

# SOLIDARITY AS A HUMAN RIGHT? REFLECTIONS ON THE DRAFT DECLARATION ON HUMAN RIGHTS AND INTERNATIONAL SOLIDARITY

JASPER KAMRADT\*

*This Comment critically examines the Draft Declaration on Human Rights and International Solidarity, focusing on international solidarity as a human right. First, it briefly surveys the status of solidarity in international law and compares it to its status under the law of the European Union. Then, it questions the feasibility and desirability of recognizing this right, discussing its implications and recent revisions, including those made in light of the climate crisis. The Comment concludes by addressing the practical challenges of applying solidarity and its impact on international cooperation.*

I.	INTRODUCTION . . . . .	779
II.	SOLIDARITY: A BRIEF OVERVIEW. . . . .	780
	A. <i>Origins</i> . . . . .	780
	B. <i>The Status of Solidarity in International Law</i> . . . . .	781
	C. <i>A Comparative Perspective: Solidarity within the European Union</i> . . . . .	782
III.	THE DRAFT DECLARATION FOR THE RIGHT TO INTERNATIONAL SOLIDARITY . . . . .	783
	A. <i>Background</i> . . . . .	783
	B. <i>The Revised Draft Declaration on Human Rights and International Solidarity</i> . . . . .	785
	C. <i>International Solidarity as a Human Right?</i> . . . . .	787
IV.	CONCLUSION & OUTLOOK . . . . .	791

## I. INTRODUCTION

Whenever there is a crisis, there is a call for solidarity. But what does solidarity, or, more precisely, the call for such mean? Is the call for solidarity or the demand to act in solidarity merely a phrase that feigns political action but ultimately fails to produce anything concrete? Or does solidarity involve more – even a legal duty to act in solidarity?

---

\* Jasper Kamradt is an LL.M. Candidate (International Legal Studies) at New York University School of Law and a Research Assistant at Humboldt-University, Berlin.

Solidarity as a concept is commonplace. Yet, its legal implications are far from understood. Does solidarity conjure rights and duties? If so, on whom? Currently, the Human Rights Council has before it a revised Draft Declaration on Human Rights and International Solidarity. Proponents of this Draft Declaration argue that international solidarity should be recognized as a human right. Its opponents point out that a definition of solidarity remains elusive, and as long as its content is not defined, it should not and cannot become a human right.

This Comment will explore both sides of the argument. It will begin by offering an introduction to solidarity, its historical foundations, and its existing position within international law (Section II.1 and II.2). A comparative analysis of the concept of solidarity as applied within areas of the European Union will follow (Section II.3). Subsequently, an evaluation of the current draft declaration on human rights and international solidarity will be conducted (Section III.1). In doing so, the present challenges facing international solidarity will be illuminated while raising questions regarding the feasibility and desirability of recognizing international solidarity as a human right (Section III.2). It concludes with an outlook and the prospective next steps for international solidarity.

## II. SOLIDARITY: A BRIEF OVERVIEW

### A. *Origins*

As a legal principle, solidarity dates back to ancient Rome, gaining traction in the French Revolution with the notion of *fraternité*.<sup>1</sup> Semantically, solidarity usually presupposes (reciprocal) obligations to act, to tolerate, and to refrain. It encompasses the nature and extent of the integration of one society or group vis-à-vis another. Thus, the concept of solidarity is understood as a mutual dependence of societies' members on each other as well as an altruistic design principle for the state, economy, and society.<sup>2</sup> Leon Duguit heaved this idea into the normative, arguing that there exists a social obligation for everyone "to fulfill a

---

1. Karl-Peter Sommermann, *Some Reflections on the Concept of Solidarity and its Transformation into a Legal Principle*, 52 ARCHIV DES VÖLKERRECHTS 10, 11 (2014).

2. Dieter Grimm, *Solidaritätsprinzip*, in EVANGELISCHES STAATSLERIKON Bd. II 3143 (1987).

certain mission and the power to perform the acts required for the accomplishment of this mission.”<sup>3</sup> The normative implications of solidarity remain nonetheless elusive as the following section will show.

