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Co-Operation

Laurence Boisson de Chazournes and Jason Rudall

'Alone we can do so little; together we can do so much.'[1]

I INTRODUCTION

Co-operation is a cornerstone principle of contemporary international law. It is difficult to overstate its reach as it finds expression in many different areas of international legal relations. That said, its gravitation to the heart of international law has been a relatively recent phenomenon. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 1970 has played an important role in this transition.

Co-operation has gradually gained prominence over the course of the twentieth century, with a clear emphasis on the obligation to co-operate in the aftermath of the Second World War. This led some to consider that international law has evolved from a law of co-existence to a law of co-operation.[2] Wolfgang Friedmann observed that States were increasingly resorting to co-operation, as opposed to conflict, to achieve their objectives. Today, co-operation finds application in matters of peace and security, human rights, international economic relations and international environmental law, amongst many others. While other principles of international law, such as the prohibition on the use of force, the duty of non-intervention and the sovereign equality of States are conceived in a negative sense – that is, they are aimed at restraining certain behaviour – the principle of co-operation is aimed at promoting certain behaviour.[3] Wolfgang Friedmann noted that the development of international co-operation was part of a changing structure in international law 'from an essentially negative code of rule abstention to positive rules of co-operation'.[4] Being positive in nature, the duty to co-operate serves as a tool for the

[1] Attributed to the American author and political activist Helen Keller. See Joseph P Lash, *Helen and Teacher: The Story of Helen Keller and Anne Sullivan Macy* (Da Capo Press, 1980) 489.

[2] See eg Wolfgang Friedmann, *The Changing Structure of International Law* (Stevens, 1964); Georges Abi-Saab, 'Cours général de droit international public (Volume 207)' in *Collected Courses of the Hague Academy of International Law* (Brill, 1987); Georges Abi-Saab, 'Whither the International Community?' (1998) 9 *European Journal of International Law* 248; Pierre-Marie Dupuy, 'International Law: Torn between Coexistence, Co-operation and Globalization: General Conclusions' (1998) 9 *European Journal of International Law* 278.

[3] Piet-Hein Houben, 'Principles of International Law Concerning Friendly Relations and Co-Operation among States' (1967) 61 *American Journal of International Law* 703, 721.

[4] Friedmann (n 2) 62.

realisation of certain aims or values. These aims or values cannot be realised unilaterally and instead require the collective effort of States taking action together.[5]

While international co-operation has only served as a central principle of the international legal order over the last half century, its history can in fact be traced back much further. With the Industrial Revolution and globalisation came the need for international regulation. These economic and regulatory developments meant States became linked to one another and interdependent. This was the reason for the earliest manifestations of economic co-operation between States and international institutions became essential for solving co-ordination and co-operation problems in this context.[6]

An early example of co-operation in international legal relations was the need to ensure freedom of navigation. This led to some of the first legal manifestations of co-operation in the form of regulatory frameworks and institutional structures that were concerned with watercourses.[7] As early as the beginning of the nineteenth century, the regulation of navigation on a number of European rivers became internationalised.[8] Indeed, the Central Commission for Navigation on the Rhine was created in 1815,[9] and the Danube Commissions were set up in 1856.[10] Other basin organisations were established thereafter. Over time these joint bodies saw their mandates enlarged and, as a result, co-operation strengthened.

Beyond these early manifestations over shared natural resources, co-operation was also necessary in other areas where States were increasingly connected. As a result, international administrative unions were formed to co-ordinate State activity and quickly became significant sites of co-operative action. For example, in 1865 the International Telegraph Union was established by the International Telegraph Convention[11] to co-ordinate the use of telecommunication infrastructure and facilitate co-operation on the development of technical standards. Latterly it fostered co-operation regarding satellite orbits and the improvement of telecommunications in the developing world. Similarly, in 1874, the General Postal Union was created and would later become the Universal Postal Union in 1878 to foster co-operation and co-ordination in postal activities.

The trend towards institutionalising co-operative endeavours in legal frameworks and institutions accelerated after the First World War. In 1919, the International Labour Organization (ILO) was established, motivated by the belief that universal and lasting peace could only be achieved if there was social justice.[12] International co-operation was extended from those issues of a technical, administrative or specialised nature to those of a more general and fundamental character, not least the maintenance of international peace and security or the enhancement of

[5] Abi-Saab, 'Whither the International Community?' (n 2).

[6] Eyal Benvenisti, 'The Law of Global Governance (Volume 368)' in *Collected Courses of the Hague Academy of International Law* (Brill, 2013).

[7] Laurence Boisson de Chazournes, *Fresh Water in International Law* (Oxford University Press, 2013); Abi-Saab, 'Whither the International Community' (n 2).

[8] See Boisson de Chazournes (n 7); Claude-Albert Colliard, 'Evolution et aspects actuels du régime juridique des fleuves internationaux (Volume 125)' in *Collected Courses of the Hague Academy of International Law* (Brill, 1968) 417.

[9] See Act of Congress of Vienna, Art CVIII, English translation and further discussion available in Stephen C McCaffrey, *The Law of International Watercourses – Non-Navigational Uses* (Oxford University Press, 2001), 173–74.

[10] General Treaty for the Re-Establishment of Peace between Austria, France, Great Britain, Prussia, Sardinia, Turkey, and Russia (Paris, 30 March 1856) in Parry, vol 114 (1885–86) 409–20.

[11] International Telegraph Convention, 17 May 1865, 130 *Consol. TS* 198.

[12] Preamble, Constitution of the International Labour Organization, 1 April 1919, adopted by the Peace Conference in April 1919. The ILO Constitution became Part XIII of the Treaty of Versailles (28 June 1919).

global welfare.[13] This development occurred with the creation of the League of Nations and the United Nations respectively. Since co-operation was positioned at the heart of the UN Charter and reaffirmed in the Friendly Relations Declaration, the constitutional status of co-operation in the international legal order was placed beyond doubt.

That said, does a general obligation to co-operate exist today? Is the expression of co-operation in the UN Charter and the Friendly Relations Declaration an 'empty shell'?[14] Do the various conceptions of co-operation in particular areas of international law differ and might those contain specific duties to co-operate? This chapter will explore the notion of co-operation and its contours, unpacking its manifestations to understand its scope and operation in contemporary international law.

II INTERNATIONAL CO-OPERATION: FOUNDATIONS OF A CONSTITUTIONAL PRINCIPLE

1 *Co-Operation under the UN Charter*

Article 1(3) of the UN Charter provides that a central objective of the United Nations is to 'achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character', while Articles 2, 55 and 56 of the UN Charter go on to provide further for co-operation among States. These provisions work together to further the objectives of the United Nations. The aims of the United Nations as provided for in Article 1 of its Charter are to ensure the maintenance of international peace and security, to pursue international development and to promote and encourage international respect for and enjoyment of human rights and fundamental freedoms.

Under Article 56 of the Charter the notions of 'international co-operation' and 'joint and separate action' are expressed explicitly. The *travaux préparatoires* shed light on the extent to which Member States of the United Nations would be expected to act either within the context of the United Nations or externally to the organisation.[15] Some delegations were concerned with the potential ramifications of including a reference to 'separate action' but other delegates saw little cause for concern.[16] Certain delegations thought there was sufficient protection elsewhere in the Charter to allay fears of interference with the domestic affairs of other States.[17] There is little evidence that any of the delegates were concerned with the positive nature of the obligation of international co-operation, as inclusion of the term 'action' suggests. Given that 'separate action' was left in the revised draft and that draft was so widely accepted, we can surmise that States envisaged a commitment, at the very least to make individual and collective efforts on the diplomatic plane, but perhaps even beyond that.

Reading Articles 1, 55 and 56 together has led some to conclude that these provisions create a binding legal obligation to co-operate in furthering the objectives of the United Nations.[18]

[13] Abi-Saab, 'Whither the International Community?' (n 2) 255.

[14] Jost Delbrück, 'Coexistence, Co-operation and Solidarity in International Law: The International Obligation to Co-operate – An Empty Shell or a Hard Law Principle of International Law? – A Critical Look at a Much Debated Paradigm of Modern International Law' in Holger P Hestermeyer et al (eds), *Coexistence, Co-Operation and Solidarity: Liber Amicorum Rüdiger Wolfrum* (Brill, 2011).

[15] The UNCIO, Committee II, General Assembly, Committee 3: Economic and Social Co-operation, 10 (1945) *Documents of the UN Conference on International Organization* 139–41.

[16] ibid.

[17] ibid.

[18] See eg Bruno Simma and Philip Alston, 'The Sources of Human Rights Law: Custom, *Jus Cogens*, and General Principles' 12 (1988) *Australian Yearbook of International Law* 82, 90, describing the 'authoritative interpretation'

As such, an argument can be made that States have undertaken a commitment to engage in co-operative action for the realisation of human rights, development and international peace and security. That said, the specific content of any general duty to co-operate is undefined by the provisions of the Charter and little guidance is offered by the *travaux préparatoires*. We now turn to subsequent expressions of the general concept for further insights.

