat, for which all are responsible.⁹

political, economic and environmental conditions is “policy space”. See: South Centre, “Policy Space for the Development of the South”, *T.R.A.D.E. Policy Brief*, No. 1, 2005, pp.1–8. In addition, the 2030 Agenda reiterates the importance of retaining “policy space” for States on at least 6 occasions. In particular, SDG 17.15 captures the commitment by States to “respect each country’s policy space and leadership to establish and implement policies for poverty eradication and sustainable development”. A related term - “governance space” - is preferred by Kanade, contending that although good governance is seen as a precondition for fulfilment of human rights obligations by States, ensuring good governance needs, in the first place, the availability of “governance space”. The right to the availability and use of “governance space” is an essential component of the RtD. See: Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, (London, Routledge, 2018).

⁸ For recent UN reports on international cooperation, see: Reports of the Secretary-General and the High Commissioner on international cooperation in the field of human rights, A/74/351 and A/HRC/44/28.

⁹ United Nations, “Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki”, A/HRC/15/32 and Corr.1, para.58. In citing this report, it has been considered whether a new approach to accountability in the global economy could be based on international

International solidarity provides an impetus for collective responses to interconnected challenges in an interdependent world. It underlies the idea of the United Nations and permeates the three interlinked pillars of the UN Charter: peace and security, development and human rights. As has been elaborated upon in Chapter 10, development and human rights are the most secure basis for peace.¹⁰ Although international solidarity can be understood in different ways in different contexts, this chapter views international solidarity as a guiding force underlying the RtD. In effect, it adopts a contextualized approach to the evolution of the idea of international solidarity, locating it within the framework of the progressive development of international law (essentially a State-led process), the framing of international cooperation as a duty of States, and as driven by developing countries in their quest for economic, social environmental and climate justice globally through a fairer international order. This Chapter proceeds on the premise that the holistic ethos of the RtD, underscored by international solidarity, supports an approach to human, social, economic and ecological well-being, which recognizes our common humanity, essential to any effective global response to the ongoing pandemic and other global crises. Several human rights independent experts have highlighted the relationship between international solidarity and human rights.

Rui Balthazar Dos Santos Alves, in a working paper submitted to the Sub-commission on the Promotion and Protection of Human Rights of the erstwhile Commission on Human Rights, argued that solidarity must inspire international relations:

The need for increasing affirmation of international solidarity arises from the state of iniquity that characterizes international relations. This iniquity derives from a certain historical context in which peoples and countries were deprived of the right to development, but it also results from factors and circumstances which continue to pose obstacles to bringing the living conditions in the developing countries closer to those in the developed countries (these factors include policies on subsidies, imposed conditionalities, the structural adjustment policies developed by the international financial institutions and policies of domination, to mention just a few of them).¹¹

The first Independent Expert on human rights and international solidarity, Rudi Mohamed Rizki, posited international and global solidarity in the light of peace, non-harm, equity, equality and sustainability in international relations, especially international economic relations, and defined international solidarity as:

the union of interests, purpose and actions among States and social cohesion between them, based on the interdependence of States and other actors to preserve the order and very survival of international society, and to achieve common goals that require

solidarity and shared responsibility. Also See: International Council for Human Rights Policy, *Human Rights in the Global Economy* (Geneva, 2010), p.11. This chapter draws substantially on a previous chapter by Shyami Puvimanasinghe, “International Solidarity in an Interdependent World” in *Realizing the Right to Development: Essays in Commemoration of the 25th Anniversary of the United Nations Declaration on the Right to Development*, New York and Geneva, 2012, p.179–194.

¹⁰ Also See: United Nations, “An agenda for peace: preventive diplomacy, peacemaking and peacekeeping: report of the Secretary-General”, A/47/277-S/24111; and United Nations, “An agenda for development: report of the Secretary-General”, A/48/935.

¹¹ E/CN.4/Sub.2/2004/45, para.25.

international cooperation and collective action. Global solidarity encompasses the relationship of solidarity among all stakeholders in the international community.¹²

Elaborating further, the Draft Declaration on the Right to International Solidarity led by Virginia Dandan, the second independent expert on human rights and international solidarity, asserted that “international solidarity is the expression of a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals”.¹³

Obiora Okafor, the third and current independent expert on human rights and international solidarity has elaborated on specific issues including climate change,¹⁴ and the threat of populism,¹⁵ through the lens of human rights-based international solidarity.¹⁶

The idea of international solidarity calls for unity in diversity among all peoples, irrespective of all distinctions. Throughout the course of history, struggles for political and social transformation have been inspired by universal values such as justice, from the demand for *liberté, égalité, fraternité* to the struggles against colonialism, racism and apartheid and the demands for dignity, democracy and freedom in the Civil Rights Movement, Arab revolutions, Occupy Wall Street, Me Too and Black Lives Matter movements to this day. Throughout the history of the modern human rights movement, international solidarity has been among the most powerful and essential tools employed by advocates and activists seeking to advance the vision of the Universal Declaration of Human Rights. Globally, the prevailing international economic system, its primary actors and structures drive the processes of globalization and connect with the erosion of State institutions and the undermining of communities and families.¹⁷ The unequivocal concentration on economic wealth creation through the market, based on the misguided notion that social issues will resolve themselves once economic fundamentals are achieved, has led to new quests for identity, social tensions and the breakdown of social cohesion in many societies, especially across the global South.¹⁸ As evidenced by the financial and economic crises, no country is immune from the adverse effects of globalization, which have also caused economic downturn and social degradation in the industrialized North and global challenges for all people.¹⁹ Likewise, no country is immune from the pandemic which affects different countries, communities and individuals in different ways. These impacts and our responses are integrally linked with governance and policies, both national and global.

From the 1960s, collective rights, based on the shared aspirations of peoples, began to be advocated by the Non-Aligned Movement and gradually extended beyond the right to self-

¹² A/HRC/15/32, para. 57.

¹³ Annex of report A/HRC/35/35 of the Independent Expert on human rights and international solidarity, Virginia Dandan, <https://www.ohchr.org/Documents/Issues/Solidarity/DraftDeclarationRightInternationalSolidarity.pdf>

¹⁴ A/HRC/44/44

¹⁵ A/75/180

¹⁶ See in general: United Nations, Webpage of the Independent Expert on human rights and international solidarity, <https://www.ohchr.org/EN/Issues/Solidarity/Pages/IESolidarityIndex.aspx>

¹⁷ See United Nations Research Institute for Social Development (UNRISD), *States of Disarray: The Social Effects of Globalization* (Geneva, 1995).

¹⁸ The implications of globalization have been contradictory, showing both national and social disintegration and new forms of international cooperation. *Ibid.*, p.167.

¹⁹ See: Charles Dumas, *Globalisation Fractures: How Major Nations' Interests are now in Conflict* (London, Profile Books, 2010).

determination to include other rights. This happened through the elevation of the duty to cooperate to achieve the objectives of the Charter, combined with the then emerging principle of international solidarity. The 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,²⁰ and the 1974 Charter of Economic Rights and Duties of States,²¹ provide further evidence of international consensus on the need for solidarity. With time, the correlative duties in human rights were transformed into concrete obligations,²² and by the 1980s several collective rights were enshrined in the African Charter on Human and Peoples' Rights.²³ This era witnessed the emergence of the RtD and of rights relating to the environment, minorities and indigenous peoples. More recent regional treaties have also integrated the concept of solidarity.²⁴ Solidarity underscores peoples' rights in hard and soft law norms, including provisions of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. It further underlies most expressions of rights described as collective or people's rights.

The notion of solidarity is fundamental to the RtD, born of the common aspirations of newly independent States in an era of decolonization and enshrined in the Declaration on the Right to Development (DRTD).²⁵ Prior to the DRTD, a conference on development and human rights held in Dakar in 1978 concluded that international solidarity underlies the RtD and is a key to its realization: "There exists a right to development. The essential content of this right is derived from the need for justice, both at the national and the international levels. The right to development draws its strength from the duty of solidarity which is reflected in international cooperation."²⁶ The RtD makes development a human right,²⁷ and has the potential to respond to global challenges in an interconnected global economy in an interdependent world because its vision of development and cooperation for development goes beyond economic growth to embrace a holistic paradigm for human well-being. This right belongs to all individuals and peoples and envisages a process which advances all human rights; its idea of rights and responsibilities transcends the geographical borders of States. The RtD also includes peace, security and disarmament; self-determination and sovereignty over natural resources; and a social and international order conducive to development. Economic and social transformation based on people-centred development and globalization is supported by the DRTD, which states, again in the preamble, that "equality of opportunity for development is a prerogative

²⁰ UNGA Resolution 2625 (XXV), annex

²¹ See: UNGA Resolution 3281 (XXIX), chapter I, "Fundamentals of international economic relations", and article 17 thereof.

²² Philip Alston, ed., *Peoples' Rights* (Oxford, Oxford University Press, 2001), p. 1.

²³ Article II (4) of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity also includes the principle of solidarity.

²⁴ Signed in 2004 and 2007 respectively, the Arab Charter on Human Rights, arts. 1(3) and 37, and the Charter of the Association of Southeast Asian Nations, preamble and art. 41(4), call for international and regional solidarity.

²⁵ A/41/128

²⁶ Commission I, Conclusions and Recommendations, *Colloque sur le développement et les droits de l'homme*, Dakar, 7-12 September 1978, mimeo, para. 10, quoted in "The international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs: report of the Secretary-General", E/CN.4/1334, para. 65.

²⁷ For recent reports and analysis, see: Consolidated reports of the Secretary-General and the High Commissioner on the right to development, A/HRC/39/18, A/HRC/42/29, and A/HRC/45/21.

both of nations and of individuals who make up nations”. An evolutionary interpretation of the DRTD can encompass sustainability, integrating both human and ecological well-being.

