

INTERNATIONAL COOPERATION AND ASSISTANCE AS A LEGAL HUMAN RIGHTS OBLIGATION OF STATES

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Annotation. The article is devoted to the analysis of the legal basis for international cooperation and assistance. The authors consider what international cooperation and assistance entails. They come to conclusion that international cooperation and assistance is not limited by transforming resources from developed states to developing states. It shall be interpreted in a more comprehensive manner. The obligation considered includes the obligations to respect, to protect and to fulfil.

Key words: international cooperation and assistance, the obligations to respect, to protect and to fulfil, human rights, the

International covenant on economic, social and cultural rights (ICESCR), the Committee on economic, social and cultural rights (CESCR), official development assistance (ODA)

Аннотация. Статья посвящена анализу правовой базы международного сотрудничества и содействия. Авторы рассматривают, что включает в себя международное сотрудничество и содействие. Они пришли к выводу, что международное сотрудничество и содействие не ограничено передачей ресурсов от развитых государств развивающимся государствам. Его нужно толковать более широко. Данное обязательство включает в себя обязательства уважать, защищать и выполнять.

Ключевые слова: международное сотрудничество и содействие, обязательство уважать, защищать и выполнять, права человека, Международный пакт об экономических, социальных и культурных правах (МПЭСКП), Комитет по экономическим, социальным и культурным правам (КЭСКП), официальная помощь развитию (ОПР)

Аннотация. Мақола халқаро ҳамкорлик ва кўмак бериш ҳуқуқий базаси таҳлилига бағишланган. Муаллифлар, халқ аро ҳамкорлик ва кўмак бериш ўз ичига нима олишини кўриб чиқишган. Улар, халқ аро ҳамкорлик ва кўмак бериш ривожланган давлатлардан ривожланаётган давлатларга ресурсларни тарқатиш билан чекланмаслиги хусусида хулоса қилишади. Буни кенгроқ талқин қилиш лозим. Мазкур мажбурият ўз ичига ҳам урмат қилиш, ҳам имоия қилиш ва бажариш мажбуриятларини киритади.

Калит сўзлар: халқаро ҳамкорлик ва кўмак бериш, ҳам урмат қилиш, ҳам имоия қилиш ва бажариш мажбуриятлари, инсон ҳуқуқлари, Халқ аро иқтисодий, ижтимоий ва маданий ҳуқуқлари тўғрисидаги Пакт (ХИИМП), Иқтисодий, ижтимоий ва маданий ҳуқуқлар бўйича Қўмита (ИИМҚ), ривожланишга расмий кўмак бериш (РПК)

Article 2.1. Of the International covenant on economic, social and cultural rights (ICESCR) is one of the most important articles, which provides the progressive realization of ESCR to the maximum available resources and through international cooperation. It was the USA

suggested to include “international assistance and cooperation” into the article during the drafting process. The suggestion did not cause much debates and was supported by many state¹. However, at present it constitutes an issue of heated debates in both practice and legal doctrine. A number of the economically developed states claim that it is not a legal obligation. However, the CESCR persistently draws attention of all states parties to the crucial necessity of international assistance and cooperation and recognizes it a legal obligation². Thus, to be more precise, the question is whether international assistance and cooperation is a legal obligation of States parties. In addition, if so, what it entails.

LEGAL BASIS FOR INTERNATIONAL COOPERATION AND ASSISTANCE

Most developed states are of opinion that international assistance is their right but not an obligation. However, the CESCR persistently encourages them to give assistance to developing states. It strongly emphasizes that without international assistance “the full realization of human rights will remain unfulfilled aspiration in many countries” and for this reason recognizes international cooperation and assistance as a legal obligation³.

There are varieties of reasons for the necessity to develop international cooperation and provide international assistance. One of them is poverty. The Committee underlines the crucial role of international assistance and cooperation in eradication of poverty. Promotion of human rights and eradication of poverty are “closely connected and

¹ Scogly, S. Extra-national obligation towards economic and social rights. International Council on Human Rights Policy, 2002. P. 16

²The CESCR, General comment No. 3.

³ The CESCR, General comment 3, para 14

mutually reinforcing”⁴. States “in a position to assist” shall provide assistance to developing countries to eliminate poverty⁵. Poverty reduction shall not be considered as charity or a moral obligation but as a legal obligation⁶. Thus, international assistance is a legal obligation derived from another international legal obligation, i.e. the obligation to reduce poverty.

