

# The Right to Development and the Duty to cooperate in International law

Documents and publications

Compiled by Giulia Contes, student research assistant, Law & Development  
Research Group, University of Antwerp Faculty of Law

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## Environmental law / Climate change

### International water law

- ❖ Zhao, Y. (2016) [Obligation des États de coopérer en droit international des cours d'eau transfrontaliers : état du droit et étude du cas Chinois](#), Thèse de Doctorat, Université de Montréal. (OA)

The existence of an obligation to cooperate in international law is controversial. Zhao Yue analyses in his thesis the extent of the obligations of the duty to cooperate in international water use management. Zhao Yue focuses on states' practices, more specifically a case study on China's practice, to understand the obligation to cooperate that could be imposed in the field of water use.

The thesis's main sections are (1) a positive study analyzing the normative content of the obligation to cooperate and (2) a constructivist case study of China's water source management and cooperation. In the first part, they notice that the obligation to cooperate incorporated in the principle of sovereignty is a trend that evolved from the law of coexistence to the law of cooperation. In order to evaluate the depth and breadth of the cooperative regimes, they focus on five parameters: the scope, the substantive rules, the procedural rules, the institutional arrangements and the dispute settlement mechanisms. Concerning the case study, China has been criticized for its unilateral approach to developing transboundary waters (one needs to bear in mind that the country is the most essential developing upstream country in the world). However, according to Zhao Yue and his supervisor, one cannot ignore China's recent efforts to establish cooperation with its neighbors. An analysis of China's practice reveals its interpretation of the general obligation to cooperate. It also helps lawyers, practitioners, and policymakers better understand different aspects of this obligation to cooperate in international law. They argue that the identities of China determine its choice of cooperation in the field of transboundary waters. The study concludes that although most of the concerned rules are generally accepted by the international community, the obligation to cooperate remains in customary international law and, consequently, is not binding. The modes of application of the obligation to cooperate result from the evolving process of social construction, varying according to cultural, historical or economic differences. In other words, according to the identities of states. Due to its different view of sovereignty, China has adopted its own style of consultative cooperation mechanism. However, with the evolution of China's identity as a rising superpower in the world, the writers have reason to expect that China, rather than searching for a hegemonic control and adopting a unilateral strategy in the utilization of transboundary waters, would opt for a more cooperative and participative strategy in the future.

**keywords: obligation to cooperate, China, water source management, international law**

- ❖ David J. Devlaeminck (2019), [The Legal Principle of Reciprocity in the Peaceful Management of Transboundary Watercourses: The Duty to Cooperate, Rules of Procedure and Self-Help Measures](#), 59 Nat. Resources J.30. (OA)

David J. Devlaeminck analyzes the legal principle of reciprocity in international water law. More precisely, the author explores the reciprocity's role in the law governing the use of transboundary waters shared by nation-states. In this article, three areas of international water law– the duty to cooperate, the rules of procedure, and dispute settlement – are analyzed through reciprocity.

He concludes that although prevalent in general international law, applying "self-help measures" finds exiguous consideration and practice in international water law. Although such measures may be appropriate in this area, their application and scope may be limited. In terms of the reciprocal structure of international law, the emergence of the duty to cooperate as a possible obligation erga omnes, coupled with the now well-embedded rules of law in this field, may help to explain why.

**keywords: reciprocity, duty to cooperate, self-help measures, water source management, international law**

## **Duty to cooperate and corporations**

- ❖ Davitti, D. (2016). [Refining the Protect, Respect and Remedy Framework for Business and Human Rights and its Guiding Principles](#) in Human Rights Law Review, Volume 16, Issue 1, March 2016, Pages 55–75.

Davitti Daria analyses the current relevance of the United Nations Framework and Guiding Principles for Business and Human Right, as it has been called into question. In order to test their significance and applicability, this article analyses their content and highlights their perceived weaknesses. The article addresses two questions, which remain crucial to any discussion on business and human rights. The first question relates to the first Framework's pillar. It concerns the role of home states: are home states under an obligation to regulate the activities of corporations under their jurisdiction? The second question relates to the second pillar and, within business groups, parent companies' role when subsidiaries violate human rights. When the parent company does not contribute to the abuse, is it under a responsibility to act? By addressing these two questions, the article outlines two currently perceived gaps in the Framework and aims to refine it and render it applicable to the adequate protection of human rights.