2 *Co-Operation in the Friendly Relations Declaration*

Coming twenty-five years after the UN Charter, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970[19] was an important reaffirmation of the commitments made by States under the Charter.[20] It also provided an opportunity to clarify the content of the principles at the heart of the new international legal order. The provisions of the Friendly Relations Declaration indicate that international co-operation extends to economic, social, cultural and trade fields, as well as those of science and technology. Similarly, international co-operation is connected with the promotion of development. As such, the Declaration confirms and extends the scope of international co-operation. In doing so, the Declaration consolidates the principle of co-operation as central to international legal relations and as having a wide reach across a range of areas where States interact. It also mandates the circumstances under which co-operation should occur.

The Declaration reiterates that States have a duty to co-operate with one another in accordance with the Charter, and goes on to elaborate that such co-operation should occur despite any political, economic or social differences they may have and should be aimed at maintaining international peace and security, promoting economic development, securing respect for human rights and the elimination of racial discrimination and religious intolerance. Furthermore, States are directed to conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention. Further still, States who are members of the United Nations are under a duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter. The Declaration also expresses that States should co-operate in the fields of science and technology as well as for the promotion of international cultural and educational progress.

Despite this elaboration of the areas in which States committed to co-operate, there has been some criticism that this Declaration does not add much additional content to the provisions of the UN Charter concerning co-operation.[21] The Declaration largely repeats what had earlier

approach 'used to arrive at human rights obligations under international law independently of specific treaties'. Simma and Alston also note: 'It consists of treating the Universal Declaration and the body of soft law built upon it as an *authoritative interpretation* of the obligation contained in Articles 55 and 56 of the UN Charter according to which "all Members pledge themselves to take joint and separate action in co-operation with the Organization" in order to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion"' (at 100).

[19] Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970), UN Doc A/RES/25/2625.

[20] Delbrück (n 14) 7.

[21] See eg Gaetano Arangio-Ruiz, *The UN Declaration on Friendly Relations and the System of the Sources of International Law* (Springer, 1979) 143; Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey' (1971) 65(5) *American Journal of International Law* 713, 729.

been set out in the Charter and appears to suggest that little consensus existed around the exact scope of the duty to co-operate.[22]

A review of the *travaux préparatoires* of the Friendly Relations Declaration sheds some light on this. Given the positive nature of the principle, it was difficult to reach consensus on the precise content of co-operation during the 1966 Special Committee meeting.[23] One particularly difficult question was the extent to which the principle of co-operation as expressed under Article 56 of the UN Charter applied to States beyond the United Nations. Socialist countries argued that co-operation was applicable to all States. Non-aligned countries were also of the view that co-operation was universally applicable but that UN Member States could not impose duties on non-members. Western delegations argued that the principle under the Friendly Relations Declaration should be applicable only to UN members. They were also keen to emphasise Articles 55 and 56 of the UN Charter in the Friendly Relations Declaration, which would confirm that Members of the United Nations had an obligation to take joint and separate action in co-operation with the United Nations. However, the Western delegations' proposal did not receive support.

The non-aligned countries' proposal made no mention of the United Nations and simply envisaged co-operation between States.[24] Similarly, a Czech proposal offered a similar approach, as well as stipulating that the aim of co-operation was the maintenance of international peace and security. This proposal also included a provision on non-discrimination that was considered to be important by Socialist countries, namely that 'States have the duty to co-operate with one another irrespective of their different systems' and, as such, should 'refrain from any discrimination in their relations with other States, in particular discrimination by reason of differences in political, economic and social systems or in levels of economic development'.[25]

However, it was not possible to include such language in the final draft given the complexity of the issue, especially in light of trade concerns and the presence of trade preferences for developing countries.[26] Responding to a concern expressed by the Australian representative, the Czech delegate stated that 'obviously no preferences which might be granted to developing countries could be regarded as discrimination'.[27] It is thought that the Czech delegate had in mind an exception that would encompass all developing countries rather than singling any of them out.[28]

The non-aligned countries, in particular Algeria, Burma, Cameroon, India, Kenya, Lebanon, Madagascar, UAR and Yugoslavia (as well as amendments by Chile) put forward a proposal that 'differences in the political, economic and social systems of States as well as in their levels of economic and social development shall not impede international co-operation'.[29] This text was less problematic than that proposed by the Czech delegation. However, it still posed several challenges for Western delegations and therefore did not attract their support.

[22] Philip Alston and Gerard Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9(2) *Human Rights Quarterly* 156, 188.

[23] See also Arangio-Rui (n 21); Rosenstock (n 21).

[24] ibid.

[25] Discussions of the Special Committee on the Friendly Relations Declaration: L.16; Potocny (Czechoslovakia), SR 34, 5.

[26] Rosenstock (n 21) 729–30.

[27] Discussions of the Special Committee on the Friendly Relations Declaration: L.16; Pechota (Czechoslovakia), SR 38, 12.

[28] Houben (n 3) 722.

[29] Discussions of the Special Committee on the Friendly Relations Declaration: L.29; L.30.

The non-aligned proposal ultimately provided that 'States shall co-operate in the promotion of economic growth throughout the world, especially that of the developing countries' and Western countries had also expressed 'a strong belief in the duty to contribute to the solution of the problem of the unequal distribution of the prosperity in the world'.[30] Agreement in the Drafting Committee was achieved around most of this text, and two alternatives were given for part of the text. As such, the following was what the Drafting Committee presented to the Special Committee, with the possibility to vote on the two variants set out:

1. States have the duty to co-operate with one another, irrespective of their different political, economic and social systems, in the various spheres of international relations in order to maintain international peace and security and to promote international economic stability and programs and the general welfare of nations.
2. To this end,
   a) States shall co-operate with other States in the maintenance of international peace and security;
   b) *Alternative I*
   States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality and non-intervention with a view to *realizing* international co-operation free from discrimination based on differences in political, economic or social systems;
   Alternative II
   States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality and non-intervention with a view to *ensuring the realization of* international co-operation free from discrimination based on differences in political, economic or social systems;
   c) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.
3. States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

Ultimately the alternatives were voted on and the present formulation was adopted:

> States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.
>
> To this end:
>
> a) States shall co-operate with other States in the maintenance of international peace and security;
> b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;
> c) States shall conduct their international relations in the economic, social, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

[30] Houben (n 3) 722.

d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

Interestingly, there is a distinction in the mandatory nature of the paragraphs of this provision. Some set out that States 'have the duty to co-operate', others that States 'shall co-operate', and others again note that States 'should co-operate'. The third paragraph contradicts the mandatory nature of the first paragraph. It has been pointed out that this reflects a negotiated compromise during the drafting of the Declaration in the Special Committee in which Western delegations were reluctant to create any impression that there is a general legal obligation to co-operate.[31] This was in contrast to the position of developing and socialist States, who were in favour of such an obligation.[32]

While the precise meaning of co-operation did not develop much from the UN Charter, particularly as regards the specific behaviour that is expected of States and the form that co-operation should take, it did serve to connect co-operation to other areas of international law and confirm its role in forging international legal relations, particularly between the developed and developing world. Given the centrality of co-operation today, it is easy to critique the Friendly Relations Declaration for not having contributed to the advancement of international co-operation. But the Declaration, along with the UN Charter, in fact crystallised the paradigm shift in the post-Second World War global order from one of predominantly co-existence to one of predominantly co-operation. These two instruments laid the groundwork for international co-operation and became reference points for subsequent expressions of co-operation.

3 *Other General Expressions of Co-Operation*

Many subsequent instruments of a universal nature have referred to international co-operation. These have nevertheless begun to apply co-operation in specific contexts, building on the groundwork of the Friendly Relations Declaration. The Declaration on the Establishment of a New International Economic Order[33] expressed in General Assembly Resolution 3201 of 1974, for example, was adopted during the Cold War and in the aftermath of the process of decolonisation. It emphasises co-operation for economic development. It was similarly expressed in the Charter of Rights and Duties of States in 1974.[34] In this context, States committed to international co-operation for development, co-operation in their economic relations, as well as co-operation in scientific and technological endeavours. Co-operation in international economic relations was perceived as particularly important because States pursuing trade policies that were purely to advance their own national interest could harm the economies of other States or negatively affect the achievement of commonly agreed goals.[35]

[31] Rüdiger Wolfrum, 'Co-operation', *Max Planck Encyclopedia of Public International Law* (April 2008), http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690–e1427?prd=EPIL.
[32] ibid.
[33] UNGA Res S-6/3201 (1 May 1974).
[34] UNGA Res 3281 (XXIX) (12 December 1974).
[35] Delbrück (n 14) 11.