The RtD requires States to collectively create national and international conditions favourable to development. While the primary responsibility is on States, “all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development”.²⁸ It has been observed that the real basis of the RtD finds its justification in the obligation to demonstrate solidarity, linked to articles 1 and 28 of the Universal Declaration of Human Rights.²⁹ Further:

States' ability to realize human rights through a democratic, participatory international environment depends to a great extent on their enjoyment of genuine equality in international relations. Discrimination among States and peoples, at the international level, has the same adverse effect as discrimination among individuals and groups within States: it perpetuates inequalities of wealth and power, and frustrates any efforts to address inequalities through the process of development. Although discrimination among States is, in strict legal terms, an issue of self-determination, friendly relations and solidarity, rather than one of human rights, discrimination at the national and the international levels is inextricably linked by its effects on individual human beings.³⁰

The open-ended Working Group on the Right to Development has underlined that, in the international economic, commercial and financial spheres, the core human rights principles of equality, equity, non-discrimination, transparency, accountability, participation and international cooperation, including partnership and commitments, are essential to the realization of the right to development.³¹ The need for international cooperation, solidarity and international responsibility for creating an enabling global environment and policy space for the realization of the right to development has been consistently emphasized in the Working Group.³² The importance of the national and international dimensions of the right to development, shared responsibility and mutual accountability were underlined by the high-level task force on the implementation of the right to development in addenda to the report on its

²⁸ A/41/128, article 2 (2).

²⁹ See: Tamara Kunanayakam, “The Declaration on the Right to Development in the context of United Nations standard-setting”, *Realizing the Right to Development: Essays in Commemoration of the 25th Anniversary of the United Nations Declaration on the Right to Development* (New York and Geneva, United Nations, 2012), pp.17–48, explaining that the right to development approaches development as a complex process which, through multiple interactions in the economic, social, cultural and political spheres, generates continuous progress in terms of social justice, equality, well-being and respect for the fundamental dignity of all individuals, groups and peoples, based on their effective participation in all aspects of the development process.

³⁰ *Ibid.*

³¹ E/CN.4/2002/28/Rev.1, para.100

³² See, for example: A/HRC/15/23, paras. 27 and 43. Also see article 3(g) of the Draft Convention on the Right to Development, *Report of the Chair-Rapporteur, Zamir Akram, to the UN Working Group on the Right to Development*, A/HRC/WG.2/21/2, 17 January 2020, incorporating international solidarity as an essential general principle to guide States Parties in achieving the object and purpose of the Convention and to implement its provisions. The relation is further elaborated in the commentaries to the draft convention prepared by Mihir Kanade, A/HRC/WG.2/21/2/Add.1, pp.27-28.

sixth session.³³ The task force elaborated that under the right to development, States had obligations to their own populations, to persons outside their jurisdiction who could be affected by their domestic policies and in their collective role through international organizations.³⁴ The international and extra-territorial dimensions of the right to development give practical expression to international solidarity.

The Human Rights Council has affirmed that everyone and every people have the right to a democratic and equitable international order which requires, inter alia, the right of every person and all peoples to both development and international solidarity.³⁵ The creation of a special procedure in this regard,³⁶ paved the way to focused work on the global order. The magnitude, depth and confluence of contemporary global challenges including climate change and the COVID-19 pandemic, and the interdependence of the planet and its people validate the urgent call for all countries to unite to shape a future which is just. The international community, stewarded by its leadership, assumes an unprecedented role in the governance of an interdependent existence, especially the regulation of international economic relations and globalization,³⁷ with accountability. The key stakeholders - States, individually and collectively through international organizations; civil society, particularly through non-governmental organizations; and the private sector - have a key role in realizing rights and upholding duties:

As articulated by one commentator:

There is a growing awareness of the need to develop multilateral mechanisms capable of controlling the destructive impact of economic restructuring. A focus on the right to development may assist people to realize that globalization is a political, public and contestable process, rather than an unstoppable force that will inevitably overtake all states. International human rights lawyers will have to harness creatively both the inspirational and the legalistic aspects of the right to development if they are successfully to use that right to effect change in the current agendas of states, international economic institutions and foreign investors.³⁸

³³ A/HRC/15/WG.2/TF/2/Add.1 and Corr.1, para. 81 and A/HRC/15/WG.2/TF/2/Add.2, para 1.

³⁴ A/HRC/15/WG.2/TF/2/Add.2, paras. 16-17 and annex.

³⁵ See: A/HRC/RES/8/5.

³⁶ See: A/HRC/RES/18/6.

³⁷ See: UNRISD, *Visible Hands: Taking Responsibility for Social Development* (Geneva, 2000).

³⁸ Anne Orford, "Globalization and the right to development", in *Peoples' Rights*, pp. 183-184. See also: Margot E. Salomon, "Legal cosmopolitanism and the normative contribution of the right to development", *London School of Economics (LSE) Law, Society and Economy Working Paper 16/2008*, observing, "While the Declaration articulates some unconventional demands for a human rights instrument the ways in which it frames the nature and scope of human rights duties is fitting under current conditions of economic globalisation. It is concerned with structural disadvantage that engenders the poverty afflicting half the global population today, and is preoccupied not with a state's duties to its own nationals, but with its duties to people in far-off places. As is argued herein, this legal cosmopolitanism is critical to the realisation of human rights in the 21st century." See also: Isabella D. Bunn, "The Right to Development and International Economic Law: Legal and Moral Dimensions", *Studies in International Trade Law No. 13* (Oxford, Hart Publishing, 2012).

III. The Duty of International Cooperation and the Right to Development

*In a world of interconnected threats and challenges, it is in each country's self-interest that all of them are addressed effectively. Hence, the cause of larger freedom can only be advanced by broad, deep and sustained global cooperation among States. Such cooperation is possible if every country's policies take into account not only the needs of its own citizens but also the needs of others. This kind of cooperation not only advances everyone's interests but also recognizes our common humanity.*³⁹

A major result of developing countries' action for development can be seen in the fact that this issue has become one of the central questions for the world community and, further, has been addressed in close connection with international cooperation. International cooperation for development rests on the premise that developing countries may not possess the resources for the full realization of rights set forth in conventions, calling for shared responsibilities. Some have argued that the notion of a RtD takes development into the sphere of obligations: "The State seeking its own development is entitled to demand that all the other States, the international community and international economic agents collectively do not take away from it what belongs to it, or do not deprive it of what is or must be its due in international trade [...]".⁴⁰ As defined in the preamble to the DRTD, "development is a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of its benefits".

The most manifest expression of solidarity in international law and policy is in international cooperation, which lies at the heart of solidarity. The obligation of States to cooperate is anchored in articles 1, 2, 55 and 56 of the UN Charter. Article 1 calls for international mechanisms to promote the economic and social advancement of all peoples and for international cooperation in solving problems of an economic, social, cultural or humanitarian nature, a fundamental purpose of the Organization. Under article 55, the UN is obligated to promote higher standards of living, full employment and conditions of economic and social progress and development; solutions to international economic, social, health and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms. In article 56, "Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in article 55", imposing a legal obligation on States.⁴¹ Article 55 is intended to implement the purposes of the United Nations, set out in article 1.⁴²

³⁹ United Nations, "In larger freedom: towards development, security and human rights for all: report of the Secretary-General", A/59/2005, para.18.

⁴⁰ Mohammed Bedjaoui, "The right to development", in *International Law: Achievements and Prospects*, Mohamed Bedjaoui, ed., (Martinus Nijhoff, 1991), pp.1191-1192.

⁴¹ See: "Globalization and its impact on the full enjoyment of human rights", E/CN.4/Sub.2/2000/13, para. 41. According to the authors of this report, action taken by Member States, collectively or individually, to defeat this pledge may be a violation of the principles of *jus cogens* under certain circumstances. This position supports the view that international cooperation and solidarity involve legal obligations of a prime nature. See also: A/HRC/12/27, paras. 21 and 42. As noted in this report, it can further be argued that obligations based on international solidarity, where they concern the most fundamental human rights, can go beyond the limits of State borders, as they are owed *erga omnes* (to all humanity/to the international community), rather than merely *inter partes* (between the parties).

⁴² Bruno Simma et. al. (eds.), *The Charter of the United Nations, A Commentary*, vol. II (Oxford, Oxford University Press, 2002), p.898.

As an Assembly of Nations, the General Assembly, through successive decisions,⁴³ has persistently declared the need among States to cooperate.

Several elements of the RtD, including international cooperation or the duty to cooperate, are legal norms embodied in binding obligations contained in international conventions, form part of customary international law and general principles of international law, or are elaborated in other international instruments and general comments of the treaty bodies.⁴⁴ International solidarity and shared responsibility are also core values underlying the United Nations Millennium Declaration,⁴⁵ the 2030 Agenda,⁴⁶ the Addis Ababa Action Agenda incorporated in the latter,⁴⁷ the Paris Agreement on Climate Change,⁴⁸ and the Sendai Framework for Disaster Risk Reduction.⁴⁹

The need to adapt the Charter to new challenges has called for an evolutionary, progressive and dynamic interpretation in relation to fundamental issues of the international community.⁵⁰ Developing countries have led efforts to elaborate the normative content of article 55, beginning with resolutions on the establishment of a new international economic order.⁵¹ In several resolutions, the international community has agreed that States shall cooperate in the maintenance of international peace and security and the promotion and respect of human rights, and should cooperate in the economic, social, cultural and science and technology fields and work together with the aim of promoting economic growth in developing countries.⁵² Particular attention was given to cooperation among developing countries, which were called upon to evolve, in a spirit of solidarity, all possible means to assist each other to cope with the immediate problems arising from the establishment of a new international economic order.⁵³ The role of the UN brings the international obligation of cooperation within the context of the

⁴³ Ibid., pp. 902-903.

⁴⁴ For a comprehensive analysis, see: “Commentaries to the Draft Convention on the Right to Development”, Prepared by Mihir Kanade, *Report of the Chair-Rapporteur, Zamir Akram, to the UN Working Group on the Right to Development*, A/HRC/WG.2/21/2/Add.1, 20 January 2020.

⁴⁵ United Nations, “Keeping the promise: a forward-looking review to promote an agreed agenda to achieve the Millennium Development Goals by 2015: report of the Secretary General”, A/64/66, paras. 5, 38 and 107.

⁴⁶ A/RES/70/1.