Moreover, the Committee notes that in some cases the developed states are not only responsible but shall be interested in giving assistance to the poorer states. For instance, if it relates to the field of health care, especially in the times of emergency. Given the possibility of transmission of some deceases, the economically developed states shall assist to developing states in this regard⁷.

International cooperation and assistance is an obligation derived from not only political commitments, ethical values and national interests. It derives from international law as well⁸. In this respect, the CESCR refers to the following legal treaties, from which this obligation is derived⁹:

- UN Charter;
- Principles of international law;
- Provisions of the Covenant itself ;
- The Declaration on the right to development;

Indeed, one of the purposes of the UN proclaimed in its Charter is “international cooperation in solving international problems of an economic, social , cultural and humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for

⁴Principles and guidelines for a human rights approach to poverty reduction strategies, OHCHR, 2006. P. 6

⁵The CESCR, General comment 3, para 14

⁶Hunt, P., Novak, M., Osmani, S., Human rights and poverty reduction, OHCHR, 2004. P. 41

⁷The CESCR, General comment 14, para 40

⁸Gostin, L., Archer, R., The duty of states to assist other states in need: ethics, human rights and international law, Georgetown university law centre, 2008. P. 4

⁹The CESCR, General comment 3, para 14

all without distinction as to race, sex, language, or religion” (article 1, para 3). Article 55 of the UN Charter determines “solutions of economic, social, health and related problems” as one of the purposes and article 56 obligates states to cooperate with each other to achieve this purpose. The idea was developed in the Declaration on principles of friendly relations and cooperation among states which reaffirms that “States should co-operate in the economic, social and cultural fields” and for the “promotion of economic growth throughout the world, especially that of the developing countries”. Thus, international cooperation is not only one of purposes of the UN, but also one of the generally recognized principles of international law.

These provisions are complemented by the ICESCR. A number of its provisions directly refer to international cooperation and assistance. In particular, articles 11, 15, 21 and 22 underline the importance of international cooperation on the realization of ESCR. The same is stressed in the Declaration on the right to development 1986, the preamble of which states that the promotion of human rights directly depends on the international economic order.

In this respect, two more Conventions should be mentioned. They are the Convention on the Rights of the Child (CRC), in particular article 4, and the Convention on the rights of person with disabilities (CRPD) contains similar provisions, in particular, articles 4 and 32, which obligate states to undertake measures for the implementation of the rights “where needed, within the framework of international cooperation”. Two Optional Protocols to the CRC also contain provisions related to international cooperation.

In addition, a number of sources of soft law reaffirm the importance of international cooperation and assistance. In particular, the Vienna declaration and Programme of actions which states, “Substantial progress in human rights

endeavours international cooperation” (para 10) as well as UN Millennium Declaration also proclaims international cooperation as “one of the fundamental values in international relations in the 21st century” (para 1 (6)) and highlights “shared responsibility for managing economic and social development”. Moreover, the Limburg principles on the implementation of the ICESCR obligates states “to cooperate with one another to promote ... the economic growth of developing countries” (para 31) as well as the Maastricht principles on extraterritorial obligations of states in the area of ESCR, adopted in 2011. Maastricht Principles define in detailed the scope of extraterritorial obligations of states with regard to ESCR.

It is also noted that the Optional protocol to the ICESCR will contribute to the general recognition of the extraterritorial obligations with regard to ESCR.¹⁰

Therefore, there are a number of international treaties, which imply the obligation for international cooperation and assistance. They obligate developed states to provide assistance to developing states. However, it is important to point out that no treaty diminishes the responsibility of developing states themselves for fulfilment of their obligations under human rights treaties. First, it is necessary to provide good governance within each country. That was emphasized in the UN Millennium Declaration as well as in the Brussels Declaration adopted in the Third UN Conference on the least developed countries in 2001. It is a responsibility of a state itself to provide the effective implementation of human rights treaties. International assistance may just complement, where needed, efforts taken by a state itself on the national level.