In a different way, the Manila Declaration on the Peaceful Settlement of International Disputes of 1982, as well as many conventions that express the principle of the peaceful settlement of international disputes since the Hague Convention on the Peaceful Settlement of International Disputes of 1899, refer to co-operation as a means of avoiding disputes.[36]

International co-operation also plays an important role through Article 41 of the Draft Articles, on the Responsibility of States for Internationally Wrongful Acts. The Draft Articles make it clear that States must co-operate to bring an end to serious violations of international law.[37] The International Law Commission (ILC) noted that international co-operation is among the 'special legal obligations of States' in the context of serious breaches of international law.[38]

General Assembly Resolution 59/204 of 20 December 2004[39] is concerned with '[r]espect for the purposes and principles contained in the Charter of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character'. In particular, it adds further clarity as to the scope of international co-operation under the UN Charter. For example, it reaffirms in its preamble

> that the promotion and protection of all human rights and fundamental freedoms must be considered a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international co-operation ...

The preamble goes on to note that

> the enhancement of international co-operation in the field of human rights is essential for the full achievement of the purposes of the United Nations and that human rights and fundamental freedoms are the birthright of all human beings, the promotion and protection of such rights and freedoms being the first responsibility of Governments.

This preambular language adds interesting contours to the duty of international co-operation. First, the use of terms such as 'enhancement', 'full achievement' and 'first responsibility' lend themselves to the proposition that this General Assembly resolution is a call for more, better and deeper international co-operation. Second, the reference to 'human rights and fundamental freedoms [as] the birthright of all human beings' underlines the universality of human rights and, in this connection, the universal nature of the duty to co-operate so that all human beings may benefit from human rights protection. Similarly, the resolution

> [c]alls upon all States to co-operate fully, through constructive dialogue, to ensure the promotion and protection of all human rights for all and in promoting peaceful solutions to international problems of a humanitarian character ...

This illustrates the depth and breadth of the obligation to co-operate to ensure human rights and underlines the positive character of the obligation. Moreover, it brings into sharper focus the roles that co-operation can play in specific areas of international law.

[36] Manila Declaration on the Peaceful Settlement of Disputes, UNGA Res 37/10 (15 November 1982).

[37] Draft Articles on the Responsibility of States for Internationally Wrongful Acts; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136.

[38] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, 114.

[39] Respect for the Purposes and Principles Contained in the Charter of the United Nations to Achieve International Co-operation in Promoting and Encouraging Respect for Human Rights and for Fundamental Freedoms and in Solving International Problems of a Humanitarian Character, UNGA Res 59/204 (20 December 2004), UN Doc A/59/503/Add.2.

4 Co-Operation as a Constitutional Principle

These instruments suggest that a minimum duty to engage with other States certainly exists.[40] However, the content of that general duty remains unclear. The developments explored above indicate that co-operation may rely on specific applications for its elaboration and operation. International co-operation is an 'entrenched precept' of the UN Charter system.[41] The Friendly Relations Declaration confirms that the scope of application of the principle of co-operation is broad. International co-operation is provided for in many different manifestations. While co-operation has never been comprehensively defined as a general obligation, obligations to co-operate for the realisation of specific ends – peace and security, human rights, environmental protection or development, for example – remain defined by the regime within which the objectives exist.[42]

General international law provides the basic obligation but it is without specific meaning. As will become evident, particular regimes have gradually contributed to the content of international co-operation and its application within those regimes is tailored to their unique contours. It will thus be shown that different regimes furnish co-operation with different features. In particular contexts, for example, international co-operation can be employed to prompt specific behaviour from States or can lead to the creation of institutions to induce co-operative behaviour. This is in fact a common feature of certain principles of international law.

Principles have many different roles in international law. They can permit new legal ideas, which have been driven by some social need, to emerge.[43] Principles can operate both as sources of law (akin to a statute in municipal law), which is to say that they can lead to the emergence of sub-principles having general application, and as sources of obligation (akin to a contract in municipal law), which is to say that it can operate to create rights and commitments for specific actors.[44] As keystones in the architecture of the international legal order, principles have certain constitutional functions that they perform as well.[45] They serve to unify the international legal system by their application across different fragments of international law. They give flexibility to the international legal system, allowing the law to adjust to the multifaceted nature of the social reality it must regulate, without allowing a fully open-ended system to emerge. In a similar way, they permit the law to evolve and help fill lacunae in legal regulation. Indeed, an effective legal system must combine 'normative closure' with 'cognitive openness', which means the law adjusts to developments in society while at the time having normative force.[46] As such, it ingests certain external norms and also determines its own content according to its internal rules and principles.[47]

Lacunae-filling was one of the major functions that the drafters of the Statute of the International Court of Justice (ICJ) had in mind for general principles of law and the main

[40] See also Wolfrum (n 31).

[41] Michael Nyongesa Wabwile, *Legal Protection of Social and Economic Rights of Children in Developing Countries: Reassessing International Co-operation and Responsibility* (Intersentia, 2010) 92.

[42] Wolfrum (n 31).

[43] Robert Kolb, 'Principles as Sources of International Law (With a Special Reference to Good Faith)' (2006) 53(1) *Netherlands International Law Review* 1, 7.

[44] ibid 11–13.

[45] See ibid 27–36.

[46] Niklas Luhmann, *Social Systems* (Stanford University Press, 1995) 6.

[47] ibid 92–96.

reason they were inserted in the Statute at all.[48] Principles also help in the interpretation of legal norms, just as equity or good faith may be used in the interpretation of specific rules. Principles may be needed to complement the operation of a series of legal rules. A good example here is the way in which the principles of necessity and proportionality are required to operationalise the law on self-defence. Alternatively, in a recent advisory opinion, the ICJ referred to the Friendly Relations Declaration in calling upon States to co-operate with the United Nations to help realise the right of self-determination in completing the decolonisation of Mauritius:

> Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right (*East Timor*; *Barcelona Traction*). The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect. As recalled in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:
>
> 'Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle'.
>
> . . .
>
> In response to Question (b) of the General Assembly, relating to the consequences under international law that arise from the continued administration by the United Kingdom of the Chagos Archipelago, the Court concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all Member States must co-operate with the United Nations to complete the decolonization of Mauritius.[49]

Finally, such constitutional principles can play an important role in the negotiation of international instruments as they can help to facilitate compromises. In other words, they 'bridge gaps of interest without yet fixing a precise legal regime',[50] leaving the latter to come into fruition at a later point in time.

The recourse to principles suggests that certain norms may crystallise in the international legal order beyond the usual processes of customary law formation and the conclusion of treaties by States.[51] In a similar way, it has been observed that the drafters of the ICJ Statute envisaged that general principles of law would not simply be those drawn from those existing *in foro domestico*, but that they could also be created anew at the international level. While principles do ultimately require general acceptance and recognition by States, to find application they do not require conclusive evidence of widespread State practice and *opinio juris*.[52] In this way,

[48] Béla Vitanyi, 'Les Positions doctrinales concernant le sens de la notion de 'principes généraux de droit reconnus par les nations civilisées' (1982) 86 *Revue générale de droit international public* 259.

[49] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, 25 February 2019, General List No 169, www.icj-cij.org/files/case-related/169/169–20190225–01–00–ENpdf, paras 180 and 182.

[50] Kolb (n 43) 35.

[51] See in particular Christian Tomuschat, 'Obligations Arising for States Without or Against their Will (Volume 241)' in *Collected Courses of the Hague Academy of International Law* (Brill, 1994) 195; see also, Oscar Schachter, 'International Law in Theory and Practice: General Course in Public International Law (Volume 178)' in *Collected Courses of the Hague Academy of International Law* (Brill, 1982) 21, 333–42 and 334 (noting that human rights come into existence in a multitude of ways, including beyond the 'usual processes of customary law formation').

[52] Simma and Alston (n 18) 105. Similarly, Judge Tanaka in the *South West Africa* cases argued that general principles under Art 38(1)(c) of the ICJ Statute encompassed 'the concept of human rights and of their protection' and that Art 38 (1)(c) 'does not require the consent of States as a condition of the recognition of the general principles'. As such,

Bruno Simma and Philip Alston have noted that 'the development of human rights law principles have always preceded practice'.[53] Indeed, general principles play an important role in the propagation of human rights protection, particularly among the rules of general international law as is evident in the jurisprudence of the ICJ.[54] This serves to illustrate the power of constitutional principles in international law. They can elaborate on State practice and *opinio juris*, allowing for the emergence of more expansive legal norms than individual States may have intended.[55] Given the inherent power of constitutional principles, this is undoubtedly a major reason why some inertia has attached to the development of a general duty to co-operate, as was evident in the negotiations of the Friendly Relations Declaration.[56]

III INTERNATIONAL CO-OPERATION IN SPECIFIC CONTEXTS: SHADES OF A GENERAL DUTY

Having considered the general duty to co-operate, we now turn to consider its particular manifestations to understand how various disciplines have endowed international co-operation with different colours. To highlight how these specific regimes have contributed to the development of international co-operation, it is not necessary to consider all of its particular manifestations. Rather we aim to show that international co-operation has evolved differently in discrete areas of international law, and that each area can contribute a different feature to our general understanding.