### B. *The Status of Solidarity in International Law*

In his May 2023 report to the Human Rights Council, the independent expert on human rights and international solidarity, Obiora Chinedu Okafor, stipulated that solidarity is an “essential principle in contemporary international law”.<sup>4</sup> By contrast, Article 38(I)(c) of the Statute of the International Court of Justice refers to “general principles of law” as one of the main sources of international law, with such “general principles” currently being defined by the International Law Commission. The Commission notably does not mention solidarity in its reports.<sup>5</sup>

Yet, certain scholars posit solidarity as an integral international legal principle, with the latter seeing it as foundational for state cooperation.<sup>6</sup> Abdul G. Koroma, former Judge of the International Court of Justice, emphasizes the role of solidarity in guiding states toward common good actions.<sup>7</sup> Conversely, others view solidarity as aspirational without concrete legal worth, lacking “characteristics of legality”.<sup>8</sup> In essence, while solidarity does not yet establish specific legal rights and obligations, its broad applicability in various areas of international law, including international environmental law, allows for the

---

3. Kostiantyn Gorobets, *Solidarity as a Practical Reason: Grounding the Authority of International Law*, 69 NETHERLANDS INT’L L. REV. 3, 6 (2022).

4. Obiora Chinedu Okafor, Rep. of the Indep. Expert on Hum. Rts. and Int’l Solidarity, Revised Draft Declaration on Hum. Rts. and Int’l Solidarity, ¶ 6d, UN Doc. A/HRC/53/32 (May 2, 2023) [hereinafter Revised Draft Declaration].

5. Rep. of the Int’l L. Comm’n, ¶ 90ff, UN Doc. A/77/10 (Aug. 4, 2023).

6. Rüdiger Wolfrum, *Solidarity Amongst States: An Emerging Structural Principle of International Law*, 49 INDIAN J. INT’L L. 8, 9 (2009); Ronald St. MacDonald, *Solidarity in the Practice and Discourse of Public International Law*, 8 PACE INT’L L. REV. 259 (1996).

7. Abdul G. Koroma, *Solidarity: Evidence of an Emerging International Legal Principle*, in COEXISTENCE, COOPERATION AND SOLIDARITY: LIBER AMICORUM RÜDIGER WOLFRUM 103, 109 (Hestermeyer, K. et al. eds., 2012).

8. Gorobets, *supra* note 3, at 12.

formulation of progressive norms.<sup>9</sup> The credibility of solidarity in international law derives not only from the reinforcement of the existing paradigm of international cooperation.<sup>10</sup> Rather, solidarity also holds the potential to formulate new norms for progressive development that embody the normative essence of this principle.

C. *A Comparative Perspective: Solidarity within the European Union*

The European Union's (EU) framework offers a comparative perspective as well as insights on the justiciability or legal value of international solidarity.

Although the idea of solidarity was already present at the inception of the European Coal and Steel Community—Robert Schuman called for a *solidarité de fait*<sup>11</sup>—solidarity as a principle long remained on the sidelines of the economically expanding and integrating ever-closer Union. Today, however, some describe solidarity as an inherent, constitutive idea of European integration.<sup>12</sup> The term “solidarity” itself is mentioned seventeen times within the Treaty of the European Union and the Treaty of the Functioning of the European Union. Importantly, however, there is not a single definition of what solidarity within this framework means, leading some scholars to argue that solidarity may be a guiding principle rather than having effective, justiciable value.<sup>13</sup> A recent decision by the CJEU may point in

---

9. MacDonald, *supra* note 6, at 282–290; see Angela Williams, *Solidarity, Justice, and Climate Change Law*, 10 MELBOURNE L. J. 493, Part IV (2009) (regarding solidarity in relation to climate change).