Thus, as demonstrated above, international cooperation and assistance is recognized as a legal obligation not only in

¹⁰Courtis, Ch., Sepulveda, M., Are extraterritorial obligations reviewable under the Optional protocol to the ICESCR. 2009.

a number of Declarations (soft law) but also in legally binding international treaties (hard law). Nevertheless, there is still disagreement that international cooperation and assistance is a legal obligation. One of the issues of debates is whether this obligation implies that developed states shall provide resources for developing states. That is the reason for unwillingness of some states to recognize this obligation as a legal one. To be more precise, states recognize the obligation for international cooperation, but there is no one generally recognized understanding of the extent of this obligation.¹¹For this reason, the second part of the paper will consider what international cooperation and assistance entails.

WHAT INTERNATIONAL COOPERATION AND ASSISTANCE ENTAILS

The classic notion of obligations restricted human right obligations by the negative obligation to refrain from interference¹². However, at present human rights obligations are interpreted in a more comprehensive manner¹³. They include not only the negative obligation to abstain from actions, but also the positive obligation to provide the rights¹⁴. To put in other words, at present it is recognized that international assistance and cooperation implies obligations to respect, to protect and to fulfil¹⁵.

The obligation to respect obligates states to abstain from any actions, which may violate human rights, the obligation to protect implies the protection against third parties, and the obligation to fulfil implies a positive

¹¹Gostin, L., Archer, R.,The duty of states to assist other states in need: ethics, human rights and international law, Georgetown university law centre, 2008. P. 4

¹² Iscogly, S. Extra-national obligation towards economic and social rights.International Council on Human Rights Policy, 2002. P. 2

¹³Ibid. P. 3

¹⁴Ibid. P. 4

¹⁵ Maastricht principles on extraterritorial obligations of states in the area of economic, social and cultural rights, 2011.

action¹⁶. The latter is frequently interpreted as development assistance (ODA) which requires resources to be transformed from developed countries to developing ones¹⁷. In this respect, Vandenhole notes development cooperation is a part of international cooperation. International cooperation includes obligation to respect, protect and fulfil while development cooperation is focused on the obligation to fulfil. Furthermore, the first two obligations – to respect and to protect – are directly derived from the legally binding international treaties and they do not cause much debates. However, the obligation to fulfil is “legally the most difficult to prove”¹⁸.

The obligation for international cooperation has legal consequences for both developed and developing states. According to the Maastricht principles, it implies the obligation to provide assistance on the one hand (para 33), and the obligation to seek assistance on the other hand (para 34). The first one relates to developed states, the second one is more relevant to developing states.

In this respect, the CESCR encourages developing countries to seek this assistance. It obligates states to indicate the nature and extent of any international assistance they need in their reports (General Comment No. 1, para 3). More specifically, in General Comment No. 2, para 10, it recommends states to identify in their reports any particular needs for technical assistance or development cooperation. The CESCR stresses that international cooperation is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the

¹⁶ Scogly, S. Extra-national obligation towards economic and social rights. International Council on Human Rights Policy, 2002. P. 14

¹⁷ Ibid., P. 11

¹⁸ Vandenhole, W. Is there a legal obligation to cooperate internationally for development? International journal on Children's rights, 2007. P. 2

Covenant, in particular, to provide the rights of persons with disabilities¹⁹ and older persons²⁰.

With the end to provide a better understanding of international obligations, the Committee has determined what international cooperation and assistance entails with respect to specific rights. In particular, the CESCR defined international obligations of state with regard to the right to housing (General comment No. 4, para 13), the right to education (General comment No. 11 para 9 and General comment No. 13, para 56), the right to food (General comment No. 12, para 17, 36, 37), right to health (General comment No. 4, para 38-42), the right to water (General comment No. 15, para 30-36), the right to work (General comment No. 18, para 29 -30), the right to social security (General comment No. 19, para 52-58).

With respect to all ESCR, the CESCR obligates states:

- To refrain from actions that interfere, directly or indirectly, with the enjoyment of ESCR;

- To give due attention in international agreements²¹. International agreements concluded between states shall be in conformity with their obligations under international human rights treaties²². It relates to all agreements between states. More specifically, it is if the failure of a state to take into account its international legal obligation regarding the right to food when entering into agreements with other states or with international organizations constitute a violation of the right to food²³.

One more specific obligation in the context above is the obligation of developed states to allocate at least 0.7 of their GDP on development assistance. This obligation is derived

¹⁹The CESCR, General comment No. 5, para 13.