1 *The Realisation of Human Rights – Giving Content to Co-operation*

A duty to co-operate to realise certain rights is evident in a number of international instruments and jurisprudence. Chapter IX of the UN Charter is dedicated to 'International Economic and Social Co-operation'. In this context, Article 55 is directed at the United Nations itself, which is committed to promoting 'higher standards of living, full employment, and conditions of economic and social progress and development' (Article 55(a)), 'solutions of international economic, social, health, and related problems; and international cultural and educational co-operation' (Article 55(b)) and 'universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language, or religion' (Article 55(c)). Article 56 of the UN Charter contains a concrete obligation for Member States

'[f]rom this kind of source international law could have the foundation of its validity extended beyond the will of States, that is to say, into the sphere of natural law and assume an aspect of its supra-national and supra-positive character'. *South West Africa cases (Ethiopia* v *South Africa; Liberia* v *South Africa)*, Second Phase, Dissenting Opinion of Judge Tanaka, ICJ Reports 1966, 6, 298.

[53] Simma and Alston (n 18) 107.

[54] See eg *Corfu Channel* case, Judgment, ICJ Reports 1949, 4, 22 ('obligations … based … on certain general and well-recognized principles' as including 'elementary considerations of humanity'); *Reservations of the Genocide Convention*, Advisory Opinion, ICJ Reports 1951, 15, 23 ('the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any convention obligation'); *Barcelona Traction, Light & Power Co (Belgium* v *Spain)*, Second Phase, ICJ Reports 1970, 3, 32 (*erga omnes* obligations derive 'from the principles and rules concerning the basic rights of the human person'); *United States Diplomatic and Consular Staff in Tehran*, Judgment, ICJ Reports 1980, 3, 42 (to '[w]rongfully deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights').

[55] See Simma and Alston (n 18).

[56] See section II.2.

of the United Nations to 'take joint and separate action in co-operation with the Organization' on the pledges set out in the previous provision.

The *travaux préparatoires* to Article 56 of the UN Charter, and in particular the notions of 'international co-operation' and 'joint and separate action', reveal some notable features as to what the drafters had in mind when they included the reference to international co-operation in this context:

> The Delegation of the United Kingdom said that there was no doubt in his mind that the Committee had approved a three-fold pledge – for separate action, for joint action, and for co-operation with the Organization ... He then went on to say that co-operation implies joint and separate action.[57]

The standard that the drafters had in mind was joint and separate action. Joint action, both with the United Nations and with each other, but also separate action individually. As such, joint and separate action is intended to mean that States should take steps individually and collectively to assist the United Nations in the realisation of the goals set out in Article 55. It is similarly taken to mean that States should co-operate for the achievement of the United Nations' more general aims, as set out in Article 1 of the UN Charter and explained above. The Friendly Relations Declaration reiterates that States have a duty to co-operate with one another in accordance with the Charter and, more specifically, that members of the United Nations 'have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter'.

The notions of 'co-operation', 'joint and separate action' and 'assistance' have been elaborated upon in other human rights instruments and their meaning has been elaborated upon by human rights bodies, especially the Committee on Economic, Social and Cultural Rights (CESCR). In fact, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) contains one of the strongest formulations of international co-operation under international law. It provides:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

This provision obliges States to co-operate and assist, particularly by offering economic and technical resources, for the realisation of rights provided for in the Covenant. Beyond diplomatic efforts at co-operation, it also envisages the commitment of resources and assistance. The distinction made in the text between taking steps 'individually' and 'through international assistance and co-operation' is a strong indication that the Covenant binds States as regards people within their own jurisdiction but also commits States to co-operating and assisting in the realisation of such rights in other countries. This indication is further strengthened by having reference to the *travaux préparatoires*, other provisions of the Covenant and the interpretations of the CESCR, as will become evident.

The *travaux préparatoires* of the Covenant show that, as regards the commitment of resources envisaged under Article 2(1), the French delegate on the Drafting Commission stated:

[57] The UNCIO (n 15).

> [t]he expression 'their resources' was intended to convey, not that States should, in implementing the rights in question, renounce all progress which was beyond their own resources, but that countries with substantial resources should lend their assistance internationally.[58]

Similarly, recognising the need for developed States to provide assistance to developing States, the Iraqi delegate said that because 'the under-developed countries would be taking on much heavier commitments than the advanced countries . . . [t]hey would certainly need international co-operation in discharging their obligations'.[59] The delegate of the United States emphasised that the provision would need 'to indicate the necessity of international co-operation in the matter'[60] and the delegate of Chile was of the view that 'international assistance to under-developed countries had in a sense become mandatory as a result of commitments assumed by States in the United Nations'.[61] All of these statements support the claim that developed countries should commit resources and assistance towards the realisation of socio-economic rights in developing countries.

Turning to the work of the CESCR, which monitors the implementation of the Covenant and adopts General Comments with a view to aiding the interpretation of its provisions, further clarity is offered on the nature of the commitments States must undertake. Interpreting Article 2(1) of the Covenant in its General Comment No. 3 of 1990, the Committee has said of international co-operation and assistance that:

> the phrase 'to the maximum of its available resources' was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international co-operation and assistance. . . .
>
> In accordance with Articles 55 and 56 of the Charter of the United Nations, and with the provisions of the Covenant itself, international co-operation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.[62]

States are concretely encouraged to develop an 'active programme of international assistance and co-operation', thereby urging positive individual action and the commitment of national resources for the benefit of developing States. This conception of assistance and co-operation thus goes well beyond diplomatic efforts, and implies a positive other-directed aspect to the obligation. Moreover, the Committee on Economic, Social and Cultural rights has indicated that States can partly discharge the obligation of international assistance by meeting the internationally agreed[63] commitment to set aside a minimum net amount of 0.7 per cent of

[58] Commission on Human Rights, 'Summary Record of the Two Hundred and Thirty-Third Meeting', 2 July 1951, UN Doc E/CN.4/SR.233, 7 UN ESCOR C.4, 8.

[59] Iraq, General Assembly Third Committee, 1203rd Meeting, 17 UN GAOR C.3, UN Doc A/C.3SR.1203 (1962), para 21.

[60] Commission on Human Rights, 'Summary Record of the Two Hundred and Seventieth Meeting', 14 May 1952, UN Doc E/CN.4/SR.270, 8 UN ESCOR C.4, 10.

[61] Chile, General Assembly Third Committee, 1203rd Meeting, 17 UN GAOR C.3, UN Doc A/C.3/SR.1203 (1962), para 10. However, it should be noted that there were several States opposed to the idea that financial assistance to developing states would be rendered mandatory; see eg the statement of Mr Bouquin of France (France, General Assembly Third Committee, 1205th Meeting, 17 UN GAOR C.3, UN Doc A/C.3/SR.1205 (1962), para 12), the statement of Mr Ostrovsky of the USSR (General Assembly Third Committee, 1203rd Meeting, 17 UN GAOR C.3, UN Doc A/C.3/SR.1203 (1962), para 14), or Mr Mantzoulinos of Greece (General Assembly Third Committee, 1204th Meeting 17 UN GAOR C.3, UN Doc A/C.3/SR.1204, para 14).

[62] CESCR, General Comment No 3 on the nature of states parties' obligations (1990), paras 13 and 14.

[63] See eg International Development Strategy for the Second United Nations Development Decade, UNGA Res 2626 (XXV) (24 October 1970), UN Doc A/RES/25/2626.

its gross national product for development assistance.[64] This is yet further evidence that a commitment of resources, particularly by developed countries to developing countries, is expected.

The Committee has also provided States with guidance on how to approach their co-operation and assistance efforts. First, in its General Comment No. 3, the Committee set out that the rights of the disadvantaged, such as women and refugees, and those of marginalised or vulnerable groups, such as children, should be prioritised. Second, they must ensure that 'minimum essential levels' of economic, social and cultural rights are realised. Third, the pace of co-operation to realise these rights must be as expeditious as possible. Fourth, the modalities chosen should be as effective as possible. Finally, all regressive measures should be avoided.[65]

Several other provisions in the Covenant illustrate the action required of States in fulfilling their duties of international assistance and co-operation. For example, Article 11(1) of the Covenant specifically places an obligation on States to ensure the realisation of the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. In this context, co-operation based on free consent is recognised as a means for such realisation. Reiterating similar language to that found in Article 2(1), Article 11 places States under an obligation to 'take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent'. As regards the right to adequate food under Article 11 the CESCR has referred to the role that international co-operation plays in the realisation of this right:

> In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required. States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end.[66]

The Committee thus added further colour to the commitment to take joint and separate action in the context of the right to food, and emphasised that co-operating jointly and separately requires positive action to ensure the realisation of the right in other countries.

The importance of positive international action to realise the rights under the Covenant is further reinforced in Article 23. This provision of the Covenant provides for a non-exhaustive list of ways in which international co-operation and assistance may be effected:

> The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

[64] See Olivier de Schutter et al, 'Commentary to the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34(4) *Human Rights Quarterly* 1085.

[65] See CESCR (n 62), paras 9–12. See also, CESCR, General Comment No 19 on the right to social security (Article 9 of the Covenant), 4 February 2008, UN Doc E/C.12/GC/19, para 31; CESCR, General Comment No 15 on the right to water (Articles 11 and 12 of the Covenant), 20 January 2003, UN Doc E/C.12/2002/11, para 16; CESCR, General Comment No 14 on the right to the highest attainable standard of health (Article 12 of the Covenant), 11 August 2000, UN Doc E/C.12/2000/4, para 40.