⁴⁷ *Outcome document of the Third International Conference on Financing for Development*, Addis Ababa, Ethiopia, 13–16 July 2015, Endorsed by UNGA Resolution 69/313 of 27 July 2015.

⁴⁸ UNGA Resolution 63/303, annex.

⁴⁹ Sendai Framework for Disaster Risk Reduction 2015-2030, available at <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>

⁵⁰ These include issues such as self-determination, prohibition of the use of force, the definition of the term “State” and the admission of permanently neutral States. In this sense, many adaptations have taken place through General Assembly resolutions, the most relevant being the 1970 Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Resolution 2615 (XXV)), the Universal Declaration of Human Rights and the development of peacekeeping missions.

⁵¹ UNGA, “Declaration on the Establishment of a New International Economic Order”, A/RES/S-6/3201, 1 May 1974; Also see: UNGA, “NIEO Programme of Action”, A/RES/S-6/3202, 1 May 1974.

⁵² For instance, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (Resolution 2615 (XXV)), is underlined by the need for international cooperation.

⁵³ UNGA Resolution 3202 (S-VI), sect. VII, para.1(a).

RtD because, in practice, implementation of article 55 of the Charter has been carried out with a focus on development.⁵⁴

Further along the course of international law, the Universal Declaration of Human Rights stipulates in article 1 that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Under article 28, everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized; and according to article 29, everyone has duties to the community. Thus, in principle, both rights and responsibilities attach to the broadest possible range of stakeholders. States and all stakeholders are obliged to work together to ensure that all human beings are treated equally, as human life has the same value, by virtue of the inherent dignity and worth, decency and respect for all human beings. International solidarity and cooperation are indispensable to ensure that global policies work to uphold all human rights for all people alike, in keeping with their inalienable rights to equality and non-discrimination.

Obligations of international cooperation are elaborated in general comments of the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. The former, in general comment No. 3 (1990), states that international cooperation for development, and thus the realization of economic, social and cultural rights, is an obligation of all States.⁵⁵ In its general comment No. 12 (1999), the Committee requested States to bear in mind the right to food when concluding international agreements.⁵⁶ Article 4 of the Convention on the Rights of the Child stipulates that:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Towards the progressive realization of rights, States must demonstrate that they implemented the same to the maximum extent of their available resources and, where necessary, have sought international cooperation. General comment No. 5 (2003) of the Committee on the Rights of the Child has outlined obligations to develop “general measures of implementation”.⁵⁷ When States ratify the Convention, they agree to obligations not only to implement within their jurisdiction, but also to contribute, through international cooperation, to global implementation.⁵⁸

Under the Millennium Development Goals 2000-2015, steps to operationalize the RtD and MDG 8 on a global partnership for development, *inter alia* through aid, trade, debt relief, transfer of technology and access to medicines, provided practical examples of how international cooperation and solidarity can be implemented. The concept of a “common heritage of mankind” was established in article 136 of the 1982 United Nations Convention on the Law of the Sea, as well as other instruments, embodying the notions of sharing, cooperation and solidarity. The 1992 Rio Declaration on Environment and Development makes international cooperation and partnership central to sustainable development. The 1993 Vienna

⁵⁴ Bruno Simma et. al. (eds.), *The Charter of the United Nations, A Commentary*, vol. II (Oxford, Oxford University Press, 2002), p. 901.

⁵⁵ E/1991/23, para.14.

⁵⁶ E/C.12/1999/5, para.36.

⁵⁷ CRC/GC/2003/5

⁵⁸ *Ibid*, para.7.

Declaration and Programme of Action,⁵⁹ identifies increased and sustained efforts of international cooperation and solidarity as essential to substantial progress in human rights.

The duty to cooperate and shared responsibilities are linked to the responsibility aspect of solidarity, while peoples' rights flow from its rights dimension. Solidarity rights are a product of social history, representing collective claims on the international community and premised on the idea that human rights are dynamic and constantly evolving as each generation infuses the values of its time.⁶⁰ They have been effective in shifting the balance of power in international relations, creating widely recognized, if not always realized, entitlements in international law and responding to the societal effects of globalization.⁶¹ They function at a community level to assure public benefits that can only be enjoyed in common with others.⁶² Over time, they have become firmly established in international law,⁶³ although soft-law norms pose a challenge to effective implementation and enforcement and need to develop progressively into hard law. A survey of the field of international solidarity reveals the existence of numerous global public values, policies, concepts and norms in international instruments of law and policy, mostly in the realms of soft law, *lex ferenda* or international public policy.⁶⁴ International solidarity and international cooperation are distinct, yet inextricably interlinked. International as well as transnational cooperation, including among non-State actors, is at the core of solidarity, and supports its movement from an ethical concept and legal principle to an actionable practice. In the context of the RtD, solidarity has manifested itself primarily through the duty to cooperate.

In the progressive development of international law, scholars have contributed to the advancement of the legal content and understanding of extraterritorial obligations on economic, social and cultural rights. Their efforts led in 1986 to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights,⁶⁵ which elaborated on the nature and scope of State obligations and the role of the Committee on Economic, Social and Cultural Rights. Expanding on the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights were agreed in 1997.⁶⁶ In September 2011, international experts elaborated the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,⁶⁷ which address how extraterritorial obligations encompass the acts and omissions of a State within or beyond its territory in addition to the obligations established by the Charter of the United Nations. The principles also touch on the scope of jurisdiction and State responsibility within the framework of human rights as well as on mechanisms for accountability. Further, on the issue of human

⁵⁹ A/CONF.157/23.

⁶⁰ A/HRC/12/27 and Corr.1, para. 11.

⁶¹ B. M. Meier, "Advancing health rights in a globalized world: responding to globalization through a collective human right to public health", *Journal of Law, Medicine & Ethics*, vol. 35, Issue 4 (2007), pp. 545 and 550.

⁶² *Ibid.*

⁶³ James Crawford, "Some conclusions", in James Crawford, ed., *The Rights of Peoples* (Oxford, Clarendon Press, 1988), p. 166.

⁶⁴ A/HRC/12/27 and Corr.1, para. 41.

⁶⁵ See: E/C.12/2000/13.

⁶⁶ *Ibid.*

⁶⁷ Available at https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23; See also, Olivier De Schutter and others, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights", *Human Rights Quarterly*, Vol. 34, 2012, pp.1084-1171.

rights obligations of international financial institutions, the Tilburg Guiding Principles on World Bank, IMF and Human Rights,⁶⁸ were drafted by a group of experts in 2001/02. The Guiding Principles link legal obligations in the field of human rights to the economic and political realities of these organizations and discuss possible redress for adverse human rights impacts stemming from their activities. The UN Guiding Principles on Business and Human Rights,⁶⁹ despite some limitations,⁷⁰ are a positive step in the direction of regulation of international business.

IV. Realizing Global Solidarity, Shared Responsibility, International Cooperation and the RtD in the Fight Against COVID-19

Renewed multilateralism, strong leadership, political will and concerted action are imperatives. The pandemic has demonstrated that as an international community, we are only as strong as the weakest link among us, specifically in this case, our weakest health system. As no country can beat this global health crisis alone – to end the pandemic, address its socio-economic impacts and recover with resilience, saving lives and livelihoods, societies and economies – the UNSG and whole UN system have amplified calls for global solidarity and shared responsibility to Build Back Better. The UNSG has highlighted the need to focus on people, especially the vulnerable and marginalized – including people living in poverty, women, young people, children, older persons, persons with disabilities, minorities, indigenous peoples, low-wage workers, the displaced, the homeless, migrants and refugees.

Before the global spread of the pandemic, in February 2020, the UNSG launched “The highest aspiration: A call to action for human rights”.⁷¹ The right to development is key to the realization of all the overarching principles of the call to action, “rights in times of crisis”; “gender equality and equal rights for women”; “public participation and civic space”; “rights of future generations, especially climate justice”; “rights at the heart of collective action”; and “new frontiers of human rights”. Human rights-centred collective action by all stakeholders – States, international organizations, civil society, the private sector and all others – is key. So too, is human solidarity between generations, and placing the voice, rights and agency of people at the centre.⁷²

COVID-19 mandates a new human, social and international solidarity. It calls on ‘We the Peoples’ to recommit to the spirit and values, principles and purposes of the UN Charter to ensure global solutions to global challenges; to the Universal Declaration of Human Rights

⁶⁸ Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights* (Nijmegen, Wolf Legal Publishers, 2003), pp. 247-255.

⁶⁹ See: A/HRC/17/31.

⁷⁰ Wesley Cragg, “Ethics, enlightened self-interest, and the corporate responsibility to respect human rights: a critical look at the justificatory foundations of the UN framework”, *Business Ethics Quarterly*, Vol. 22, No.1, 2012, pp. 9–36; Surya Deva, “Treating human rights lightly: A critique of the consensus rhetoric and the language employed by the Guiding Principles”, in S. Deva & D. Bilchitz (Eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*, Cambridge, Cambridge University Press, 2013, pp.78-104; Mihir Kanade, “UN Guiding Principles on Business and Human Rights: Presenting the Problem as the Solution”, in Laura Westra and Mirian Villela (eds), *The Earth Charter, Ecological Integrity, and Social Movements*, (New York: Routledge, 2014) pp. 39–49.

⁷¹ Available at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf

⁷² See: United Nations, “A UN framework for the immediate socio-economic response to COVID-19”, April 2020, available at www.un.org/sites/un2.un.org/files/un_framework_report_on_covid-19.pdf

which calls on all human beings to act towards one another in a spirit of solidarity and entitles all to a social and international order in which all human rights and fundamental freedoms can be realized; and to the DRTD which is underscored by the duty of international cooperation. Joint and collaborative action in solidarity mandates operationalizing the RtD to support an enabling environment for sustainable development, global partnership and means of implementation for all people in all countries - including in Africa, least developed countries, landlocked developing countries, small island developing States, and countries in conflict and post-conflict.⁷³ This needs strengthening all forms of international cooperation including South-South and Triangular, to build forward better, fairer and greener societies at all levels.