10. Cf. ANNELIESE SCALZO ET AL., INTERNATIONAL SOLIDARITY IN INTERNATIONAL HUMAN RIGHTS LAW 9–10 (2021).

11. Robert Schuman, French Foreign Minister, The Schuman Declaration, ¶ 3 (May 9, 1950).

12. Christian Calliess, AEUV Art. 222 [1], in CHRISTIAN CALLIESS & MATTHIAS RUFFERT, EUV/AEUV KOMMENTAR (6th ed. 2022); see, e.g., J.H.H. Weiler, *A Constitution for Europe? Some Hard Choices*, 40 J. COMMON MKT. STUD. 563, 565–69 (2002) (regarding the debate surrounding the term “European Constitution”).

13. Koen Lenaerts & Stanislas Adam, *La Solidarité, Valeur Commune Aux États Membres et Principe Fédératif de l'Union Européenne*, 57 CAHIERS DE DROIT EUR. 307, 384f. (2021).

a different direction: the OPAL Case, dealing with solidarity within Energy Law.<sup>14</sup>

In the OPAL case, the Court recognized a violation of the “spirit of solidarity” because Germany did not consider Poland’s interests sufficiently while constructing a gas pipeline from Russia to Germany. The Court held that in the “spirit of solidarity,” Member States of the European Union must take the interests of other Member States into account when advancing their interests in the realm of European Energy Law.<sup>15</sup> Importantly, the Court further held that solidarity, as a general principle of EU law, is justiciable.

What’s the takeaway? A solidarity provision need not be specific to obtain legal value. The fact that the concept of solidarity itself entails such a broad notion is not to its detriment in this case; rather, it is an advantage. This judgment constitutes a shift in the perception of solidarity within the European Union: From a merely political, ambitious statement to a principle with justiciable character. Yet, the question remains: how can such a principle be justiciable without a clear definition? Though the CJEU has (significantly) more competence to establish such justiciability, the key takeaway from this comparative perspective remains that solidarity may obtain a justiciable meaning, leaving room for “solidarity litigation”. It remains to be seen whether this can have an implication for international solidarity.

### III. THE DRAFT DECLARATION FOR THE RIGHT TO INTERNATIONAL SOLIDARITY

#### A. *Background*

Against the backdrop of ever-increasing globalization and the change of the millennium, the U.N. Commission on Human Rights passed resolution 2002/73, recognizing, *inter-alia*, the so-called “third-generation” human rights, including the rights to solidarity in April 2002.<sup>16</sup> Accordingly, the Sub-Commission

---

14. Treaty on the Functioning of the European Union, art. 194(I); Case C-848/19 P, Fed. Republic of Ger. v. Republic of Pol., European Comm’n.

15. For a critical analysis of the Ruling, see Anatole Boute, *The Principle of Solidarity and the Geopolitics of Energy: Poland v. Commission (OPAL Pipeline)*, 57 COMMON MARKET L. REV. 889, 898 (2020).

16. See Commission on Human Rights Res. 2002/73, ¶ 11, §§ 5,6 (Apr. 25, 2002).

on the Promotion and Protection of Human Rights tasked Rui Baltazar Dos Santos Alves with drafting a working paper assessing the status of international solidarity as a human right. Alves premises his working paper with the assumption that, as the Commission recognized several primary sources of international human rights law,<sup>17</sup> “the right to solidarity would operate under the “moral legitimacy” of those international instruments”.<sup>18</sup> However, already Alves characterizes the meaning of the expression “rights of solidarity” as too vague since its legal value is put into question by referring to solidarity as a “duty” rather than a right.<sup>19</sup> The split decision in voting on both resolutions of the Commission, which corresponds roughly with States from the Global North vs. States from the Global South developed (against) and developing nations (in favor), was also recognized.<sup>20</sup>

Then, in 2005, the Commission on Human Rights established a mandate for an Independent Expert on human rights and international solidarity. Therein, the independent expert was “to study the issue and prepare a draft declaration on the right of peoples to international solidarity”.<sup>21</sup> This draft declaration was submitted to the (now) Human Rights Council in 2017 by the second Independent Expert, Virginia Dandan. However, the above-mentioned looming skepticism remained as indicated by the votes in the Human Rights Council.<sup>22</sup> Mainly, the fundamental question regarding the nature of solidarity as a human right was raised. Specifically, the question was raised whether a right could be based on morals and reason, and if such a right could be justiciable. Dandan countered by arguing that the validity of a legal argument is not deduced by its origins

---

17. Namely, the Charter of the United Nations, the Declaration on the Right to Development, the ICESCR as well as the United Nations Millennium Declaration.