[66] CESCR, General Comment No 12 on the right to adequate food (Article 11), para 36.

This indicates a mix of diplomatic efforts as well as the commitment of resources, such as 'the furnishing of technical assistance'. It indicates the minimum positive action expected under the Covenant, and provisions on specific rights encourage States to go further in terms of committing resources, as is the case with Article 11 and the realisation of the right to an adequate standard of living for everyone.

Article 12 of the Covenant obliges States to 'recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. Once again, the universal nature of this right is underlined in the provision itself. Interestingly, in a General Comment, the CESCR has added further detail as regards the scope of the commitment to international assistance and co-operation. The Committee set out that:

> To comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law. Depending on the availability of resources, States should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required.
>
> . . .
>
> For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide 'international assistance and co-operation, especially economic and technical' which enable developing countries to fulfil their core and other obligations.[67]

Clearly, this is a right which requires international co-operation and assistance, particularly from developed to developing countries, for its realisation.

Similarly, as regards the right to water under the Covenant (Articles 11 and 12), the CESCR has emphasised in its General Comment No. 15 that States should 'facilitate realization of the right to water in other countries'.[68] This General Comment spells out that the obligation includes such positive action as providing water resources, as well as financial, technical and other assistance, when this is necessary for the realisation of the right to water. Moreover, the General Comment speaks of a 'special responsibility' incumbent upon developed States to assist developing States. Emphasising the universal nature of the right to water, the Committee also noted that '[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'.[69]

Turning to the right to education under Article 13 of the Covenant, General Comment No. 13 of the CESCR elaborates that:

> In its General Comment 3, the Committee drew attention to the obligation of all States parties to take steps, 'individually and through international assistance and co-operation, especially economic and technical', towards the full realization of the rights recognized in the Covenant, such as the right to education. Articles 2(1) and 23 of the Covenant, Article 56 of the Charter of the United Nations, Article 10 of the World Declaration on Education for All, and Part I, paragraph 34 of the Vienna Declaration and Programme of Action all reinforce the obligation of

[67] CESCR, General Comment No 14 on the right to the highest attainable standard of health, paras 39 and 45 respectively.
[68] CESCR, General Comment No 15 on right to water (Articles 11 and 12 of the Covenant), para 34.
[69] ibid, para 2.

> States parties in relation to the provision of international assistance and co-operation for the full realization of the right to education.[70]

As is evident from this General Comment, the Committee envisages that international assistance and co-operation would 'especially' take the form of economic and technical support, in terms not only of the right to education but also of other rights under the Covenant.

These General Comments all contribute to the *acquis* of the ICESCR, and help to clarify the nature of rights under it. The text of the obligations discussed and the *acquis* give meaning to the obligations of international co-operation and assistance.[71] These obligations can involve the promotion of rights through diplomatic means, but also the commitment of resources as well as economic and technical support, particularly from developed States to developing countries. The meaning of co-operation has been widened still in the elaboration of the right to development, as will be explored in the next subsection.

2 *Promoting Development under International Law – Widening the Scope of Co-Operation*

A further context in which international co-operation finds expression is in the various declarations and agreements aimed at furthering development. It has been contended that the law of co-operation 'means co-operation among States for the purposes of development to increase the social welfare of the world community'.[72] Development co-operation is understood to include the activities carried out by developed countries to enhance the economic progress of developing countries.[73] Development co-operation may be multilateral in nature where it is conducted through an international organisation or bilateral where it is conducted by individual States in accordance with their own foreign policy.[74] Development co-operation can also be of a financial nature, which might involve the mobilisation of capital through loans, or of a technical nature, which might involve the transfer of knowledge.[75] Early examples of technical assistance are the Technical Assistance Programme that was established by the UN General Assembly through Resolution 200(III) of 4 December 1948. It involved experts being sent on missions to developing countries, granting scholarships and the creation of training and research centres. Various institutions were established to further this endeavour. The UN General Assembly created the UN Programme for Development (UNDP),[76] which was intended to co-ordinate and streamline the various initiatives that were being pursued by different specialised agencies of the United Nations. The UN Conference on Trade and Development (UNCTAD) and the UN Industrial Development Organization (UNIDO) were established to enhance technical co-operation and assistance for the benefit of developing countries. As for financial co-operation, this is typically co-ordinated by institutions linked to the World Bank, such as the International Development Association, which was established in 1960.

In fact, it has long been argued that States should contribute to each other's welfare. In 1758, for example, Vattel observed that '[t]he first general law, which is to be found in the very end of the society of Nations, is that each Nation should contribute as far as it can to the happiness and

[70] CESCR, General Comment No 13 on the right to education (Article 13 of the Covenant) at para 56.
[71] Wabwile (n 41) 108.
[72] Wolfrum (n 31).
[73] Antonio Cassese, *International Law* (2nd edn, Oxford University Press, 2005) 518.
[74] ibid.
[75] ibid 519.
[76] UNGA Res 2029–XX (22 November 1965).

advancement of other Nations'.[77] In the 1980s, the universal nature of development and, as a result, the need for collective efforts in its realisation, was underlined by the UN Commission on Human Rights Resolution 6 (XXXVIO). Its paragraph 2 provides that 'the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations'.[78] Georges Abi-Saab has argued that the right to development is a collective right which is an 'aggregate of the social, economic and cultural rights ... of all individuals constituting a collectivity. In other words, it is the sum total of a double aggregation of the rights and of the individuals.'[79]

A positive obligation on States to co-operate internationally is provided by the 1986 Declaration on the Right to Development, which recognises that all States are responsible for the realisation of the right to development. Its Article 1 provides that:

> The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 3.3 of the Declaration on the Right to Development provides that 'States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development', and Article 4.1 notes that 'States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.' These provisions, read alongside the preamble of the Declaration that calls for 'international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and ... promoting and encouraging respect for human rights and fundamental freedoms', provides a basis for the proposition that States are under an affirmative duty to pursue a legislative programme that facilitates realisation of the right to development. That there is a reference to individual and collective action would suggest that States must both take measures themselves through their own domestic policies and engage in co-operative efforts with other countries to this end.

States are responsible for implementing the right to development and the beneficiaries are intended to be individuals in developing countries. It is incumbent on the international community to co-operate to ensure that States fulfil their obligation to realise the right to development. Full realisation of the right to development will require the realisation of many different rights as well as a favourable economic system, improving the rule of law, fundamental institutional change and strengthening the infrastructure of the developing country. All of this may require co-operation and assistance from the international community.[80]

In the earlier Charter of Economic Rights and Duties of States of 1974, its Article 17 underlines the importance of international co-operation in the realisation of development. Indeed, it emphasises that international co-operation for development is both a shared goal and a common duty for States:

[77] Emer de Vattel, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and the Affairs of Nations and of Sovereigns* (1758) in James B Scott (ed), *The Classics of International Law* (Carnegie Institute, 1916) 6.

[78] UN Commission on Human Rights, Res 6 (XXXVIO).

[79] Georges Abi-Saab, 'The Legal Formulation of the Right to Development' in Rene-Jean Dupuy (ed), *The Right to Development at the International Level* (The Hague Academy of International Law, 1980) 164.

[80] Arjun Sengupta, 'Conceptualizing the Right to Development for the Twenty-First Century' in United Nations (ed), *Realising the Right to Development* (UN, 2014), 72–73.

> Every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty.

In Commitment 9 of the UN World Summit for Social Development,[81] States committed themselves 'to increasingly and/or utilizing more efficiently the resources allocated to social development in order to achieve the goals of the Summit through national action and regional and international co-operation'.[82] Commitment 9 goes on to set out the more concrete ways in which this may be achieved.

The UN Millennium Declaration, which included the Millennium Development Goals and was adopted by the UN General Assembly, also makes an implicit reference to international co-operation:

> In addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.[83]

Furthermore, the Millennium Development Goals made a call to developed countries in a number of areas. Goal 8 stipulated a 'global partnership for development' as well as targets to develop 'an open, rule-based predictable, non-discriminatory trading system' (Target 12) and to meet the needs of the least developed countries (Target 13). In so doing, the Declaration adds yet further colour to our understanding of international co-operation.

International co-operation has played a role in forging approaches to international development, which is called by some the law of development co-operation.[84] This can involve the transfer of official development assistance from industrialised countries to developing countries.[85] It has also assisted in mediating the distinction between the formal equality of sovereign States under international law and the need to ensure material differences in the expected commitments of developing countries, taking into account their capacity. This is also a feature in the context of the protection of the environment, as will be shown in the following subsection.