In a world facing both a multitude of interconnected challenges and a dire decline in multilateralism in this 75th anniversary of the United Nations and centenary year of the League of Nations, the COVID-19 pandemic poses a profound reminder of the need for international cooperation and solidarity. The UNSG,⁷⁴ the High Commissioner for Human Rights,⁷⁵ and the entire UN system have amplified their calls for global solutions in responding to the pandemic, which also implies the renewed relevance of the RtD. Among other developments, the UN led by the UNSG has issued several policy briefs including on Covid-19 and its socio-economic impacts,⁷⁶ debt,⁷⁷ human rights challenges;⁷⁸ tackling the inequality pandemic – a new social contract for a new era;⁷⁹ UN Comprehensive Response to COVID-19 - saving lives, protecting societies, recovering better;⁸⁰ and universal health coverage.⁸¹ The UN also adopted a framework for the immediate socio-economic response to COVID-19, which includes key indicators to track the human rights implications of the pandemic.⁸² The SG further called for a global ceasefire, requesting all parties at war to “silence the guns”.⁸³

Among other developments, in March 2020, the High Commissioner for Human Rights called for easing of sanctions to enable medical systems to fight Covid-19 and limit global contagion,

⁷³ See: A/RES/70/1, para. 16.

⁷⁴ See: <https://www.un.org/en/coronavirus>

⁷⁵ See: <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>

⁷⁶ United Nations, “Shared responsibility, global solidarity: responding to the socioeconomic impacts of COVID-19”, p. 2, March 2020, https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf; United Nations, “A UN framework for the immediate socio-economic response to COVID-19”, April 2020, <https://unsdg.un.org/sites/default/files/2020-04/UN-framework-for-the-immediate-socio-economic-response-to-COVID-19.pdf>

⁷⁷ United Nations, “Debt and COVID-19: A Global Response in Solidarity”, 17 April 2020, https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_debt_relief_and_covid_april_2020.pdf

⁷⁸ United Nations, “COVID-19 and Human Rights We are all in this together”, April 2020, <https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/UN-SG-Policy-Brief-Human-Rights-and-COVID-23-April-2020.pdf>

⁷⁹ See: The 18th Nelson Mandela Lecture delivered by UNSG Antonio Guterres, https://www.un.org/sites/un2.un.org/files/sg_remarks_on_covid_and_inequality.pdf

⁸⁰ United Nations, “UN Comprehensive Response to COVID-19 Saving Lives, Protecting Societies, Recovering Better”, September 2020, https://www.un.org/pga/75/wp-content/uploads/sites/100/2020/10/un_comprehensive_response_to_covid.pdf

⁸¹ United Nations, “Policy Brief: COVID-19 and Universal Health Coverage”, https://unsdg.un.org/sites/default/files/2020-10/SG-Policy-Brief-on-Universal-Health-Coverage_English.pdf

⁸² United Nations, “A UN framework for the immediate socio-economic response to COVID-19”, April 2020, <https://unsdg.un.org/sites/default/files/2020-04/UN-framework-for-the-immediate-socio-economic-response-to-COVID-19.pdf>

⁸³ See: <https://www.un.org/sg/en/content/sg/press-encounter/2020-03-23/transcript-of-the-secretary-generals-virtual-press-encounter-the-appeal-for-global-ceasefire>

emphasising negative impacts of sanctions on several countries.⁸⁴ At the Human Rights Council, on 9 April 2020, she emphasised that the epidemic clarified the need to increase efforts to ensure that all people, including the most vulnerable, benefit from development and reminded all States of the duty of international cooperation and assistance.⁸⁵ In May 2020, she joined several heads of agencies and heads of State in signing on to “Making the response to Covid-19 a public common good”.⁸⁶ This calls for equitable global access to Covid-19 health technologies through sharing of knowledge, intellectual property and data.

On 20 May 2020, the UNSG launched a policy brief on the impact of Covid-19 in Africa.⁸⁷ He called for international action to strengthen Africa’s health systems, maintain food supplies, avoid a financial crisis, support education, protect jobs, keep households and businesses afloat, and cushion the continent against lost income and export earnings. He affirmed that African countries should have quick, equal and affordable access to any eventual vaccine and treatment that must be considered global public goods. The High Commissioner also urged equitable access for Covid-19 diagnostics, therapeutics and vaccines and called upon creditors of African countries to freeze, restructure or relieve countries’ debt.⁸⁸ She stressed that international solidarity with the people of Africa and African governments was a matter of human rights necessity, and priority should be given to investing more in health, water and sanitation, social protection, employment and sustainable infrastructures to ensure that no one is left behind. She called for the lifting of unilateral sanctions, debt-relief and swift and generous financial and technical international support.⁸⁹ The reports of the UNSG,⁹⁰ and High Commissioner for Human Rights,⁹¹ on international cooperation in the field of human rights also highlight the renewed relevance of the RtD, international cooperation and solidarity in the wake of Covid-19.⁹²

Solidarity manifests itself through the daily actions of a range of stakeholders, including States, civil society, global social movements, corporate social initiatives and people of goodwill, especially in the face or the aftermath of crises and disasters including the ongoing pandemic. Ideally, solidarity should be preventive, to avoid or mitigate harm notably in crises and disasters. Since poor countries lack resources to install infrastructure and early warning systems, public health infrastructure and systems as demonstrated by the pandemic, adequate investment is required to reduce vulnerability to risks and the severity of disasters and to build better facilities in their aftermath. Technology and the benefits of scientific progress must be shared for the common good of all under the International Covenant on Economic, Social and Cultural Rights, the RtD principle of fair sharing of the benefits of development, principle 9 of the Rio Declaration and other international legal principles. In the wake of the pandemic, WHO, UNESCO and OHCHR recently made a Joint Appeal for Open Science, *inter alia*, to

⁸⁴ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25744>

⁸⁵ See: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25785>

⁸⁶ See: https://www.who.int/docs/default-source/coronaviruse/solidarity-call-to-action-29-may-2020.pdf?sfvrsn=202610bd_2

⁸⁷ United Nations, “Policy Brief: Impact of COVID-19 in Africa”, 20 May 2020, https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_covid-19_impact_on_africa_may_2020.pdf

⁸⁸ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25898>

⁸⁹ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25833>

⁹⁰ A/74/351.

⁹¹ A/HRC/44/28.

⁹² Also see: United Nations Committee on Economic, Social and Cultural Rights, “Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights”, E/C.12/2020/1, 6 April 2020.

commit to supporting the international scientific community by fostering a culture of collaboration and solidarity, rather than competition, and by sharing research outcomes and knowledge to make science widely accessible to everyone;⁹³ and to join the Solidarity Call to Action jointly launched by WHO and the President of Costa Rica and WHO's COVID-19 Technology Access Pool (C-TAP) that seeks to facilitate sharing of knowledge, intellectual property and data for the response to the pandemic.⁹⁴ Other recent initiatives include WHO's Solidarity Response Fund.⁹⁵

Across borders, there are an ever-increasing number of alliances, of people and nations reaching out to others as illustrated in the pandemic. International assistance and cooperation in the form of aid and debt relief have traditionally been a component of North-South relations. However, only an overarching international solidarity and accountability in international economic relations can sustain the lives of people on a daily basis, in the context of the continuing rise in poverty and inequality within and among countries in a crisis such as the ongoing pandemic. The WHO's Solidarity Fund, and the COVID-19 Vaccines Global Access Facility (COVAX),⁹⁶ are among many emerging initiatives. Human rights-based approaches to development are non-discriminatory and require safeguards for the poor, vulnerable and marginalized. The international dimensions of the RtD require justice for the globally vulnerable, including entire populations of developing countries, least developed countries,⁹⁷ landlocked developing countries, small island developing States, States in armed conflict and post-conflict situations, States in transition to democracy and those in other fragile contexts.

Climate and environment related issues, including natural-resource management and biodiversity, which also assume renewed importance in light of the pandemic given the intrinsic linkages of health and the environment, clearly illustrate the need for international solidarity and a holistic approach. As has been noted, "the international architecture for environmental conservation and global resource management needs to be strengthened substantially... More bold steps have to be taken to create an integrated ecosystem approach to sustainably using natural resources and healing the earth's fragile environment".⁹⁸

Sustainable development is defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".⁹⁹ The principles of sustainable development in the Rio Declaration on Environment and Development and underlying the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change integrate the notions of sustainability, justice and equity to all in the present generation and to those yet unborn, that is, inter- and intra-generational equity.

⁹³ See: Joint Appeal for Open Science by World Health Organization, UNESCO and UN OHCHR, available at https://www.ohchr.org/Documents/Press/WebStories/JointAppeal_OpenSciences_EN.pdf; Also see United Nations Committee on Economic, Social and Cultural Rights, "General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)", E/C.12/GC/25, March 2020.

⁹⁴ See: <https://www.ohchr.org/EN/NewsEvents/Pages/Open-Science-Appeal.aspx>

⁹⁵ See: <https://covid19responsefund.org/en/>

⁹⁶ See: <https://www.who.int/initiatives/act-accelerator/covax>

⁹⁷ The 2011 Istanbul Programme of Action of the Fourth United Nations Conference on the Least Developed Countries calls for a strengthened global partnership and makes explicit reference to human rights, including the right to development and gender equality and empowerment. For more information, see: <https://www.un.org/ohrls/content/istanbul-programme-action>

⁹⁸ Nico Schrijver, *Development without Destruction: The UN and Global Resource Management* (Bloomington, Indiana University Press, 2010), p. 221.

⁹⁹ "Report of the World Commission on Environment and Development: Our Common Future" (the Brundtland Report), A/42/427, annex, chap. 2, para. 1.

The RtD is integral to sustainable development, as reflected in the Rio Declaration and the Vienna Declaration and Programme of Action, both of which read: “The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations”.¹⁰⁰

The Rio Declaration sets the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people.¹⁰¹ The idea of shared responsibilities is further developed therein to recognize the principle of common but differentiated responsibilities embodied in international legal instruments, taking into account global inequalities and the need to deal with them equitably.

