



1-1-2005

Human Rights and Human Responsibilities: A Necessary Balance?

Mia Giacomazzi

Follow this and additional works at: <http://digitalcommons.law.scu.edu/scujil>

Recommended Citation

Mia Giacomazzi, *Human Rights and Human Responsibilities: A Necessary Balance?*, 3 SANTA CLARA J. INT'L L. 164 (2005).
Available at: <http://digitalcommons.law.scu.edu/scujil/vol3/iss2/1>

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Journal of International Law by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

HUMAN RIGHTS AND HUMAN RESPONSIBILITIES SYMPOSIUM
SANTA CLARA UNIVERSITY SCHOOL OF LAW
APRIL 1, 2005

**HUMAN RIGHTS AND HUMAN RESPONSIBILITIES:
A NECESSARY BALANCE?**

Mia Giacomazzi^{*}

INTRODUCTION

On September 1, 1997, the InterAction Council proposed a Universal Declaration of Human Responsibilities. Recognizing that economic globalization brought about new global problems, the InterAction Council sought to bring responsibilities into balance with rights in order to promote a movement of involvement regarding freedoms. Working on a draft of human ethical standards since 1987, the InterAction Council firmly believes that “a better social order nationally and internationally cannot be achieved by laws, prescriptions and conventions alone, but needs a global ethic.”¹ While the InterAction Council hoped to have their Responsibilities Declaration adopted by the General Assembly of the United Nations, their statement did not receive universal acclaim.

In the Summary Report of the Steering Meeting on the Dissemination of the Universal Declaration of Human Responsibilities (1998), the Committee rightly acknowledged that “it will take years before the moral appeal of the document will be accepted by the multitude of the

^{*} Mia Giacomazzi is Editor-in-Chief of the *Santa Clara Journal of International Law* (volume 3) and a J.D. Candidate at Santa Clara University School of Law. She wishes to thank Jiri Toman and Almaz Negash for their support, guidance, and inspiration. This paper was written in preparation of the “Human Rights and Human Responsibilities Symposium” to be held on April 1, 2005 at Santa Clara University. The symposium is part of the High-Level Meeting of the InterAction Council.

¹ Introductory Comment, www.interactioncouncil.org.

people around the world.”² Adopted just a year earlier, reactions to the document were mixed and wide-ranging. Most Asian countries quickly and widely accepted the Universal Declaration for Human Rights, while the majority of Western governments remained reluctant to sign on the ideals presented.

The resistance of the Universal Declaration of Human Responsibilities stems from the belief by some states and most human rights activists that the Responsibilities Declaration will weaken the issue of human rights. Concerns arose that oppressive regimes may readily embrace the concept of human responsibilities as a substitute for the advancement of human rights. Further, Article 14 of the Declaration of Human Responsibility drew attacks from the Western media who were concerned about the freedom of press.

The InterAction Council has consistently maintained that the exercise of responsibility is essential for the full implementation of human rights. The original motivation of the Universal Declaration of Human Responsibilities was based on the notion that human rights and human responsibilities were complementary. Indeed, the initial objective was to have the Responsibilities Declaration presented to the U.N. General Assembly for adoption as a resolution on the 50th Anniversary on the Human Rights Declaration. Without western support, however, this goal was not realized.

Although inextricably intertwined, the notions of human rights and human responsibilities have developed separately within the international community. Duties were considered, but ultimately rejected, by the drafting committee of the Universal Declaration of Human Rights. The

² Summary Report of the Steering Committee Meeting on the Dissemination of the Universal Declaration of Human Responsibilities, Chaired by Malcom Fraser, March 20-21, 1998, available at www.interactioncouncil.org

void that created – the one the InterAction Council aims to fulfill – has yet to be successfully dealt with in a meaningful way.

Both the activists of human rights and human responsibilities share one important purpose: protecting and promoting human dignity. Indeed, the authors of the Universal Declaration of Human Responsibilities contend that their efforts were done in the name of human rights. Despite this common goal, however, few human rights activists have signed on to the ideas of the Universal Declaration of Human Responsibilities.