3 *Co-Operation in International Environmental Law – The Emergence of Transparency and Accountability as Incentives*

The scale and nature of environmental challenges mean that protection of the environment can only occur through international co-operation. The interdependence of States makes co-operation an important tool for solving common problems like damage to the environment.[86] States co-operate to protect global public goods, manage shared resources and solve challenges that can only be achieved through bilateral or multilateral action. Co-operation has many facets

[81] UN World Summit for Social Development, 6–12 March 1995, UN Doc A/CONF.166/9.
[82] ibid, Commitment 9.
[83] United Nations Millennium Declaration, UNGA Res 55/2 (8 September 2000), UN Doc 55/2, at para 2.
[84] See Philip Dann, *The Law of Development Co-operation: A Comparative Analysis of the World Bank, EU and Germany* (Cambridge University Press, 2013).
[85] ibid 13.
[86] Daniel Bodansky, Jutta Brunnée and Ellen Hey, 'International Environmental Law: Mapping the Field' in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2008) 8.

in the area of environmental protection. It is aimed at mitigating transboundary risks and emergencies,[87] and is closely connected with the obligation of prevention and the no-harm rule. It also includes, amongst other aspects, the duty to consult and negotiate, and reflects the need for institutional co-operation. The principle has similarly been referred to in many decisions of international courts and tribunals, including the ICJ and the International Tribunal for the Law of the Sea (ITLOS). This case law serves to confirm that co-operation is a fundamental principle at the heart of international law and that States are under an obligation to co-operate in good faith. In the *Pulp Mills* case, for example, the ICJ said:

> [i]t is by co-operating that the States concerned can jointly manage the rules of damage to the environment that might be created by the plans initiated by one or other of them, so as to prevent the damage in question.[88]

The Court went on to elaborate the related obligations to notify, consult and conduct environmental impact assessments (EIAs), in turn giving colour and texture to the obligation of co-operation in this context. Moreover, the Court noted that there was a customary international law obligation to conduct an EIA where a particular project poses a risk to the environment. In a transboundary context, the conduct of an EIA will require co-operation with other States:

> [EIAs] must be notified by the party concerned to the other party. . . This notification is intended to enable the notified party to participate in the process of ensuring that the assessment is complete, so that it can then consider the plan and its effects with a full knowledge of the facts.[89]

In a similar way, the ICJ said of the obligation to give prior notification to the relevant basin organisation that 'the obligation to inform . . . allows for the initiation of co-operation between the Parties which is necessary in order to fulfil the obligation of prevention'.[90] This provides an interesting example of the way in which co-operation connects to other fundamental principles of international environmental law.

In addition to customary international law, an obligation to co-operate has become a regular feature of numerous multilateral environmental agreements (MEAs). The obligation to co-operate is present in a wide range of MEAs. That said, it varies greatly in its precise meaning from one MEA to another. Specific manifestations of the principle might include the exchange of information between States, the conduct of scientific research and systematic observations, prior notification, consultation, prior informed consent, notification in the case of an emergency or emergency assistance, for example.[91] Many instruments also have provisions requiring co-operation in investigating, identifying and avoiding environmental harm. As for the scope of co-operation in international environmental law, this can range from the requirement to offer 'economic and technical assistance' in the context of climate change or the 'exchange of data and information' to protect water resources, amongst others.

The Stockholm and Rio Declarations provide for co-operation as a means of achieving environmental objectives. Principle 24 of the Stockholm Declaration articulates that:

[87] Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (3rd edn, Oxford University Press, 2009) 137.

[88] *Pulp Mills on the River Uruguay (Argentina* v *Uruguay)*, Judgment, ICJ Reports 2010, para 77.

[89] ibid.

[90] ibid, para 102.

[91] See Laurence Boisson de Chazournes et al (eds), *Protection internationale de l'environnement* (Pedone, 2005); David Hunter, Julia Sommer and Scott Vaughan, 'Concepts and Principles of International Environmental Law: An Introduction', *Environment and Trade* (CIEL, UN Environment Programme, 1994).

> [i]nternational matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation … is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

Principle 27 of the Rio Declaration provides that:

> States and people shall co-operate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

Moreover, the preamble of the Rio Declaration speaks of 'the creation of new levels of co-operation among States, key sectors of societies and people'. In this way, co-operative efforts should manifest themselves in different forms, at various levels, and with diverse actions through, for example, public–private partnership programmes.[92]

Under framework conventions, international co-operation can serve a particularly important additional purpose. Indeed, it is often inserted to drive the progressive development of framework convention regimes. As for the climate-change regime, the UN Framework Convention on Climate Change 1992 (UNFCCC) refers to co-operation in several provisions, including its preamble and Articles 3, 7 and 9, while the Kyoto Protocol does so in its Article 2(b), and the Paris Agreement in Articles 6, 7, 10 and 12. In fact, the 2030 Agenda for Sustainable Development, which includes the Sustainable Development Goals, explicitly recognises the centrality of co-operation to climate change action as follows:

> [t]he global nature of climate change calls for the widest possible international co-operation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change.[93]

Like the UNFCCC, the Paris Agreement is based on the advancement of a common interest. It recalls that 'climate change is a common concern of humankind'.[94]

International co-operation requires both financial and technical assistance to ensure that developing countries can mitigate and adapt to the effects of climate change. Developed countries have a special responsibility in this context. As for the financial assistance commitments under the Paris Agreement, it is only the developed country parties that are expected to assume them. In accordance with the principle of common but differentiated responsibilities, developed States parties have committed to approximately 100 billion dollars per year. There is a further undertaking to set a new financial assistance objective before 2025.[95]

The Paris Agreement also aims to ensure that there is 'efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties'.[96] At COP 24, several countries made new commitments in respect of the Adaptation Fund (e.g. Germany, Sweden, Italy, France, Belgium and the European Union).[97] Moreover,

[92] Peter Sand, 'Principle 27: Co-operation in a Spirit of Global Partnership' in Jorge E Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press, 2015) 622.

[93] Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October 2015, para 31.

[94] Eleventh para of the preamble to the Paris Agreement.

[95] Para 54 of the Decision of the Contracting Parties.

[96] Art 9.9 of the Paris Agreement.

[97] See Adaptation Fund, 'Adaptation Fund Breaks Single-Year Resource Mobilization Record with Nearly US$ 129M in New Pledges Received', www.adaptation-fund.org/adaptation-fund-breaks-single-year-resource-mobilization-record-nearly-us-129m-new-pledges-received/.

Germany and Norway committed to doubling their contribution to the Green Climate Fund.[98] Further still, greater transparency was envisaged through the recently agreed Katowice Rulebook in the context of funding for developing countries.[99] Financial assistance will also form a part of the global stocktake under the Paris Agreement, which is due to take place every five years. Technology development and transfer is similarly intended to help advance the effective implementation of the Paris Agreement. The importance of co-operation in respect of technology is evidenced in its ability to enhance climate change mitigation and adaptation action. In this context, parties are required to 'strengthen co-operative action on technology development and transfer' under Article 10.2 of the Paris Agreement.

An emerging feature of the regime for co-operation on climate change is the importance attached to transparency and accountability. These are essential implementation tools that are intended to give the Paris Agreement its teeth. The Agreement envisages, for example, an 'enhanced transparency framework for action and support'. This includes an augmented reporting mechanism that is concerned with the action and support of States. Developed countries must report on financial, technology transfer and capacity-building support provided to developing country parties under Articles 9, 10 and 11 of the Paris Agreement. This information provided by developed countries will also be subject to a technical expert review. In addition, interestingly, developing countries should report on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11. These elements all suggest a thickening of the institutional structure for the purpose of improving implementation of co-operative efforts in the context of climate action.

Transparency under the Paris Agreement is intended to be comprehensive and information is made available through the Internet to all and any actors. Non-governmental organisations, scientific associations and other actors now have new tools at their disposal, and it will be interesting to see how they take advantage of them. This transparency and accountability to civil society may provide new dimensions to co-operation and a renewed impetus for States to co-operate for the universal realisation of climate goals.

4 *International Co-Operation to Protect Water Resources – the Need for Institutions*

Co-operation for the effective use and management of shared water resources has a long history. This co-operation can take the form of international conventions or institutional structures like basin organisations or river commissions. Indeed, co-operation through institutional structures and mechanisms helps to ensure that international water resources are managed effectively.[100] Co-operation can take various forms in these institutions, from the interaction between different stakeholders to the facilitation of joint activities between States.

Such institutions serve as important mechanisms for dialogue and consultation, which helps to prevent tension that could lead to disputes. When disputes do arise, these institutions can help

[98] See Green Climate Fund, 'GCF Replenishment Wins Strong Endorsement at COP24', www.greenclimate.fund/news/gcf-replenishment-wins-strong-endorsement-at-cop24.

[99] Report of the Conference of the Parties on its Twenty-Fourth Session, held in Katowice from 2 to 5 December 2018, Decision 1/CP.24, FCCC/CP/2018/10/Add.1 (19 March 2019).

[100] Boisson de Chazournes (n 7) 30–31.

to resolve them.[101] Their structure differs from one mechanism to another.[102] Co-operation can take many forms in these legal frameworks, whether in respect of the inter-State co-operation essential to their establishment or the co-operation they facilitate with other stakeholders, such as representatives of local communities. Indeed, the secretariats of basin organisations and commissions can constitute important channels for co-operation between States and other stakeholders.[103]

The scope of co-operation in the context of these institutions has become relatively large over time, while the competencies of basin organisations and commissions have become more varied. If in the beginning their main function concerned navigation and fishing activity, the competence of these organisations has gradually extended to hydro-plants and the production of energy, irrigation activities or environmental protection. Today, their functions can include information collection and dissemination, regulation by the adoption of standards and guidelines, the brokering of negotiations for the development of binding instruments or agreements, or the promotion and execution of joint operational activities.