International solidarity underscores debt relief, and strengthened solidarity and shared responsibilities by both debtors and creditors can help debt sustainability while safeguarding basic human rights. Debt sustainability is an important form of international solidarity through which low and middle-income developing countries can acquire appropriate means and facilities to foster their comprehensive development. Following the pandemic, concerted calls for debt relief, debt restructuring and debt sustainability for debt burdened countries lacking ‘breathing space’ to enable fiscal space to deliver basic needs and rights have been made at the highest levels of global leadership and governance including by the UN, the IMF and the G20.

Solidarity among nations as well as generations underlines the United Nations Framework Convention on Climate Change and is implicit in its article 3, which lays down the principles of the Convention. Under this article, the Parties should, *inter alia*, protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities; accordingly, developed countries should take the lead in combating climate change and its adverse effects. Further, the specific needs and special circumstances of developing countries, especially those particularly vulnerable to the adverse effects of climate change and those that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Under article 4 entitled “Commitments”, developed country Parties are required to take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing countries, to enable them to implement the provisions of the Convention. All Parties are required to take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.¹⁰² These principles are reaffirmed in the Paris Agreement.¹⁰³

¹⁰⁰ Principle 3, Rio Declaration on Environment and Development, A/CONF.151/26; and paragraph 11, Vienna Declaration and Programme of Action A/CONF.157/23.

¹⁰¹ Principle 5, Rio Declaration on Environment and Development, A/CONF.151/26, stipulating: “All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”

¹⁰² Also See: International Council on Human Rights Policy, *Beyond Technology Transfer: Protecting Human Rights in a Climate-Constrained World* (Geneva, 2011).

¹⁰³ See: Paris Agreement on Climate Change, 2015, available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

Also in the field of technology transfer, article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that in view of the special needs and requirements of least developed country members of the World Trade Organization, their economic, financial and administrative constraints and their need for flexibility to create a viable technological base, they will not be required to apply the provisions of the Agreement, other than articles 3, 4 and 5, for a period of 10 years from the date of application.¹⁰⁴ Developed countries are required to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country members, to enable them to create a sound and viable technological base. Article 67 states that in order to facilitate the implementation of the Agreement, developed country members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least developed country members.¹⁰⁵

The seminal role of solidarity within the framework of financing for development, first highlighted in the Monterrey Consensus on Financing for Development,¹⁰⁶ was confirmed in the 2008 Doha Declaration on Financing for Development,¹⁰⁷ reiterating commitments to address such financing in the spirit of global partnership and solidarity. Within the broader framework of financing for development, the search for innovative sources of development finance is linked closely to international solidarity. In his progress report on innovative sources of development finance, the UNSG described international solidarity as a basis for international cooperation in the context of financing for development and highlighted existing and potential initiatives that could contribute to international and human solidarity, including solidarity levies.¹⁰⁸ Solidarity also underpinned the outcome documents of the second and third High-Level Forums on Aid Effectiveness held in 2005 and 2008 respectively: the Paris Declaration on Aid Effectiveness,¹⁰⁹ and the Accra Agenda for Action;¹¹⁰ the 2009 Conference on the World Financial and Economic Crisis and its Impact on Development;¹¹¹ the 2010 special high-level meeting of the Economic and Social Council with the Bretton Woods institutions, the World Trade Organization and the United Nations Conference on Trade and Development,¹¹² and its follow-up meetings. The Addis Ababa Action Agenda,¹¹³ is integral to the 2030 Agenda and its implementation is key to achieving the SDGs.

¹⁰⁴ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights, available at https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

¹⁰⁵ Ibid.

¹⁰⁶

A/CONF.198/11,

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.198_11.pdf

¹⁰⁷ See: A/CONF.212/L.1/Rev.1, <https://www.un.org/development/desa/financing/document/report-follow-international-conference-financing-development-review-implementation>

¹⁰⁸ A/64/189 and Corr.1.

¹⁰⁹ OECD, *The Paris Declaration on Aid Effectiveness*. Paris, OECD, 2005, available at <http://www.oecd.org/dac/effectiveness/34428351.pdf>. See, in particular, paragraph 1 and section II, Partnership commitments.

¹¹⁰ OECD, *The Accra Agenda for Action*, Paris, OECD, 2008, available at <http://www.oecd.org/dac/effectiveness/34428351.pdf>. See, in particular, paragraphs 9, 15, 19 and 21. Also see: OECD, *The Busan Partnership for Effective Development Cooperation* (Paris, OECD, 2011), available at <https://www.oecd.org/dac/effectiveness/busanpartnership.htm>

¹¹¹ UNGA Resolution 63/303, annex, paras. 10, 11 and 46.

¹¹² See: Summary by the President of the Council, A/65/81–E/2010/83, para.20.

¹¹³ *Outcome document of the Third International Conference on Financing for Development*, Addis Ababa, Ethiopia, 13–16 July 2015, Endorsed by UNGA Resolution 69/313 of 27 July 2015.

South-South cooperation derives from a joint struggle for justice, and bonds that were nurtured in a spirit of solidarity and friendship. It implies cooperative interaction through building solidarity based on mutual benefit among developing countries in their efforts to compensate for their relative lack of global power.¹¹⁴ Such cooperation has been found to be extensive and diverse in terms of financing for development, knowledge and experience-sharing, networking, institution-building and formalization of cooperative arrangements.¹¹⁵ The new global architecture for international cooperation calls for strengthening of all forms of international cooperation: North-South, South-South, triangular, as well as South-North. The Buenos Aires Outcome Document of the Second High Level UN Conference on South-South Cooperation,¹¹⁶ paves the way forward to further advancement of South-South and Triangular cooperation which will be indispensable as the world emerges from the pandemic. In recent times we have seen numerous examples of South-South solidarity and cooperation especially in the sharing of medical personnel, vaccines and equipment especially protective personal equipment. We have also witnessed South-North cooperation, with poorer countries reaching out to help richer countries in dire need, also through deployment of healthcare personnel and medical supplies.

V. Achieving Global Partnership and Activating the Means of Implementation of the SDGs in the Fight Against COVID-19

COVID-19 and the urgent need to find global solutions to global problems in keeping with the spirit, the purposes and the principles of the UN Charter, brings SDG 17 wherein the international community pledged to strengthen the means of implementation and revitalize the global partnership for sustainable development, to the heart and soul of fighting the pandemic. Fighting the virus requires us to re-ignite all aspects of SDG 17 as well as the Means of Implementation Targets (a, b, c Targets) in all the other SDGs, in their full indivisibility, underscored by the RtD premised on international solidarity and cooperation, peace, development and all other human rights. The same applies to the Addis Ababa Action Agenda which is integral to the 2030 Agenda and provides a comprehensive framework for Financing for Sustainable Development based on solidarity; and related provisions of the Paris Agreement and the Sendai Framework. The 2030 Agenda also reaffirms support to the Istanbul Declaration and Programme of Action, the SIDS Accelerated Modalities of Action (SAMOA) Pathway, the Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014-2024, and the importance of supporting the African Union's Agenda 2063 and the programme of the New Partnership for Africa's Development, all of which are integral to it, as well as to countries in conflict and post-conflict situations.

In light of massive financial crisis, especially in middle and low income countries many of which are struggling under the weight of unsustainable debt burdens and debt servicing obligations, this requires the immediate strengthening of domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection in keeping with Target 17.1; and urgent implementation of Target 17.2 whereby developed countries must implement fully their official development assistance commitments, including the commitment by many of them to achieve the target of 0.7 per cent of ODA/GNI to developing countries and 0.15 to 0.20 per cent of ODA/GNI to least developed countries; ODA providers are encouraged to consider setting a target to provide

¹¹⁴ United Nations, "The state of South-South cooperation: report of the Secretary-General", A/66/229, para.4(c).

¹¹⁵ Ibid.

¹¹⁶ See: <https://www.unsouthsouth.org/wp-content/uploads/2019/10/N1911172.pdf>

at least 0.20 per cent of ODA/GNI to least developed countries. The promise of Target 17.3 to mobilize additional financial resources for developing countries from multiple sources becomes increasingly urgent and imperative, and likewise, the calls of Target 17.4 to assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress, as also Target 17.5 to adopt and implement investment promotion regimes for least developed countries. The achievement of these Targets now assumes a new scale and urgency, given both the magnitude and catastrophic nature of the consequences of the pandemic.

Technology related Targets assume monumental importance in the context of COVID-19. Target 17.6 commits to enhance North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation and enhance knowledge sharing on mutually agreed terms, including through improved coordination among existing mechanisms, in particular at the United Nations level, and through a global technology facilitation mechanism. The longstanding global struggle for access to medicines especially in the fight against HIV/AIDS, is reignited by ongoing debates on access to vaccines against COVID-19. The UNSG, the World Health Organization, and a plethora of global leaders, academics and activists have amplified the call for a ‘People’s Vaccine’,¹¹⁷ to make a new vaccine freely accessible to all people in all countries as a global public good (discussed in more detail below). This flies in the face of the entrenched interests of business and monopolies and of intellectual property laws, notably the WTO Agreement on Trade Related Intellectual Property Laws (TRIPS). Recent efforts by India, South Africa, Kenya and Eswatini to relax certain TRIPS provisions to maximize production and distribution have met with major opposition (discussed in more detail below). In their joint proposal at the TRIPS Council meeting, the four countries called for a waiver to be granted to all WTO members so that they do not have to implement, apply, or enforce certain obligations related to COVID-19 products and technologies under Sections 1 (copyrights and related rights), 4 (industrial design), 5 (patents) and 7 (protection of undisclosed information) of Part II of the TRIPS Agreement.¹¹⁸

In an era of climate change and environmental degradation, Target 17.7 to promote the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed assumed renewed importance, now more than ever in the context of Building Better, Fairer and Greener in recovering from the pandemic with more resilience.¹¹⁹ To this end, it is critical to continue to implement Target 17.8 to fully operationalize the technology bank and science, technology and innovation capacity-building mechanism for least developed countries and enhance the use of enabling technology, in particular information and communications technology.