18. UN, Economic & Social Council, Specific Human Rights Issues: New Priorities, in Particular Terrorism and Counter-Terrorism, Human Rights and International Solidarity Working Paper Submitted by Rui Baltazar Dos Santos Alves, ¶ 4, UN Doc E/CN.4/Sub.2/2004/43 (June 15, 2004).

19. *Id.* at ¶ 25ff.

20. *Id.* at ¶ 5.

21. UN Commission on Human Rights., Human Rights Res. 2005/55, UN Doc E/CN.4/RES/2005/55, ¶ 7 (Apr. 20, 2005).

22. Virginia Dandan (Independent Expert on Human Rights and International Solidarity), Hum. Rts. and Int'l Solidarity, ¶ 23, General Assembly, UN Doc A/71/280 (Aug. 3, 2016).

but rather by its reception upon introduction to the international community.<sup>23</sup>

In short, the Draft Declaration seeks to establish a link between human rights and international solidarity. The international community's reception, however, was negligible, presumably due to the fact that it was, and still is, merely a draft; neither the Human Rights Council nor the U.N. General Assembly has cast a vote. Following the COVID-19 Pandemic and the exacerbation of other global crises, such as climate change, the Draft Declaration was revised and updated by the third independent expert, Obiora C. Okafor. After including an expert advisory group and consultations with UN Member States and other stakeholders, the second draft was submitted to the Human Rights Council in May 2023.<sup>24</sup>

The following part will highlight and comment on select issues of this revised declaration.

#### B. *The Revised Draft Declaration on Human Rights and International Solidarity*

The report illuminates the attitude of the Members of the Council and other stakeholders to certain aspects of the right and, therefore, may shed some new light on the status of solidarity in international law. The preamble embeds the connection between human rights and international solidarity squarely within the main human rights documents, States' commitment to development, and multiple United Nations General Assembly Resolutions.<sup>25</sup> The operative section entails ten articles, and is divided into three parts, ranging from definitions to addressees to implementation.<sup>26</sup> Though the preambulatory paragraphs give the declaration context, the focus should lie on the Articles themselves.

Article 1 of the Draft Declaration defines international solidarity as "an expression of unity by which peoples and individuals enjoy the benefits of a peaceful, just and equitable

---

23. *Id.* at ¶ 29.

24. Revised Draft Declaration, *supra* note 4.

25. *Id.* at Annex I.

26. The three parts being Definition and Scope (Part I, Articles 1–3), International Solidarity as a right and a duty, framing the Addressee (Part II, Articles 4–5), and Implementation (Part III, 7–10).

international order, secure their human rights and ensure sustainable development.” The broad scope of this provision (critics would argue its elusiveness) becomes immediately apparent. Nevertheless, Article 2 seems to try to elucidate some of the issues by dividing international solidarity into three distinct categories: preventive solidarity (Article 2(1)), reactive solidarity (Article 2(2)), and international cooperation (Article 2(3)).

Reactive solidarity seems to be the most specific of the three categories. Pursuant to Article 2(2), it is “characterized by collective and individual actions to respond to and solve global challenges”. Those challenges include, *inter alia*, environmental degradation, and climate change. Together with international cooperation (Article 2(3)), this type of solidarity could be useful to further support global climate action. According to Okafor, the principle of reactive solidarity was clarified to better reflect possibilities where States can cooperate in solidarity.<sup>27</sup>