DEVELOPMENT OF RIGHTS DECLARATION

Protection and promotion of human rights was at the core of the United Nations since its inception. Reference to the respect for human rights was made in Article I of the United Nations Charter.³ Further, Article 68 mandates that “the Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights...”⁴

When created in 1946, the United Nations Commission on Human Rights had one item high on its agenda – drafting the Universal Declaration of Human Rights. During the two-year drafting process, the drafting committee and the UNESCO Philosophy committee entertained contributions from great thinkers from all of the world’s philosophical and political associations. It was in the process that the ideas of both human rights and duties were first discussed on a global level.⁵

Eastern thinkers noted that the language of “human rights” was a relatively modern European development. However, this did not mean

³ <http://www.un.org/aboutun/charter/>

⁴ *Id.*

⁵ The Committee’s report, the questionnaire, and collected responses are collected in JACQUES MARITAIN, HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS (1949) [hereinafter “HUMAN RIGHTS”].

that sources of human rights were not present in Eastern traditions. As Confucian philosopher Chung-Shu Lo explained,

The problem of human rights was seldom discussed by Chinese thinkers of the past, at least in the same as it was in the West. There was no open declaration of rights in China, either by individual thinkers or by political constitutions, until this conception was introduced from the West...[However], the idea of human rights developed very early in China.”⁶

Additionally, Muslim philosopher and poet Humayin Kabir believed that the most important consideration for a charter of human rights is that it be universal. The “fundamental flaw in the Western conception of human rights [is that in] practice often applied only to Europeans and sometimes to only some among Europeans.”⁷

The concept of balancing rights and responsibilities was strongly emphasized by most Asian and some European respondents. Political scientist S.V. Puntambekar wrote that Hindu thinkers propounded a code that included five social freedoms (freedom from violence, freedom from want, freedom from exploitation, freedom from violation and dishonor and freedom from early death and disease) and five individual virtues (“absence of intolerance, compassion or fellow-feeling, knowledge, freedom of thought and conscience, and freedom from fear, frustration or despair”).⁸ Chung-Shu Lo also explained that the “basic ethical concept of Chinese social political relations is the fulfillment of duty to one’s neighbor, rather than the claiming of rights.”⁹

⁶ Chung-Shu Lo, *Human Rights in the Chinese Tradition*, in HUMAN RIGHTS, *supra* note 5, at 186.

⁷ MARY ANN GLENDON, A WORLD MADE NEW 74 (2001) [hereinafter “A WORLD MADE NEW”].

⁸ S.V. Puntambekar, *The Hindu Concept of Human Rights*, in HUMAN RIGHTS, *supra* note 5, at 191.

⁹ Chung-Shu Lo, *supra* note 6.

Gandhi urged the committee to remember that respect for rights ultimately depends on attitudes and habits having more to do with duty than entitlement:

I learned from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.¹⁰

While not explicit in Anglo-American rights documents, the idea of responsibility had been a familiar part of the traditions of many countries. Drawn from continental and Latin American rights documents and classical, biblical and socialist thought, the first two drafts of the Rights Declaration included duty language. Cassin proposed the following article as one of the general principles, “[E]ach man owes to society fundamental duties which are: obedience to law, exercise of a useful activity, acceptance of the burdens and sacrifices demanded for the common good.”¹¹ Eventually the duty language proposed was embodied in Article 29(1) of the Universal Declaration of Human Rights, which reads: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”¹²

Since then, the United Nations has adopted various agreements aimed at protecting the rights of human beings. Among these agreements

¹⁰ Mohandas Gandhi, *Letter Addressed to the Director-General of UNESCO*, in HUMAN RIGHTS, *supra* note 5, at 18.

¹¹ Suggestions Submitted by the Representative of France for Articles of the International Declaration of Human Rights, the “Cassin Draft”, Art. 3, in A WORLD MADE NEW, *supra* note 7, Appendix 2.

¹² Universal Declaration of Human Rights, Art. 29(1), available at <http://www.un.org/overview/rights.html>

are: the Covenant on Civil and Political Rights, the Optional Protocol to the Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights, the Convention Against Torture, the Convention Against Genocide, the Geneva Conventions, the Convention on the Rights of the Child, the Convention on Elimination of Discrimination Against Women and the Charter of the United Nations.¹³

In order to monitor violations of the aforementioned agreements on human rights, the United Nations created a wide variety of mechanisms. For each convention, treaty bodies were established to monitor and promote the respective covenants. Extra-conventional mechanisms were also created. UN special rapporteurs, representatives, experts and working groups monitor compliance and investigate allegations of human rights abuses by State parties. In recent years, field offices were opened at the request of Governments to assist in the development of national institutions for the promotion and protection of human rights. Field offices also conduct educational campaigns in their base countries.