In Target 17.9, the international community promised to enhance international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-

¹¹⁷ See for instance, <https://peoplesvaccine.org/>

¹¹⁸ COVID-19: Licensing deals on vaccines reinforce need for TRIPS waiver
Published in SUNS #9231 dated 12 November 2020,
<https://www.twn.my/title2/unsd/2020/unsd201109.htm>

¹¹⁹ See: Mihir Kanade, 2017. “Technology and the Sustainable Development Goals: A Right to Development Approach”, in Mariateresa Garrido (ed.) *Human Rights and Technology: The 2030 Agenda for Sustainable Development*, Ciudad Colon: UPEACE Press, Chapter 1, pp. 7–30.

South, South-South and triangular cooperation. While capacity-building has always been an aspect of cooperation between countries under conventional forms of North-South cooperation, it is particularly pertinent to South-South cooperation, based on a spirit of solidarity and sharing among peoples and countries of the South.

Targets 17.10 to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO, including through the conclusion of negotiations under its Doha Development Agenda; 17.11 to significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020; and 17.12 to realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with WTO decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access are essential to ensure that trade is directed to the ends of inclusive, equitable and sustainable development for all.¹²⁰ Building better post-COVID mandates the immediate implementation of the Doha Agenda, to ensure that the benefits and burdens of development and globalization are shared fairly and equitably in the spirit of solidarity as underscored by the RtD.

The systemic issues spelt out in the Targets 17.13 – 17.19 go the heart of the RtD which addresses systemic and structural issues at the intersection of peace, human rights and development – notably, policy and institutional coherence to enhance global macroeconomic stability, including through policy coordination and policy coherence in 17.13; to enhance policy coherence for sustainable development in 17.14; and to respect each country's policy space and leadership to establish and implement policies for poverty eradication and sustainable development in 17.15. Both policy coherence and policy space are critical to fighting COVID-19, with many poor countries increasingly deprived of fiscal space to deliver human rights especially economic, social and cultural rights.

Targets 17.16 – 17.17 call for multi-stakeholder partnerships to enhance conventional development cooperation. Specifically, Target 17.16 seeks to enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the sustainable development goals in all countries, in particular developing countries; and Target 17.17 seeks to encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships. Finally, with regard to data, monitoring and accountability, Target 17.18 aims by 2020, to enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts; and Target 17.19, aims by 2030, to build on existing initiatives to develop measurements of progress on sustainable development that complement gross domestic product, and support statistical capacity-building in developing countries. Improving data, monitoring and accountability in line with the RtD inevitably entails data at both the national and global levels, and as such, would include data on all aspects of SDG 17 as well as the a, b, c Targets of all the SDGs.

¹²⁰ On the right to development framework for multilateral trade (including related targets in SDG 17) and human rights, see in general: Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, (London, Routledge, 2018).

VI. Current Status

The sections above have highlighted the actions that need to be taken in order to ensure equitable, effective and meaningful recovery from the COVID-19 pandemic globally. They have also highlighted the importance of operationalizing the RtD to realize global solidarity, shared responsibility, and the duty to cooperate in doing so. This section briefly analyses illustrative global actions/inactions (as of February 2021) specifically related to the issue of access to vaccines to evaluate whether reality matches the trajectory needed.

a. Declaring the vaccines as a “global public good”

As noted above, numerous calls have been made for declaring the COVID-19 vaccines as global public goods,¹²¹ including by the WHO, the UNSG, several special rapporteurs and independent experts of the Human Rights Council, States, NGOs, leaders, and scholars. In the most basic form, “the concept of a ‘global public good’ is an economic idea that [...], refers to products, ideas, policies or issues with effects that could extend to everyone, everywhere”.¹²² It recognizes the fact that “key aspects of our global health require the need for international collective action: health security; research and development; disease transmission and control; vaccine development and coverage”,¹²³ and that self-preservation of peoples and societies is impossible without recognition of mutual vulnerabilities.¹²⁴ For instance, disease eradication, especially of the one causing a pandemic, is a global public good, since its impacts are transnational and any action to prevent, control and mitigate it requires collective global action.¹²⁵ In this context, principally, global public goods must be non-rivalrous,¹²⁶ and non-excludable.¹²⁷

The concept of global public goods is inherently tied to the guarantee of universal human rights. The enjoyment of the highest attainable standard of health is a human right and, as such, everyone is entitled to it without discrimination. As has rightly been pointed out by OHCHR:

The availability of vaccines, medicines, health technologies and health therapies is an essential dimension of the right to health, the RtD and the right to enjoy the benefits of scientific progress and its applications. Everyone is entitled, on an equal footing with

¹²¹ A different term implying the same idea – “global common good” – has also been employed. See for instance: <https://vaccinecommongood.org/>

¹²² GAVI, “Are Vaccines Global Public Good”, available at <https://www.gavi.org/vaccineswork/are-vaccines-global-public-good#:~:text=The%20UN%20General%20Assembly%20resolution,once%20safe%2C%20quality%2C%20efficacious%2C>

¹²³ Yonette Felicity Thomas, Obijiofor Aginam et. al., Policy Brief: Reaffirming the Significance of Global Public Goods for Health: Global Solidarity in Response to COVID-19 and Future Shocks, T20 Saudi Arabia, p.2.

¹²⁴ Ibid.

¹²⁵ GAVI, “Are Vaccines Global Public Good”, available at <https://www.gavi.org/vaccineswork/are-vaccines-global-public-good#:~:text=The%20UN%20General%20Assembly%20resolution,once%20safe%2C%20quality%2C%20efficacious%2C>

¹²⁶ Ibid. “Non-rivalrous” means that “using it doesn’t reduce the amount for anyone else, although activities or interventions concerning it may well be”.

¹²⁷ Ibid. “Non-Excludable” means that “it should be impossible to prevent anyone else from getting the benefits”.

others, to enjoy access to all the best available applications of scientific progress necessary to enjoy the highest attainable standard of health.¹²⁸

In our specific context, this means that “COVID-19 vaccines should be treated as global public goods, rather than as marketplace commodities available only to those countries and people who can afford to pay the asking price”.¹²⁹ The current practices and legal frameworks, however, pose challenges to a straightforward recognition and realization of the COVID-19 vaccines as global public goods. As pointed out by GAVI, “drugs and vaccines are often both rivalrous and excludable – for example, if prices are set so high that low- and middle-income countries can’t afford to buy them, or if there are supply issues”.¹³⁰ As such, while the indispensability of recognizing the vaccines as global public goods is well-acknowledged, making this operational entails positive action by all, in global solidarity and shared responsibility, to establish concrete and targeted policies and programmes that would make vaccines both non-rivalrous and non-excludable, and to eliminate any legal barriers thereto.

The UNGA has been a theatre for debates on recognizing the vaccines as global public goods. In its resolution of 20 April 2020 entitled “International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19”, States could not reach an agreement on including the language of “global public goods”.¹³¹ Later, in its omnibus resolution of 11 September 2020, titled “Comprehensive and coordinated response to the coronavirus disease (COVID-19) pandemic”, the UNGA again did not explicitly recognize the vaccines as global public goods, merely recognizing “*the role of extensive immunization against COVID-19 as a global public good for health in preventing, containing and stopping transmission in order to bring the pandemic to an end, once safe, quality, efficacious, effective, accessible and affordable vaccines are available*”.¹³² As, however, discussed below, numerous roadblocks continue to exist in translating recognition of *the role of extensive immunization* or that of vaccines as global public goods into actual practice. Political will, especially of the wealthier nations, remains inadequate.

b. Pre-Ordering and Hoarding of Vaccines by Developed Countries

As of the end of January 2021, “of the 12.5bn doses that the main vaccine producers have so far pledged to produce in 2021, 6.4bn have already been pre-ordered, most of them by wealthy countries”.¹³³ This means that as of mid-January, a small group of rich countries - comprising just 16% of the world's population - had purchased 60% of the global vaccine supply.¹³⁴ This clearly has adverse impacts on access to vaccines in the global south, where almost 86% of the global population lives. What is worse, some wealthy countries have engaged in attempts to

¹²⁸ United Nations, “Human Rights and Access to COVID-19 Vaccines”, 17 December 2020, available at https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf

¹²⁹ Ibid

¹³⁰ GAVI, “Are Vaccines Global Public Good”, available at <https://www.gavi.org/vaccineswork/are-vaccines-global-public-good#:~:text=The%20UN%20General%20Assembly%20resolution,once%20safe%2C%20quality%2C%20efficacious%2C>

¹³¹ A/RES/74/274

¹³² A/RES/74/306. The resolution was adopted by a recorded vote of 169 in favour to 2 against (Israel, United States), with 2 abstentions (Hungary, Ukraine). See: <https://www.un.org/press/en/2020/ga12262.doc.htm>.

¹³³ The Economist Intelligence Unit Limited, “Coronavirus vaccines: expect delays: Q1 global forecast 2021”, available at <https://www.eiu.com/n/campaigns/q1-global-forecast-2021/>.

¹³⁴ Andrea Taylor, A Bird’s-Eye View of Global Distribution, Duke Global Health Institute, 20 January 2021, <https://globalhealth.duke.edu/news/ensuring-everyone-world-gets-covid-vaccine>.

hoard vaccines, having “purchased doses to vaccinate their entire populations multiple times over by the end of 2021 if all the candidate vaccines in clinical trials are given regulatory approval”.¹³⁵ For instance, some developed countries have reportedly secured supplies equivalent to several times the size of their populations, while others have reportedly paid far more than other countries to secure vaccine doses.¹³⁶ According to Amnesty International, 90% of the population in 67 countries will be unable to receive a COVID-19 vaccine in 2021, despite five of those countries – Kenya, Myanmar, Nigeria, Pakistan and Ukraine – having reported about 1.5 million cases between them.¹³⁷

Despite this, by the beginning of February 2021, it is already clear that production of vaccines has not matched the quantities expected by developed countries. Global media has extensively reported that vaccine-producers have been warned with adverse consequences if preferential and adequate supply is not ensured to the wealthier countries as expected.¹³⁸ In this context, “it is likely that developing countries with poor infrastructure, few healthcare workers and inadequate refrigeration will find the rollout even harder”.¹³⁹ Latest estimates indicate that for poorer economies, mass immunisation will take until 2024, if it happens at all.¹⁴⁰ This indeed appears to be the trajectory. By mid-February, as the UNSG has pointed out, just ten countries have administered 75% of all COVID-19 vaccines; meanwhile not a single dose has been received by more than 130 countries.¹⁴¹

These practices of “vaccine nationalism” not only directly undermine the realization of vaccines as a global public good, but run contrary to the need for global solidarity and shared responsibility that underpins the duty to cooperate and the RtD. As the independent expert on Human Rights and International Solidarity, Obiora Okafor, has noted in his call for international vaccine solidarity to be preferred over international vaccine competition:

this pandemic will not end for anyone, until it ends for everyone. The virus can still travel from the vastly unvaccinated massive population of the Global South to the Global North, including in its increasingly mutating forms. This would likely bolster or reignite the

¹³⁵ United Nations, “Human Rights and Access to COVID-19 Vaccines”, 17 December 2020, available at https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf, p.2.