Article 3 continues the theme of expansive application. It ranges from fostering peace and security (1), to reducing asymmetries between States (2), refugees (4), to combating violence against women and the use of gender stereotypes (9). Importantly in Section (5), the Article mentions the issue of capacity building between States to address climate change as well as “adequate compensation” for human rights violations. The independent expert has amended this article to expand the objectives of solidarity in order to better address issues like climate change. While assessing the (broad) scope of this Article, it becomes apparent how vast the scope of solidarity must be to be an effective tool. Compared to individual “rights of the first and second generation”, rights of the “third generation” become broader as they seek to address the underlying issue. Meanwhile, individual rights, such as the right to health (Article 12 ICESCR) or freedom of expression (Article 19 ICCPR) remain more specific—a stark contrast to the rights of the third generation.<sup>28</sup>

Articles 5 and 6 deal with the addressees, as well as the right-holders and/or duty-bearers: “All States have the duty to respect (...) international solidarity” (Article 6(2)). Having a

---

27. Revised Draft Declaration, *supra* note 4, at ¶ 22.

28. See Philip Alston, *A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?*, 29 NETH. INT’L L. REV. 307 (1982).



duty to foster solidarity would entail that States must care for both positive and negative solidarity, which would not only require States to be reactive but also to act preemptively. All these broad concepts may be given full effect via legislative, administrative, budgetary, or other measures within both the international and the national realm of States, as per Article 8 regarding the implementation. Mindful of State sovereignty, the declaration does not specify how obligations of solidarity shall be vernacularized from the international to the national sphere. Notably, though, Article 8(2) establishes a due diligence standard. According to Okafor, this standard is “sensitive to the varying capacities of States as a way of addressing variable State responsibility for actions or omissions affecting human rights”.<sup>29</sup> This recalls the approach of common but differentiated responsibilities of international environmental law,<sup>30</sup> though it remains questionable whether this approach should be transplanted from international environmental law to international human rights law.

In sum, the revised draft declaration on human rights and international solidarity covers lots of ground. Yet, this is not unusual as virtually all issues of a global scale require cooperation, which is premised on solidarity. The independent expert tries to accommodate both the views of the Global North (remaining critical of such right) and the Global South (advocating for its inception).<sup>31</sup> What follows will be an assessment of the revised draft by analyzing its scope and the implications of certain provisions, as well as testing whether or not solidarity could actually be considered a human right if it is arguably not even a general principle of international law.

### C. *International Solidarity as a Human Right?*

The nature of the main revisions to the draft declaration was heavily influenced by the current developments in climate change (both physical and legal). For example, Okafor explicitly added climate change to be encompassed by reactive

---

29. Revised Draft Declaration, *supra* note 4, at Annex II, ¶ 33.

30. See Ellen Hey & Sophia Paulini, *Common but Differentiated Responsibilities*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT’L L., ¶¶ 4–8, 20 (Oct. 2021).

31. Revised Draft Declaration, *supra* note 4, at ¶¶ 7–12.

solidarity.<sup>32</sup> Though one could laud the effort of the independent expert to support climate change litigation by adding new legal tools to the metaphorical toolbox, questions regarding the feasibility of these efforts remain. What's the purpose of this draft declaration – To establish the human right to international solidarity? Would that be sensible or further the cause of international cooperation? If we take this ambition seriously, the focal point is twofold—first, *can* international solidarity be a human right; and second, *should* international solidarity be a human right?

In addressing the first question, we must establish what makes a right or a value a human right. Of course, this question is part of considerable debate and a matter of substantial difficulty,<sup>33</sup> leading *inter alia* to the critique of “human rights inflation”<sup>34</sup> Yet, several “justificatory tests”<sup>35</sup> have been developed to prove that a right is a human right.<sup>36</sup> These tests exist next to the fact that it is, ultimately, up to the States to agree whether a right will become a human right. One of these tests is also applied by the independent expert. Okafor chose a procedural approach devised by Philip Alston in 1984<sup>37</sup> consisting of four main categories/steps: (1) gather input from a variety of sources; (2) ensure this input addresses the issues raised by the sources; (3) include several reflection and revision phases; and finally, (4) gather expert input. After these four procedural steps have been completed, the Human Rights Council would adopt a recommendation for the General Assembly, upon which the General Assembly would consider the matter and put it to a vote. Only then could the new human right be proclaimed.<sup>38</sup>

---

32. *Id.* at ¶¶ 6d, e.