These organisations also often facilitate the conduct of joint activities, which may be carried out by the organisation itself or by Member States. Therefore, in addition to the aspects of co-ordination necessary to prevent damage to protected interests, these collective frameworks also encourage resource development insofar as this is possible within the jurisdictions of the organisations, and as such add further value to their existence. Many of these mechanisms have a legal personality that allows them to engage directly on the international stage.[104]

The purpose of these bodies is to prevent damage to protected resources through the application of various legal regimes. In this context, the protection of the environment has over time become an important field of activity for these basin organisations and commissions. Several legal instruments and programmes have been adopted or pursued under their auspices, which have strengthened the work of their secretariats in this area. The international commissions for the Rhine and the Danube are particularly notable as they have both adopted instruments and pursued programmes that have helped raise awareness of and reinforce the means of protection offered by these institutions.[105]

The law of shared watercourses highlights that co-operation can take place within the context of institutional structures and mechanisms. River or basin commissions have helped to ensure that international water resources are managed effectively.

[101] See ibid 48–53; Laurence Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (Brill, 2016) 29–31.

[102] See the typology of functions offered by Colliard (n 8) at 421–31; Lucius Caflisch, 'Règles générales du droit des cours d'eau internationaux (Volume 219)' in *Collected Courses of the Hague Academy of International Law* (Brill, 1989) 196–202.

[103] See Mekong River Commission for Sustainable Development, *Public Participation in the Lower Mekong Basin* (Mekong River Commission, 2005), www.mrcmekong.org/assets/Publications/governance/Public-Participation.pdf.

[104] On the status of the Administrative Commission of the River Uruguay, see *Pulp Mills on the River Uruguay (Argentina* v *Uruguay)* (n 98), paras 87, 89.

[105] See Convention on the Protection of the Rhine 1999; Rhine 2020 – Program on the sustainable development of the Rhine (implementing Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [2000] OJ L327, 1–73), www.iksr.org/fileadmin/user_upload/Dokumente_en/rhein2020_e.pdf. See also Joint Statement on Guiding Principles for the Development of Inland Navigation and Environmental Protection in the Danube River Basin (with annexes) 2007, www.danubecommission.org/uploads/doc/72/Joint%20Statement/EN/Joint_Statement_FINALpdf.

5 International Co-operation in the Law of the Sea – Towards Community-Based Co-Operation

International co-operation is an essential component of the UN Convention on the Law of the Sea of 1982 (UNCLOS). In particular, Part XII of UNCLOS requires States to co-operate in the prevention of marine pollution. In the *MOX Plant* case of ITLOS, the Tribunal noted that '[t]he duty to co-operate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the [UNLCOS], and general international law'.[106] ITLOS has in fact reiterated the fundamental nature of the principle of co-operation in international law on several occasions, in particular the *Southern Bluefin Tuna* cases,[107] the *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore)*[108] and the *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*.[109]

Indeed, UNCLOS requires that States co-operate, at the universal and regional levels, directly or through international organisations, to ensure the protection of the marine environment, the conservation and management of living resources, as well as the conservation of marine mammals, for example. Parties are also obliged to co-operate in the field of marine scientific research, and in the development and transfer of marine technology.

Under the law of the sea, States are also required to co-operate in the development of rules, norms, practices and procedures to protect and preserve the marine environment, as well as in the application of the relevant rules. This is likely to mean that States have committed to developing the legal framework relevant to the protection of the marine environment with new hard- and soft-law instruments.[110] There is similarly an obligation to co-operate in scientific research on marine pollution as well as in the area of monitoring and evaluating marine pollution.[111] Alternatively, there is an obligation to provide technical aid and assistance under UNCLOS. This includes the duty to notify in the event of an accident or imminent danger, as well as joint action plans for dealing with emergencies.[112] It should also be noted that the Convention envisages different levels of obligation for developing countries as well as rendering special assistance to developing countries.[113]

As is well-known, UNCLOS provides for the 'International Seabed Area', which is often simply referred to as 'the Area'. This is the area beyond the limits of national jurisdiction and includes the seabed, the ocean floor and its subsoil. The Area and its resources are part of the common heritage of humankind,[114] and extractive activities in the Area are administered by the International Seabed Authority,[115] an autonomous legal person that is both independent from its

[106] *MOX Plant case (Ireland* v *United Kingdom)*, ITLOS Request for Provisional Measures, 1999, para 20.

[107] *Southern Bluefin Tuna cases (New Zealand* v *Japan; Australia* v *Japan)*, ITLOS Order of 27 August 1999; for an overview of these cases, see also Laurence Boisson de Chazournes, 'The International Tribunal for the Law of the Sea' in Chiara Giorgetti (ed), *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Martinus Nijhoff, 2012) 111–32.

[108] *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v *Singapore)*, ITLOS Order of 8 October 2003.

[109] *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, ITLOS Advisory Opinion of 2 April 2015.

[110] Mathias Forteau and Jean-Marc Thouvenin (eds), *Traité de droit international de la mer* (Pedone, 2018) 794.

[111] See Arts 200–6 of UNCLOS.

[112] ibid, Arts 198 and 199.

[113] ibid, Arts 202 and 203.

[114] ibid, Art 140.

[115] See ibid, Art 157.

Member States but also obliged to act in the interests of its Member States and on behalf of humankind as a whole. This regime is intended to ensure that resources extracted from the Area, which can include valuable minerals, are distributed fairly and equitably. Article 148 of UNCLOS provides that:

> [t]he effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.

When extractive activities are conducted, this must be by an organ of the International Seabed Authority, known as the 'Enterprise',[116] and potentially in collaboration with other actors authorised to do so under the Agreement Relating to the Implementation of Part XI of UNCLOS. Those who are authorised to exploit the common goods must share the benefits with those who might need them most.[117] The Secretariat of the International Seabed Authority also publishes information on, for example, marine environmental protection, for the purposes of public accountability. Similarly, marine scientific research conducted in the Area must be carried out for the benefit of humankind as a whole. This regime indicates a further trend in the realm of co-operation over natural resources, one towards a community-based approach.[118]

IV ANALYSIS

Co-operation is multifaceted and is manifested in a variety of ways. We have shown that international co-operation can be much broader than the pursuit of efforts at the diplomatic level. It can include a duty to notify, to take positive action and to commit resources. Moreover, it can imply specific action such as the offering of technological assistance, the adoption of international measures or sharing information, for example. It can occur within an institutional context or outside of one. These facets of international co-operation have gradually been developed over time, particularly since the Second World War. As a result, this principle has become broader and deeper, and will continue to develop.

It plays a fundamental role in the universal realisation of human rights.[119] In the context of development co-operation, it can imply reducing poverty by reshaping the international economic system as well as investment and financial systems, participatory trading, improving access to markets for developing countries, cancelling debt incurred by developing countries and creating a system for the transfer of resources to developing countries.[120] Furthermore, it can have a wide-ranging role in ensuring developed countries offer international co-operation and assistance in all aspects of their external action, including, for example, trade, security, military

[116] Established under Art 170 of UNCLOS, which provides that the Enterprise is '[t]he organ of the Authority which shall carry out activities in the Area directly as well as the transporting, processing and marketing of minerals recovered from the Area'.

[117] ibid. See also, Edward Brown, *Sea-Bed Energy and Minerals: The International Legal Regime* (Martinus Nijhoff, 2001) ch 7.

[118] Andrew Clapham, *Brierly's Law of Nations* (7th edn, Oxford University Press, 2012) 199.

[119] Margot Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (Oxford University Press, 2007).

[120] ibid 102–3.

assistance, development and cultural exchange.[121] In a different area again, it has informed the development of rules around environmental protection, with specific manifestations being found in information sharing or obligations to assist developing countries in meeting their environmental commitments. Under the law of the sea, States are expected to co-operate to prevent marine pollution and in activities concerning the deep seabed, in particular by sharing valuable resources that have been extracted and which are part of the common heritage of humankind.

One of the most expansive expressions of a positive duty to co-operate is to be found in the ICESCR, where it has a special role to play in the realisation of socio-economic rights. The character of the duty to co-operate and assist in the realisation of economic, social and cultural rights, as well as the special responsibility placed on developed countries in this context is evident in the statement of the CESCR in its General Comment No. 3 on the 'Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)' that '[i]t is particularly incumbent upon those States which are in a position to assist others in this regard'.[122] This statement appeals to the moral sensitivities of States and underlines that without international co-operation and assistance the full realisation of socio-economic rights will be hindered. Rather than attaching liability to a failure to pursue a programme of international assistance and co-operation, the prospect of non-fulfilment of rights in third countries is offered as a consequence.