DEVELOPMENT OF RESPONSIBILITIES DECLARATION

As previously noted, the concept of human responsibility was only new to some regions of the world. As Oscar Arias Sanchez noted in April 1997:

[M]any societies have traditionally conceived of human relations in terms of obligations rather than rights. This is true, in general terms, for instance for much of Eastern thought. While traditionally in the West the concepts of freedom and individuality have been emphasized, in the East the notions of responsibility and community have prevailed. The fact that a Universal Declaration of Human Rights was drafted instead of a Universal Declaration of Human Duties undoubtedly reflects the philosophical and cultural background of the document's drafters who, as is

¹³ A Summary of United Nations Agreements on Human Rights, available at www.hrweb.org/legal/undocs.html

known, represented the Western powers who emerged victorious from the Second World War.¹⁴

Believing that a world in which everyone demands rights but does not accept responsibilities will be an unequal and even dangerous and discordant world, Takeo Fukuda of Japan formed the InterAction Council in 1983. Soon thereafter, members began to explore the possibility of establishing a common ethical standard. After meetings with several groups, the InterAction Council was encouraged that some ethical standards spanned across all political and religious beliefs.¹⁵

Chairperson Helmut Schmidt explains:

The initiative to draft a Universal Declaration of Human Responsibilities is not only a way of balancing freedom with responsibility, but also a means of reconciling ideologies and political views that were deemed antagonistic in the past. The basic premise, then, should be that humans deserve the greatest possible amount of freedom, but also should develop their sense of responsibility to its fullest in order to correctly administer their freedom.¹⁶

The Universal Declaration of Human Responsibilities is organized in five parts—fundamental principles for humanity, non-violence and respect for life, justice and solidarity, truthfulness and tolerance, and mutual respect and partnership. The Responsibilities Declaration covers many subjects including marriage, property, professionals, and the

¹⁴ Oscar Aris Sanchez, "Some Contributions to a Universal Declaration of Human Obligations," available at <http://www.interactioncouncil.org>

¹⁵ See generally, Malcolm Fraser, *A Declaration on Human Responsibilities?*, available at <http://www.interactioncouncil.org>

¹⁶ A Universal Declaration of Human Responsibilities, Report on the Conclusions and Recommendations by a High-Level Expert Group Meeting, Chaired by Helmut Schmidt (1997).

media.¹⁷ Endorsers and supporters of the document hail from every corner of the globe.

The declaration by the InterAction Council is not an isolated document. It fulfils the urgent call by important international bodies for global ethical standards at present made in chapters of the reports both of the UN Commission on Global Governance (1995) and the World Commission on Culture and Development (1995). The same topic has also been discussed for a long time at the World Economic Forum (WEF) in Davos and similarly in the new UNESCO Universal Ethics Project. Increasing attention is also being paid to it in Asia.¹⁸ A UNESCO plan for a Universal Declaration of Human Responsibilities was also devised in March 1997.¹⁹

The UNESCO-Cousteau Society Meeting of Expert proposed the Universal Declaration of Human Rights for Future Generations in 1994. Recognizing that future generations also have rights, the declaration imposes duties on each generation in order to preserve rights for the future. Outlining a prohibition of future discrimination, Article 12 asserts that each “generation must undertake not to adopt any measure which might lead in future to discrimination of any kind.”²⁰ Similarly, Article 13 outlines that each “generation must always ensure that the rights of those belonging to future generations are fully safeguarded and are not sacrificed for the sake of expediency of interests.”²¹

¹⁷ See generally, The Universal Declaration of Human Responsibilities, available at <http://www.interactioncouncil.org>

¹⁸ Hans Kung, *Human Responsibilities Reinforce Human Rights: The Global Ethic Project*, in REFLECTIONS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, (Martinus Nijhoff Publishers, The Hague, 1998).

¹⁹ <http://astro.temple.edu/~dialogue/Antho/unesco.htm>

²⁰ Human Rights for Future Generations, UNESCO-Cousteau Society Meeting of Experts.

²¹ *Id.*

In 1999, The UN General Assembly adopted resolution 53/144, entitled “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.”²² The Declaration of Human Rights and Responsibility presents affirmative duties on states to take measures to promote understanding of civil, political, economic, social and cultural rights.²³ The 1999 Declaration also imposes affirmative duties on individuals, non-governmental organizations and institutions to promote understanding, tolerance and peace.²⁴

CONCERNS²⁵

The concerns expressed by states and human rights activities center around three main issues. First, there is a concern that oppressive regimes will misuse the Responsibilities Declaration. Secondly, members of the media feel that Article 14 may infringe upon the freedom of the press. Finally, some are misgivings over who is responsible for adhering to the morals prescribed within the Responsibilities Declaration.

Misuse of Responsibilities Declaration

As earlier expressed, some Western states are concerned that oppressive regimes may use misuse the Responsibilities Declaration. The perception is that regimes may point to the concept of human responsibilities as a substitute for the advancement of human rights. In response, Hans Kung counters that while responsibilities can be misused,

²²

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En?OpenDocument)

²³ *Id.*, Art. 14(1)

²⁴ *Id.*, Art. 16.