33. James Nickel, *Human Rights*, in *The Stanford Encyclopedia of Philosophy*, § 2 (Edward N. Zalta ed., Fall 2021 ed., 2021).

34. Rosa Freedman & Jacob Mchangama, *Expanding or Diluting Human Rights?: The Proliferation of United Nations Special Procedures Mandates*, 38 HUM. RTS. QUARTERLY 164, 183–186 (2016).

35. *Id.*

36. Nickel, *supra* note 33 (citing, *inter alia*, ALAN DERSHOWITZ, *RIGHTS FROM WRONGS: A SECULAR THEORY OF THE ORIGINS OF RIGHTS* (2004)) (“For example, it could be required that a proposed human right not only protect some very important good but also respond to one or more common and serious threats to that good”).

37. See Philip Alston, *Conjuring Up New Human Rights: A Proposal for Quality Control*, 78 AM. J. INT’L L. 607, 619–620 (1984).

38. *Id.* at 620.

Regarding the proposed human right of international solidarity, the independent expert convincingly answers steps (1), (3), and (4) in the affirmative.<sup>39</sup> However, the issues under step (2) remain. At this inflection point, the questions of *can* and *should* converge. Only if we understand the qualitative and substantive issues<sup>40</sup> raised (the *should*) can we affirm the procedural test. Aside from the general debate alluded to above,<sup>41</sup> the debate surrounding the draft declaration raises several distinct objections, arguing that international solidarity should not be a human right. The objections range from its inherent unsuitability to its elusiveness and the lack of common and widespread international support.<sup>42</sup>

The allegation that solidarity is inherently unsuitable to become a human right rests on the premise that it deviates from the traditionally understood structure and aim of human rights.<sup>43</sup> The independent expert counters essentially by arguing that, upon closer inspection, the traditional understanding of the human rights structures is not as homogenous as it may appear.<sup>44</sup> To further support this argument, we have to bear in mind that solidarity would be part of the third generation of human rights—one that is characterized by collective, evolving, and expansive rights, emphasizing international cooperation and the need to address systemic inequalities.<sup>45</sup> Although international solidarity is not typically referred to as a right of the third generation, it shares many of these characteristics, allowing transplantation of the supporting arguments. Due to this characterization, more natural than dogmatic in approach, it is at least worth questioning whether the traditional framework should apply to this “generation”.<sup>46</sup> Further, similar rights that faced similar opposition have already been proclaimed as new

---

39. Revised Draft Declaration, *supra* note 4, at ¶¶ 27, 29–30.

40. *Alston*, *supra* note 37, at 619.

41. See discussion, *supra*, on § II.2.

42. Revised Draft Declaration, *supra* note 4, at ¶ 14.

43. See PAOLO CAROZZA & LUIGI CREMA, ON SOLIDARITY IN INTERNATIONAL LAW 11 (2014) (also cited by Revised Draft Declaration, *supra* note 4, at ¶ 15).

44. Revised Draft Declaration, *supra* note 4, at ¶ 16.

45. Patrick Macklem, *Human Rights in International Law: Three Generations or One?*, 3 LONDON REV. INT’L L. 61, 62–68 (2015).

46. Steven Jensen, *Putting to Rest the Three Generations Theory of Human Rights*, OPEN GLOBAL RIGHTS (Nov. 15, 2017) <https://www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/>.

human rights—the right to development<sup>47</sup> and the right to a healthy environment.<sup>48</sup>