¹³⁶ The Economist Intelligence Unit Limited, “Coronavirus vaccines: expect delays: Q1 global forecast 2021”, available at <https://www.eiu.com/n/campaigns/q1-global-forecast-2021>, p.2

¹³⁷ Amnesty International, Campaigners warn that 9 out of 10 people in poor countries are set to miss out on COVID-19 vaccine next year, 9 December 2020, available at <https://www.amnesty.org/en/latest/news/2020/12/campaigners-warn-that-9-out-of-10-people-in-poor-countries-are-set-to-miss-out-on-covid-19-vaccine-next-year/>

¹³⁸ Vox, “The EU-AstraZeneca vaccine fight, explained”, 29 January 2021, <https://www.vox.com/2021/1/29/22254497/eu-astrazeneca-covid-19-vaccine-fight-explained>

¹³⁹ The Economist Intelligence Unit Limited, “Coronavirus vaccines: expect delays: Q1 global forecast 2021”, available at <https://www.eiu.com/n/campaigns/q1-global-forecast-2021>, p.4.

¹⁴⁰ Ibid.

¹⁴¹ United Nations, “Secretary-General's remarks to the Security Council Open Meeting on Ensuring Equitable Access to COVID-19 Vaccines in Contexts Affected by Conflict and Insecurity”, 17 February 2021, available at <https://www.un.org/sg/en/content/sg/statement/2021-02-17/secretary-generals-remarks-the-security-council-open-smeeeting-ensuring-equitable-access-covid-19-vaccines-contexts-affected-conflict-and-insecurity-delivered>

pandemic, even in states that have vaccinated large swathes of their populations, or otherwise complicate or delay the effort to end it.¹⁴²

UN Secretary-General Guterres has noted that:

The world's leading economies have a special responsibility. Yet, today, we are seeing a vaccine vacuum. Vaccines are reaching high income countries quickly, while the world's poorest have none at all. Science is succeeding, but solidarity is failing. Some countries are pursuing side deals, even procuring beyond need.¹⁴³

In similar vein, WHO Director-General Ghebreyesus has blamed vaccine nationalism for the inequity, saying the world was on the brink of “catastrophic moral failure”.¹⁴⁴ Vaccine equity, he maintains, is not just a moral imperative, it is a strategic and economic imperative,¹⁴⁵ as he launched a new Call to Action: The Vaccine Equity Declaration,¹⁴⁶ which calls on all countries to work together in solidarity and in each of their best interests to ensure that within the first 100 days of the year, vaccination of health workers and older people was underway in all countries. This call is that the heart of WHO'S campaign for #VaccinEquity.

The Committee on Economic, Social and Cultural Rights has called unequivocally for universal and equitable access to COVID-19 vaccines.¹⁴⁷ So have numerous others, including governments, civil society activists, academics,¹⁴⁸ and others.

c. WHO's COVAX facility

The COVID-19 Vaccines Global Access Facility (COVAX) was launched in April 2020 at the WHO and works in partnership with the Global Vaccine Alliance (GAVI) and the Coalition for Epidemic Preparedness Innovations (CEPI). COVAX is envisioned to act “as a platform that will support the research, development and manufacturing of a wide range of COVID-19 vaccine candidates and negotiate their pricing”.¹⁴⁹ It aims to have 2 billion doses available by the end of 2021 to all participating countries (over 185 by January 2021) regardless of income

¹⁴² Statement by the UN Independent Expert on human rights and international solidarity, Mr Obiora C. Okafor, 22 January 2021, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26683&LangID=E>

¹⁴³ United Nations, “Secretary-General's video message on the Two Millionth death from the COVID-19 pandemic”, 15 January 2021, available at <https://www.un.org/sg/en/content/sg/statement/2021-01-15/secretary-general%E2%80%99s-video-message-the-two-millionth-death-the-covid-19-pandemic-scroll-down-for-french-version>

¹⁴⁴ United Nations, “WHO chief warns against ‘catastrophic moral failure’ in COVID-19 vaccine access”, 18 January 2021, available at <https://news.un.org/en/story/2021/01/1082362>

¹⁴⁵ WHO, “WHO Director-General's Opening Remarks at 148th Session of the Executive Board”, 18 January 2021m available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-148th-session-of-the-executive-board>

¹⁴⁶ WHO, “Call to Action: Vaccine Equity Declaration”, 18 January 2021, available at <https://www.who.int/campaigns/annual-theme/year-of-health-and-care-workers-2021/vaccine-equity-declaration>.

¹⁴⁷ E/C.12/2020/2.

¹⁴⁸ Diane Desierto, “Equitable COVID Vaccine Distribution and Access: Enforcing International Legal Obligations under Economic, Social, and Cultural Rights and the Right to Development”, *EJIL: Talk!*, 2 February 2021, <https://www.ejiltalk.org/equitable-covid-vaccine-distribution-and-access-enforcing-international-legal-obligations-under-economic-social-and-cultural-rights-and-the-right-to-development/>

¹⁴⁹ GAVI, “COVAX Explained”, 3 September 2020, available at <https://www.gavi.org/vaccineswork/covax-explained>

levels on the principle of equal access, and 6 billion doses in the longer term.¹⁵⁰ The COVAX facility seeks to ensure this based on the collective contributions of participating countries and the collective purchasing power that comes with it “in order to negotiate highly competitive prices from manufacturers that are then passed on to participants”.¹⁵¹ It is rightly considered a “lifeline” for “lower-income funded nations, who would otherwise be unable to afford these vaccines, as well as a number of higher-income self-financing countries that have no bilateral deals with manufacturers”, and “the only viable way in which their citizens will get access to COVID-19 vaccines”.¹⁵² It is important to note that the expected 2 billion doses to be distributed by the end of 2021 are adequate only to protect high risk and vulnerable people, as well as frontline healthcare workers.¹⁵³ In effect, even in the longer term, funded countries, subject to funding availability, are expected to receive doses to vaccinate up to 20% of the population.¹⁵⁴

The COVAX facility undoubtedly has the potential to be an excellent illustration of global solidarity, shared responsibility and the duty to cooperate. There are however at least three major obstacles. Firstly, a successful realization of the equitable distribution of the expected 2 billion doses by the end of 2021 is not reserved only for poorer or “funded” countries, but also includes the wealthier or self-funded countries, almost all of whom have joined the facility.¹⁵⁵ This, combined with pre-orders and hoarding attempts by wealthier countries, essentially leaves the COVAX facility struggling with supply shortages. Also, as has been noted, “COVAX supplies may be slow to arrive, especially if delays in the production for and delivery to richer countries push back delivery dates for poorer nations”.¹⁵⁶ The WHO Director-General, in an address to the World Trade Organization, rightly observed that “at the outset, rich countries have bought up the majority of the supply of multiple vaccines” and that this is at the “expense of COVAX”, lamenting that “countries engage in bilateral deals, potentially bumping up the price for everyone”.¹⁵⁷

Secondly, the COVAX facility can only distribute vaccines approved by WHO’s regulators. While COVAX can and does have agreements with numerous potential vaccine-producers, the actual meeting of delivery targets depends on agreements with providers of approved vaccines. As of the beginning of February 2021, agreements with providers of approved vaccines included an advance purchase agreement with AstraZeneca for 170 million doses, an agreement with the Serum Institute of India (SII) for 200 million doses of the AstraZeneca/Oxford

¹⁵⁰ See: <https://www.who.int/initiatives/act-accelerator/covax>

¹⁵¹ GAVI, “COVAX Explained”, 3 September 2020, available at <https://www.gavi.org/vaccineswork/covax-explained>

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ The Economist Intelligence Unit Limited, “Coronavirus vaccines: expect delays: Q1 global forecast 2021”, available at <https://www.eiu.com/n/campaigns/q1-global-forecast-2021>, p.4.

¹⁵⁷ See: <https://wp.twnnews.net/sendpress/email/?sid=NjUwMDQ&eid=MjgxMQ>

candidate,¹⁵⁸ and an agreement with Pfizer and Biontech for upto 40 million doses.¹⁵⁹ These hardly appear adequate to meet even the 2021 targets of 2 billion doses.

The third obstacle relates to lack of funding. By the end of January 2021, COVAX had raised USD 6 billion, while at least another USD 2 billion more are required to meet its global vaccination target for 2021.¹⁶⁰

d. WHO's C-TAP

As noted earlier in this chapter, the COVID-19 Technology Access Pool (C-TAP) was launched in May 2020 to compile, in one place, pledges of commitment made under the WHO's Solidarity Call to Action,¹⁶¹ for stakeholders, especially pharmaceutical corporations, to voluntarily share COVID-19 health technology related knowledge, intellectual property and data. In particular, it seeks to overcome the strict patenting requirements under the global intellectual property rights regime that may impede equitable access to COVID-19 vaccines and therapeutics at affordable prices to all, by calling for voluntary pooling of information regarding vaccines, treatments and trial data.¹⁶² C-TAP thus seeks to permit generic drug producers around the world to produce drugs or vaccines without fear of breaching patents.