While the obligation to co-operate and its many facets, such as the duties to consult and negotiate, can be found in many different international instruments, the legal contours of the obligation are not precisely defined. This has an impact on the implementation of co-operation, particularly in terms of what is required of States in discharging their obligation to co-operate.[123] Such requirements are dependent on the specifics of the relevant regime.[124] Greater precision around co-operation obligations has been achieved in contexts beyond international environmental law. In the implementation of economic, social and cultural rights, for example, the CESCR has illustrated the types of co-operative activities expected of States under the ICESCR.[125]

Similarly, the central role of good faith in co-operation must be better established. International co-operation is closely connected to reciprocity and good faith.[126] But good faith can have much wider application in co-operative activities. Good faith should, for example, guide States when they conduct EIAs, which are a manifestation of co-operation insofar as they are concerned with sharing information between States. Good faith is also important when States are requested to co-operate with recommendations from international bodies regarding the protection and preservation of the environment and natural resources. In light of a rapidly

[121] Sigrun Skogly, *Beyond National Borders: States' Human Rights Obligations in International Co-operation* (Intersentia, 2006); see also Sigrun Skogly and Mark Gibney, 'Economic Rights and Extraterritorial Obligations' in Shareen Hertel and Lanse Minkler (eds), *Economic Rights: Conceptual, Measurement and Policy Issues* (Cambridge University Press, 2007) 267; Alston and Quinn (n 22) 191; Arjun Sengupta, 'Poverty Eradication and Human Rights' in Thomas Pogge (ed), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford University Press, 2007) 344.

[122] CESCR (n 62), para 14.

[123] See Malgosia Fitzmaurice, 'Legitimacy of International Environmental Law. The Sovereign States Overwhelmed by Obligations: Responsibility to React to Problems Beyond National Jurisdiction' (2017) 77 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 339–70, 347.

[124] See Robert Steenkamp, 'UNCLOS, CITES and the IWC – A Tailored International Duty to Co-operate', *EJIL: Talk!*, 26 November 2018.

[125] See eg CESCR (n 62), paras 9–12.

[126] Christina Leb, 'One Step at a Time: International Law and the Duty to Co-operate in the Management of Shared Water Resources' (2015) 40(1) *Water International* 21–32.

changing geopolitical landscape, it should also be emphasised that the legal framework around co-operation dictates that it must occur despite any political, economic or social differences that States may have.

Another open question is the extent to which the duty to co-operate is shaped by the principle of common but differentiated responsibilities. How these two concepts interact should be carefully spelt out in specific regimes. In a different context, the CESCR has underscored that co-operation for development and thus for the realisation of economic, social and cultural rights is an obligation of all States, but also that those States with plentiful resources bear a heavier commitment.[127] Inroads have already been made and financial mechanisms intended to facilitate co-operation between developing and developed countries do reflect the principle of common but differentiated responsibilities. This is the case, for example, with the Global Environment Facility (GEF) and the Forest Carbon Partnership Facility, which promote capacity-building and financial assistance.[128] Moreover, the recent approach of the Paris Agreement, emphasising that developed countries owe a special responsibility to developing countries in respect of financial and technical assistance, is a step in this direction.

Finally, there remains disagreement as to whether international co-operation leads to enforceable rights. The negotiating history of the ICESCR reveals that there was a division among the negotiating States on this point and, ultimately, the issue was avoided in the final text.[129] However, the issue had to be considered again when the Optional Protocol to the Covenant was under negotiation. Developed countries in those negotiations accepted there was a moral responsibility to co-operate internationally but did not accept the Covenant provided for a legally binding obligation to co-operate for the realisation of socio-economic rights.[130] However, General Assembly resolutions and other international agreements have suggested that stronger legal obligations do flow from international co-operation in certain contexts. Examples are the General Assembly resolution on the Right to Food[131] and the Sustainable Development Goal 17, which is concerned with strengthening of a global partnership for sustainable development.

Georges Abi-Saab has argued that increased institutional density is necessary where additional normative density pertains.[132] This is confirmed by the experience of international co-operation. Abi-Saab argues that co-operation is intended to tackle profoundly ambitious tasks and, as a result, the law of co-operation must be institutionalised. He explains that

> [t]his is in application of what could be termed a law or fundamental hypothesis of 'legal physics', which can be formulated as follows: 'each level of normative density requires a corresponding level of institutional density in order to enable the norms to be applied in a satisfactory manner'.[133]

International co-operation is particularly effective and can be manifested in more elaborate ways when it is found within an institutional context. This is evident, for example, through the

[127] CESCR (n 62), para 14.

[128] See Laurence Boisson de Chazournes, 'Is There Room for Coherence in Climate Financial Assistance' (2015) 4 *Laws* 541–58.

[129] Alston and Quinn (n 22) 188–90.

[130] Commission on Human Rights, Report of the Open-ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on its Third Session, 14 March 2006, UN Doc E/CN.4/2006/47.

[131] The Right to Food, UNGA Res 59/202 (31 March 2005), UN Doc A/RES/59/202, paras 20 and 32.

[132] See eg Abi-Saab, 'Cours general de droit international public (Volume 207)' (n 2) 93; Abi-Saab, 'Whither the International Community?' (n 2) 256.

[133] Abi-Saab, 'Whither the International Community?' (n 2) 256.

protection and management of water resources through basin organisations. These institutions have been successful at ensuring and promoting co-operative activity. In a similar way, the climate-change regime is beginning to create institutional machinery around the appraisal of co-operative efforts made by developed countries in providing technological and financial assistance to developing countries so that they can mitigate and adapt to the effects of climate change. As a result, co-operation is operationalised in this particular context through transparency, reporting and accountability mechanisms. In contrast, stronger institutional mechanisms that take account of and evaluate co-operative efforts are necessary to properly operationalise co-operation for the realisation of human rights and development.

International institutions come into existence as a product of co-operation. International organisations can take many different shapes and sizes: they can be formal or informal, highly structured or flexible frameworks for co-operation. To show how loosely organised co-operation can be in an institutional context we may refer to the examples of the Quartet on the Middle East, the Group on Earth Observations, the BRICS, the G8 and the G20.[134] Over time, the institutional intensity of co-operation can change and, as a result, unstructured forms of international co-operation can evolve into more structured international organisations.[135] Depending on the functional necessity, States will delegate more or less of their sovereignty to international organisations in an attempt to resolve questions of international co-operation.[136] As Paul Reinsch observed in 1911:

> It is not so much the case that nations have given up certain parts of their sovereign powers to international administrative organs, as that they have, while fully reserving their independence, actually found it desirable, and in fact necessary, regularly and permanently to co-operate with other nations in the matter of administering certain economic and cultural interests.[137]

International organisations are hubs for functional co-operation and facilitate giving effect to a desire to co-operate. They allow for harmonisation, dialogue, accountability and the coagulation of epistemic communities, all of which give meaning to co-operation.[138]

V CONCLUSIONS

Through a consideration of different legal instruments that make provision for international co-operation, it has been possible to trace its multifaceted dimensions and evolution since its appearance in the UN Charter and the Friendly Relations Declaration. That said, it should also be noted that international co-operation can be found in much earlier expressions in the creation of the first international institutions on shared natural resources and administrative unions, for example. Today, there are many sites of co-operation and these have generally contributed new characteristics to the general conception of co-operation under the UN Charter and Friendly Relations Declaration.

General international law provides a basic expression of the duty to co-operate. But this duty is without much meaning. It has been the task of specialised regimes of international law to add

[134] Henry Schermers and Niels Blokker, *International Institutional Law* (Brill, 2018) 35–36.
[135] ibid 36.
[136] David J Bederman, 'The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel' (1995–96) 36 *Virginia Journal of International Law* 275, 339.
[137] Paul Reinsch, *Public International Unions, Their Work and Organization: A Study in International Administrative Law* (Ginn and Company, 1911) 14.
[138] Bederman (n 136) 374.

shades of colour to the general obligation. Co-operation for the realisation of human rights – particularly economic, social and cultural rights – has provided content and scope to the duty. The law of development co-operation has provided nuance in the application of the duty, with a special responsibility incumbent on developed countries to provide financial and technical assistance to developing countries. Co-operation over shared natural resources, particularly in respect of fresh water or the deep seabed, has shown how institutions can play an important role in operationalising co-operation. Finally, environmental co-operation, such as in the context of climate change, evidences new attempts to compel co-operation through transparency and accountability mechanisms.

International co-operation finds application in many more areas of international law than those explored in this chapter. But we have endeavoured to highlight that, in order to operationalise co-operation, the general duty must be connected to some functional need and, in turn, that need will shape the way in which co-operation is manifested in practice. Our analysis shows that co-operation is most successful in specific contexts with a well-defined institutional structure. Transparency and accountability add new dimensions to international co-operation, though the extent to which such dimensions make co-operation more effective remains to be seen.

The Friendly Relations Declaration did little to advance the substance of international co-operation but it did cement this principle at the centre of the international legal order, building in this way on the work of the UN Charter before it, and providing a solid foundation for the many and varied manifestations of co-operation that we may find in so many areas of international law today.