**key words: business and human rights, corporations, extraterritorial obligations, due diligence principle, duty of care, UN Framework and Guiding Principles for Business and Human Rights**

## International cooperation

- ❖ Diane Desierto (2020) [Beyond the State: Our Shared Duties to Cooperate to Realize Human Rights during the Evolving Risks of a Global Pandemic](#), EJIL talk, August 20, 2020 (OA)

In her article, Diane Desierto argues that the duties of international cooperation under international human rights law are not to be considered only a duty of States, but also of the private sector, groups, individuals who are all supposed to be both subjects and addressees of the right to development under the 1986 UN Declaration on the Right to Development and the Draft Convention on the Right to Development.

**key words: Draft Convention on the Right to development, duty to cooperate, private sectors, groups, individuals**

- ❖ Fara Yassine (2021) [Principle of Cooperation in the ICESCR: A Duty or Discretion to Cooperate in Times of Pandemic?](#), Berkley Global Society, January 5, 2021 (OA)

The article analyses whether or not there is an existing binding obligation to assist and cooperate in case of pandemics. She concludes that emerging obligations in this domain are not obligations of result. According to her analysis, international cooperation and assistance can be seen as a concept giving rise to due diligence obligations. In terms of Covid-19, such cooperation requires States to fulfill extraterritorial obligations and to share “research, medical equipment and supplies, and best practices in combating the virus.”

**key words: Covid 19, duty to cooperate, assistance, soft-law, binding, pandemics, Article 2 paragraph 1 of the ICESCR.**

## Right to development and Duty to cooperate

- ❖ Vandenhoe, W. (2009). [Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development ?](#) In *The International Journal of Children's Rights* 17(1):23-63 DOI:10.1163/157181808X358267

Wouter Vandenhoe explores in his article several provisions of the Convention on the Rights of the Child, containing references to international cooperation. The article explores whether these references to international cooperation amount to a legal obligation to cooperate for development (in realising economic, social and cultural rights). It does so by analyzing the interpretation given by the Committee on the Rights of the Child and of other human rights treaties which contain similar wording (in particular, the ICESCR Rights and the Disability Convention).

The author emphasizes that while it is not possible to establish the existence of a legal obligation to provide development assistance in general (extraterritorial obligation to fulfil), legal obligations to respect and protect the economic, social and cultural rights of children in third countries do apply. Moreover, the author underlines that the CRC Committee clarified some specific obligations of

fulfilment for donor countries (i.e., the allocation of 0,7 percent of GDP to development assistance and adopting a rights-based approach to development cooperation).

**key words: Duty to cooperate, right to development, Convention on the Rights of the Child, ICESCR, Disability Convention**

- ❖ Marcos Orellana (2010) [Climate Change and the Right to Development: International Cooperation, Financial Arrangements, and the Clean Development Mechanism](#), Human Rights Council, Fifteenth session, Working Group on the Right to Development. (OA)

This paper was written on behalf of the Center for International Environmental Law (CIEL) for the High Level Task Force (HLTF) on the Implementation of the Right to Development. The paper explores the interface between the right to development and climate change, with a focus on international cooperation, financial arrangements and the Clean Development Mechanism (CDM). The paper also analyzes the international community's legal response to the climate change threat, with particular emphasis on the institutional and normative elements that channel international cooperation. The paper also describes various financial arrangements mobilizing support for climate change mitigation and adaptation.

**key words: climate change, duty to cooperate, right to development, clean development mechanism.**

- ❖ OHCHR (2013) [REALIZING THE RIGHT TO DEVELOPMENT. Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development](#), United Nations, New York and Geneva (OA)

In 2013, a collection of essays were put together in a UN document on the realization of the right to development. For the purpose of this study, one of the most relevant essays is in Chapter 14, i.e. "International solidarity in an interdependent world" written by Shyami Puvimanasinghe. The chapter describes how international solidarity, which underlies the right to development and is key to its realization, can provide the impetus for the collective responses to interconnected challenges in an interdependent world. The chapter here focuses on the concept of international solidarity specifically in relation to the right to development.

**key words: Right to development, international solidarity, duty to cooperate, developing countries, human centered approach, global justice**

- ❖ United Nations, Human rights, Office of the High Commissioner for Human Rights, [Frequently asked questions on the Right to Development](#), New York and Geneva, 2016 (OA)

Despite its relevance to the most significant challenges facing all societies and the international community, the promise of the right to development has remained unfulfilled. In 2016, in commemoration of 30 years of the right to development, the United Nations created a handbook incorporating different frequently asked questions on the right to development. Question 7 is particularly relevant for the Right to development and Duty to cooperate, namely "What is the role of international cooperation in the right to development?".