While promising to be an excellent illustration of global solidarity, shared responsibility and the duty to cooperate, unfortunately, as of the beginning of February 2021, the C-TAP had attracted zero contributions in the eight months since it was established.¹⁶³ There have in fact been serious concerns raised by the People's Vaccine Alliance regarding the lack of progress, including lack of strategy, political and technical leadership, and transparency, calling upon the Director-General of WHO to take urgent corrective measures.¹⁶⁴

e. TRIPS waivers

As has been elaborated in Chapter 9 by Obijiofor Aginam, a major concern impeding access to essential medicines relates to the strict patenting requirements under the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement under the World Trade Organization. This agreement requires WTO members to guarantee patents to pharmaceutical corporations. The monopoly thus created by such patents significantly limits the availability of generic drugs at

¹⁵⁸ WHO, "WHO, COVAX Announces additional deals to access promising COVID-19 vaccine candidates; plans global rollout starting Q1 2021", 18 December 2020, <https://www.who.int/news/item/18-12-2020-covax-announces-additional-deals-to-access-promising-covid-19-vaccine-candidates-plans-global-rollout-starting-q1-2021>

¹⁵⁹ Pfizer and Biontech Reach Agreement with COVAX for Advance Purchase of Vaccine to Help Combat COVID-19, 22 January 2021, <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-reach-agreement-covax-advance-purchase>

¹⁶⁰ BBC, "Covax: How will Covid vaccines be shared with poorer countries?", 4 February 2021, <https://www.bbc.com/news/world-55795297>

¹⁶¹ For information about the WHO's Solidarity Call to Action, see: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/global-research-on-novel-coronavirus-2019-ncov/covid-19-technology-access-pool/solidarity-call-to-action>

¹⁶² WHO, COVID-19 Technology Access Pool, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/global-research-on-novel-coronavirus-2019-ncov/covid-19-technology-access-pool>

¹⁶³ The Guardian, "WHO platform for pharmaceutical firms unused since pandemic began", <https://www.theguardian.com/world/2021/jan/22/who-platform-for-pharmaceutical-firms-unused-since-pandemic-began>

¹⁶⁴ See: <https://www.keionline.org/wp-content/uploads/HE-Dr-Tedros-Letter-from-Peoples-Vaccine-Alliance-and-Health-Action-International.pdf>

affordable prices. The TRIPS regime does establish a compulsory licensing procedure (when voluntary licenses are not agreed upon by patent-holders) where WTO members can invoke national public emergency or other circumstances of extreme urgency, or in cases of public non-commercial use, to overcome patents and permit domestic or foreign generic drug producers to make supplies.¹⁶⁵ However, in such cases as well, the patent-holder needs to be compensated, that is, paid adequate remuneration.¹⁶⁶ Additionally, any decision regarding remuneration including its quantum is subject to judicial review.¹⁶⁷ Because of these limitations, there has only been one instance ever where this mechanism has been invoked, that too unsuccessfully (as a result of those very limitations).¹⁶⁸

In view of the inhibiting nature of the existing patenting and compulsory licensing regimes under the TRIPS agreement in addressing concerns of access to COVID-19 vaccines and therapeutics, numerous developing countries led by India, South Africa, Kenya and Eswatini, have demanded waivers of the strict TRIPS requirements.¹⁶⁹ In addition to waivers related to other intellectual property rights, the proponents have argued that the provisions of compulsory licensing and flexibilities to the patenting requirements in the TRIPS Agreement were not designed to deal with pandemics of a global nature, but of health emergencies of individualized nature affecting a specific country.¹⁷⁰ As such, it is untenable to continue requiring that countries individually and separately undergo the procedures required for waivers under the TRIPS agreement, while still subjecting themselves to the requirement of compensating patent-holders during an unprecedented pandemic.

Unfortunately, all such efforts have been blocked by developed countries, contending that the TRIPS agreement is adequate and that voluntary licensing along with the COVAX facility can address the concerns of developing countries.¹⁷¹ As indicated above, however, these arguments are empirically incorrect and specious.

VII. Conclusion

*If we follow the science, and demonstrate unity and solidarity, we can overcome the pandemic. We need global solidarity every step of the way. Developed countries must support health systems in countries that are short of resources.*¹⁷²

In his landmark book on world poverty and human rights, Thomas Pogge noted that “millions would be saved from diseases and death if generic producers could freely manufacture and market life-saving drugs in the poor countries”.¹⁷³ Recently, at a Biennial Panel Discussion on ‘COVID-19 and the Right to Development: We Are All in This Together’, held during the 45th session of the Human Rights Council in September 2020, participants agreed on the imperative

¹⁶⁵ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights, available at https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm, articles 31 and 31bis.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ See: Third World Network, “Proponents of TRIPS waiver call for text-based negotiations”, 25 January 2021, <https://wp.twnnews.net/sendpress/email/?sid=NjUwMDQ&eid=MjgxMQ>

¹⁶⁹ Ibid.

¹⁷⁰ Ibid

¹⁷¹ Ibid

¹⁷² United Nations, “Secretary-General's video message for the World Health Summit”, 25 October 2020, <https://www.un.org/sg/en/content/sg/statement/2020-10-25/secretary-generals-video-message-for-the-world-health-summit>

¹⁷³ Thomas Pogge, *World Poverty and Human Rights* (Polity, Cambridge, 2008), pp.155-156.

need to operationalize the RtD including through enhanced system-wide collaboration throughout the UN system, and global cooperation to close digital divides.¹⁷⁴ Panellists and participants shared good practices and success stories of global solidarity in the ongoing pandemic, including examples of North-South, South-South as well as South-North cooperation to deploy healthcare professionals and essential medical products.¹⁷⁵

Going forward, it is key to enhance understanding of the RtD, international cooperation and solidarity with a view to their realization including through United Nations system-wide collaboration and collective action by all stakeholders; to consider ways to strengthen global solidarity and shared responsibility including through collaboration in identifying health and socio-economic needs, exchange of information, scientific knowledge and best practices; and to discuss joint action by States, intergovernmental organizations, civil society, academia and other stakeholders including through North-South, South-South and Triangular Cooperation at the national, regional and global levels. Likewise, it is vitally important to identify opportunities to advance global partnership and means of implementation for sustainable development and its financing through integrated approaches and coherent and coordinated action at all levels and share good practices and success stories in operationalizing the RtD, international cooperation and solidarity including through South-South cooperation,¹⁷⁶ multi-stakeholder partnerships and other collaboration.

International solidarity is key to our common future.¹⁷⁷ Climate change and the confluence of the global health, economic, financial, food, energy and other crises now notably the COVID-19 pandemic, raise fundamental, in fact existential, questions about our value systems. The RtD, underlined by international solidarity, can serve as a normative basis for policy coherence as well as a normative bridge connecting the world's peoples, with its emphasis on global justice and an equitable international order. Stewardship of the Earth and all its people is the responsibility of Governments and all others in a multi-stakeholder world. The far-sighted wisdom of the DRTD provides an alternative and indispensable paradigm of development and international economic relations, the realization of which is dependent on international solidarity, through which we “declare our responsibility to one another, to the greater community of life, and to future generations”.¹⁷⁸ From a New Social Contract to a New Global Deal,¹⁷⁹ and from Green Recovery to a Just Transition,¹⁸⁰ the pandemic is pushing humanity to

¹⁷⁴ See: <https://www.un Geneva.org/en/news-media/meeting-summary/2020/09/human-rights-council-holds-biennial-panel-right-development-and>

¹⁷⁵ Ibid.

¹⁷⁶ Indeed, some of the most successful examples of global solidarity and international cooperation in tackling the COVID-19 pandemic have been led by the global South. See for instance, <https://timesofindia.indiatimes.com/india/long-list-of-countries-to-receive-indias-gift-of-covid-vaccines/articleshow/80514411.cms> reporting on India's cooperation with numerous countries in providing vaccines, including millions free of cost; <https://www.nbcnews.com/news/latino/cuba-sends-white-coat-army-doctors-fight-coronavirus-different-countries-n1240028>, reporting on Cuba's provision of doctors to over 40 countries during the pandemic.

¹⁷⁷ Obiora Okafor, *Solidarity Key to Post COVID-19 Response*, 28 April 2020, available at <https://www.openglobalrights.org/solidarity-key-to-post-covid-19-response/?lang=English>

¹⁷⁸ The Earth Charter, available at <https://earthcharter.org/read-the-earth-charter/>

¹⁷⁹ Speech by UN Secretary-General António Guterres at Davos World Economic Forum, 24 January 2019, available at <https://www.weforum.org/agenda/2019/01/these-are-the-global-priorities-and-risks-for-the-future-according-to-antonio-guterres/>

¹⁸⁰ See reports of the Special Rapporteur on Extreme Poverty and Human Rights, “The ‘just transition’ in the economic recovery: eradicating poverty within planetary boundaries”, A/75/181/REV.1;

pursue transformative changes at a deeper level, to heal from its pain and suffering, to reach new heights in economic, social and environmental justice, including racial justice. Operationalizing the RtD will be an indispensable cog in the wheel to take us there, as among many relevant provisions in point, the DRTD mandates appropriate economic and social reforms with a view to eradicating all social injustices. The DRTD is a deeply interwoven thread in the inextricable web of peace, human rights and development, human dignity and humanity, global solidarity, shared responsibility and international cooperation. It is key to reimagining and reshaping, recovering and rebuilding our global economic system for all people in all countries, and our planet, our common home. In her lecture delivered while accepting the 2004 Nobel Peace Prize, Wangari Maathai noted: In the course of history, there comes a time when humanity is called to shift to a new level of consciousness, to reach a higher moral ground. A time when we have to shed our fear and give hope to each other. That time is now.¹⁸¹

Seventeen years later, as a discordant and fragmented world enters an uncertain 2021 amidst the COVID-19 pandemic and its ruthless impacts on societies, this message could not have been more pertinent.

“Looking back to look ahead: A rights-based approach to social protection in the post-COVID-19 economic recovery”, available at <https://www.ohchr.org/Documents/Issues/Poverty/covid19.pdf>

¹⁸¹ Wangari Maathai, 2004 Winner of the Nobel Peace Prize, Nobel Lecture, <https://www.nobelprize.org/prizes/peace/2004/maathai/26050-wangari-maathai-nobel-lecture-2004/>