²⁰ The CESCR, General comment No. 6, para 18

²¹ It is set forth in all General Comment mentioned above

²² Principles and Guidelines for a Human Rights Approach to Poverty Reduction strategies, OHCHR, 2006, para 105

²³ The CESCR, General comment No. 12, para 19

from a number of political commitments but not from legal treaties. In this respect, it is recommended to strengthen this obligation by providing strong legal basis²⁴.

The CESCR emphasizes the importance of international cooperation and assistance in the times of emergency. Indeed, this obligation is of great importance in the states of emergency such as armed conflicts or natural disasters. At present, development aid is declining, while aid given in humanitarian assistance is growing²⁵. In the situations of emergency states may face difficulties to provide even minimum level of ESCR, for example the right to food. Thus, they shall seek for assistance where needed. They also have burden of proving in showing that it has unsuccessfully sought to obtain international support²⁶. States in a position to assist shall provide assistance. It will be humanitarian assistance. Moreover, in this case assistance may be given without the consent of the government concerned²⁷. It is noteworthy that in some cases states are obligated not only to seek, but also to accept assistance and the refusal will be considered as a violation²⁸.

Thus, the CESCR has contributed much to recognition of international assistance as a legal obligation. It not only has clearly defined the fulfilment obligations, but also it has equally elaborated on the obligations to respect and to protect ESCR in third countries²⁹. Vandenhole notes that compared with the CRC Committee the CESCR provides

²⁴ Vandenhole, W. Is there a legal obligation to cooperate internationally for development. *International journal on Children's rights*, 2007. P. 8

²⁵ Luopajarvi, K. Is there an obligation on states to accept international humanitarian assistance to internally displaced persons under international law. *Oxford university press*, 2003. P. 712

²⁶ Ibid, P. 707

²⁷ Ibid, P. 678.

²⁸ Ibid, P. 696

²⁹ Vandenhole, W. Is there a legal obligation to cooperate internationally for development. *International journal on Children's rights*, 2007. P. 6

more comprehensive interpretation of international cooperation and assistance:

The CRC Committee has mainly focused on an extraterritorial obligation fulfil-provide... the practice of the ICESCR Committee indicates that a much broader range of extraterritorial obligations could be pointed out to states parties.³⁰

To sum up, international cooperation and assistance provided in article 2 of the IESCR as legal obligation includes the obligations to respect, to protect and to fulfil. As demonstrated above, there are no debates with regard to recognition the obligations to respect and to protect as legal ones but the obligation to fulfil cause controversy. Therefore, the extent of this obligation shall be elaborated more detailed and determined by law in order to avoid misunderstanding.

CONCLUSION

Given that international assistance and cooperation is set forth in a number of international treaties, both Declarations and legally binding international treaties, it may be concluded that it is a legal obligation.

The obligation for international cooperation and assistance imposes obligations not only on developed states but also on developing states. The CESCR underlines it does not diminish responsibility of developing states for the effective implementation of the ICESCR. International assistance shall complement to a certain extent national efforts taken to provide human rights where needed.

International cooperation and assistance is not limited by transforming resources from developed states to developing states. It shall be interpreted in a more comprehensive manner. A narrow interpretation of this

³⁰ Ibid., P. 7

obligation cause debates. The obligation considered includes the obligations to respect, to protect and to fulfil.

International cooperation and assistance may be carried out in different forms. It is not reduced to ODA. As stated above, international cooperation and assistance is of great importance in times of emergency.

The CESCR emphasizes that states in a position to provide assistance to poor states. The Committee provides an in-depth interpretation of international cooperation and assistance in general and with regard to specific rights. Its General comments include provisions on international obligations of states with respect to the right to food, health, work, social security, water and education. First, the CESCR obligates states to consider ESCR as a matter of great concern in their international agreements and to refrain from all actions that may cause a violation of ESCR in other countries.

However, the extent of the obligation for international and assistance is still not determined clearly, especially with regard to the content of the obligation to fulfil in the framework of international cooperation and assistance. As stated above, some elements of this obligation are based basically on political commitments of states rather than legal provisions (such as 0.7% target). Thus, it is necessary to clarify its extent and to provide an appropriate legal basis in order to strengthen it.

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