What's more, the objection remains that solidarity is too elusive to become an actionable (i.e., justiciable) human right. On the face of it, this objection is hard to contest. For example, this argument also prevails, as shown above in the Law of the European Union and the debate surrounding its status in international law. Here, Okafor reasons that, sooner or later, all rights become vague and indeterminate.<sup>49</sup> He also provides concrete examples of solidarity measures that occurred during the COVID-19 pandemic.<sup>50</sup> Finally, the independent expert ends on a policy argument, questioning the interests of “strong” States *vis-a-vis* “weak” States when it comes to the responsibility to protect versus the right to international solidarity. The former is accepted by States, (purportedly) allowing them to intervene based on human rights, whereas the latter is not. Notably, both arguments rest on the same premise that “the global community is [either] now “thick enough” to transcend State sovereignty to the extent of conferring obligations on foreigners to express pro-human rights solidarity to people in other countries, or it is not”.<sup>51</sup>

These arguments are not, however, entirely persuasive. Invoking Scandinavian realism could seem like a form of “whataboutism”, ignoring the current shortcomings in the operability of international solidarity, one of which is the degree of specificity (operationality) of solidarity either on a national or international level. The CJEU's recent OPAL Case may serve as an example that solidarity has reached, at least in certain regions or areas of law, a degree of specificity that makes it actionable. This conclusion, however, would ignore that the Court did not specify the degree of the solidarity obligations, essentially opening Pandora's box. In this regard, while the abstract criteria of the procedural test may be met, the arguments of the

---

47. G.A. Res. 41/128 (Dec. 4, 1986).

48. U.N. General Assembly, The Human Right to a Clean, Healthy and Sustainable Environment, UN Doc A/76/L.75 (July 26, 2022).

49. Revised Draft Declaration, *supra* note 4 at ¶ 18 (referring to H.L.A. Hart, *Scandinavian Realism*, 14 CAMBRIDGE L.J. 233, 240 (1959)).

50. *Id.* at ¶¶ 21–22; see P. Phutpheng, *The Access to COVID-19 Tools (ACT) Accelerator*, WORLD HEALTH ORG. (last visited Nov. 10, 2023) <https://www.who.int/initiatives/act-accelerator>.

51. Revised Draft Declaration, *supra* note 4, at ¶ 24.

Independent Expert are still unresolved. States would be justified in arguing that international solidarity remains evanescent, even for a right of the “third generation”. To complicate the matter further, another counterargument could be that this would ignore that international solidarity, importantly, does not introduce an entirely new legal framework, but rather, as shown above, is part of existing international law. Yet, its inception of a human right would help disperse some of its uncertainty.

Finally, the question of broad support may be postponed, because until now, a majority of the Human Rights Council supported the draft declaration; however, it has not yet been put to a vote.

This section addressed the question of whether solidarity *can* be a human right by also dealing with the subsequent question of whether solidarity *should* be a human right. While that ultimately remains to be seen, the criteria for Alston’s procedural test are met. Independent expert Okafor observed that the concerns of States had been addressed, fulfilling the abstract requirements. Nevertheless, this section also pointed to the fact that some of the concerns have valid reasons and are not to be ignored. Further rounds of input would be necessary to diminish those concerns. The comparison to other rights of the third generation may prove useful for those seeking to establish international solidarity as a human right. Thus, solidarity *can* be a human right (at least under one of the many tests). The question of whether it *should* be a human right may ultimately only be decided by the Members of the Council.

#### IV. CONCLUSION & OUTLOOK

In conclusion, the examination of international solidarity as a human right reveals a multifaceted and intricate issue. The revisions made by the independent expert to the draft declaration, reflecting contemporary global concerns like climate change, signify a shift in the understanding of human rights. Nevertheless, the practical application of international solidarity, both at the national and international levels, remains a formidable challenge. The CJEU’s OPAL judgment suggests that solidarity may attain a justiciable interpretation, potentially opening the door to what could be termed “solidarity litigation.” However, the absence of a precise definition for solidarity and its elusive conceptual scope still poses (potentially

insurmountable) obstacles to its effective implementation and enforcement.

Looking forward, the acknowledgment of international solidarity as a human right carries significant implications for international cooperation and the development of new legal mechanisms to address pressing global issues, such as climate change. Nonetheless, akin to a mirage, the elusive nature of solidarity persists, offering both sides just enough hope that it either exists or will, upon closer inspection, turn out to be an illusion.