**key words: Right to development, International cooperation, UN, Office of the High Commissioner for Human Rights**

- ❖ Gianna Alessandra Sanchez Moretti and Shyami Puvimanasinghe (2018), [Right to Development](#) in Max Planck Encyclopedia of Comparative Constitutional Law [MPECCoL]

This article is divided in three main points, all aiming at explaining the Right to Development. The first focuses on a definition of the right to development, tracing its history and its evolution.. The authors underline that if the concept could be understood as difficult to define due to the multidimensional aspect of the right, it remains that we can see the RTD becoming a constitutional right as well as vesting a legal framework around the world.

The second point focuses on a contemporain comparison analysis between the RTD in National Constitutions. If the RTD explicitly enshrined in few constitutions, most countries do recognize other human rights connected to development and the realization and implementation of the RTD directly and/or indirectly (i.e., within the categories of economic, social, and cultural, or civil and political rights).

The third point really focuses on the challenges ahead, as well at the opportunity of the RTD. Indeed, as pointed out in many research on the same issue, the lack of consensus among states along north-south is underlined as a major challenge. *“The Declaration calls for strengthened international cooperation and meaningful reform of global governance institutions, processes, and policies. In practice, this should also be reflected in national constitutions, legislation and policies.”*

**key words: Natural resources - Economic, social, and cultural rights - Environment and energy policy - Economic development**

- ❖ Vinai Kumar Singh (2020). Deputy director of the Indian Society of International Law [Operationalisation of ‘Duties’ of States and Non-State Actors in the Draft Convention on the Realisation of the Right to Development](#) (11.12.2020) (OA)

This article is a legal opinion on the operationalisation of duties of States and Non-State Actors in the Draft Convention on the realization of the right to development. The author first outlines the history of the creation of the Expert Mechanism on the Right to Development. The rest of the article focuses on different new elements present in the draft Convention, such as the invocation of “Common Concern of Humankind” to identify the duty-bearers; the importance of the linkage of a human rights based approach and human rights impact assessments ; the recognition of the principle of a “no harm obligation” and its linkage with the International Economic and Social Order. The article emphasizes that both the ‘duty to cooperate’ and the ‘no harm obligation’ reference in the Convention are going to be challenging. For developing countries, the challenge lying ahead will be to assess the draft Convention “for its scope and extent of the duty obligations to successfully address inequity in international economic and social order”. On the other hand, the challenge for developed countries will lie in the evaluation of the draft Convention “for its nature and scope of duties operationalise through the concept of no harm obligations.”.

**key words: right to development, Draft Convention on the Right to Development, no harm obligation, duty to cooperate,**

- ❖ Dellaux, J. (2021). Duty to cooperate in Encyclopedia of Law and Development, Edward Elgar Publishing, 2022, 68-72.

The author focuses on defining the duty to cooperate through historical analysis of the emergence of the concept in some areas of international law. The author analyzes that while it is taking more and more importance in international law, the duty to cooperate remains of variable intensity. When it comes to realization of human rights or the right to development, international law uses soft law. The author concludes that the duty to cooperate illustrates international law's (ongoing) evolution: the shift from an independent to cooperative sovereignty and from a global society to a community. However, when the duty tends to preserve States' interests (related to potential damages or spaces beyond jurisdiction), it still benefits from a greater legal recognition than when it comes to human rights realization or cooperation for development. Indeed, even if cooperation is widely promoted, community interests are only adequately considered and genuinely recognized when they coincide with individual State interests.

**key words: duty to cooperate, definition, international community, soft-law, human rights, right to development**

- ❖ Makoto Nakagiri (2022) [Right to Development in Today's Draft Convention: Retransformation into a State's Right?](#), EJIL talk March 21, 2022 (OA)

The article draws attention to the evolution of the draft Convention on the Right to Development, which may challenge, according to the author, the international law system established by the “Global North”. This is mainly due to the new character of the provisions concerning the legal duty to cooperate at the international level (article 13) and the responsibility of non-state actors (article 24 and 26 concerning the conference of State parties and experts' committee capable of examining violations of the RTD).

**key words: Global North, duty to cooperate, Draft Convention on the Right to development**

- ❖ Girma Teshome, R. (2022). [The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right?](#) In Human Rights Law Review, 2022,22, 1-24 (Oxford)

In light of the draft Convention on the Right to Development's negotiation under the auspices of the Human Rights Council, this article explores the merits and the added value of the draft in terms of its normative contents, particularly compared with its soft law predecessor—the Declaration on the Right to Development. Roman Girma Teshome argues that the draft is a significant step in recognising the right to development as a human right because it is binding, if adopted, and contains concrete, detailed and implementable norms. According to the author, while maintaining (to a certain extent) abstract and aspirational formulation of norms, the draft also addresses some of the prevalent Declaration's limitations.

**key words: the right to development, the Declaration on the Right to Development, the Draft Convention on the Right to Development, sustainable development, duty to cooperate**