²⁵ This section is meant to identify, rather than discuss, the concerns of the Responsibilities Declaration. These issues will be more fully addressed by the panel members of the Human Rights and Human Responsibilities Symposium on April 1, 2005 at Santa Clara University.

so too can rights.²⁶ He concludes that this is no reason to reject the concept traditional in Confucianism, Hinduism, Buddhism, and Islam.²⁷

Freedom of Press

Article 14 of the Universal Declaration of Human Responsibilities states:

The freedom of the media to inform the public and to criticize institutions of society and governmental actions, which is essential for a just society, must be used with responsibility and discretion. Freedom of the media carries a special responsibility for accurate and truthful reporting. Sensational reporting that degrades the human person or dignity must at all times be avoided.

Members of the media are concerned that this article infringes on the freedom of the press. Specifically, the concern centers around who would be the judge of what is accurate and truthful reporting.

In response, Kalevi Sorsa expressed to the International Press Institute:

The freedom of the press or of a journalist is guaranteed in a modern constitutional state. There is the right to report freely. The state must support this right and, if necessary, act to enforce it. The state and the citizen have the responsibility to respect that right. However, the right to report freely does not impinge on the responsibility of being truthful and fair of the journalist or of the media.”²⁸

Levels of Ethical Behavior

Traditionally, human rights are conceived in terms of obligations of states to individuals. The ethical code suggested by the InterAction Council considers at least four dimensions of human actions—obligations

²⁶ Hans Kung, *Don't be Afraid of Ethics! Why we need to talk of responsibilities as well as rights*, available at <http://www.interactioncouncil.org>

²⁷ *Id.*

²⁸ Kalevi Sorsa, “Rights and Responsibilities,” speech made at international Press Institute, World Congress in Moscow, May 1998, available at <http://www.interactioncouncil.org>

between persons; obligations between nations; obligations toward the planet; obligations toward ourselves. The debate on this subject is rich.

Eleanor Roosevelt:

Where, after all, do universal human rights begin? In small places, close to home -- so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.²⁹

United Nations High Commission for Human Rights:

We must all act when human rights are violated. States as well as the individual must take responsibility for the realization and effective protection of human rights.³⁰

Kofi Annan, Secretary-General of the United Nations:

I will be a champion of human rights and will ensure that human rights are fully integrated in the action of the Organization in all other domains. Human rights, indeed, cut across all the work of the United Nations, from peacekeeping, child rights, health and development to the rights of indigenous peoples to education, social development and the eradication of poverty. Consultations have already taken place among all agencies and programmes of the United Nations, leading to strategies and campaigns being devised.³¹

²⁹ A WORLD MADE NEW, *supra* note 7, at 75.

³⁰ <http://www.ohchr.org/english/about/hc/index.htm> (March 1, 2005)

³¹ <http://www.ohchr.org> (March 1, 2005)

His Holiness the Dalai Lama:

If we aim to be happy, we should acknowledge that others also desire to achieve happiness. If we believe we should have a right to be happy, others should also have the same right. If we wish that others help us achieve happiness, we must be committed to helping others achieve their *own happiness*.³²

CONCLUSION

Over 50 years ago, the drafters of the Universal Declaration of Human Rights found that indeed there were principles underlying the draft Declaration in many cultural and religious traditions. They also found that these principles were not always expressed as rights. Instead, some cultures operate upon the understanding that people also have duties to themselves, each other, their community and their world. Apart from Article 29, however, the concept of responsibility was removed from the final draft. It is now essential to revisit the topic. In order to create a more balanced approach that truly spans across all cultures and belief systems, a Responsibilities Declaration may now be a necessary complement to the Duties Declaration.

As scholar Richard Falk stated:

Responsibilities must be conceived as correlative to rights. Such a premise would be well served by the drafting of a Universal Declaration of Human Responsibilities as an indispensable companion to the Universal Declaration of Human Rights. The Western discourse on human rights works within the invisible boundaries of self-expression and resistance to authority (the individualist ethos that gives rise to consumer absolutism and all forms of permissiveness), and without sense of responsibility to the well-being and needs of the community. The notion of protection the individual is a great advance over its absolutist antecedents, but it needs to be balanced by the acknowledgement that the individual is embedded within a community. The importance of placing limits upon human

³² A WORLD MADE NEW, *supra* note 7.

assertiveness at all levels of social organization is overlooked if the stress is placed only on the protection of individuals.³³

SUGGESTED READING LIST

1. Richard A. Falk, *Human Rights Horizons* (Routledge 2000).
2. Malcolm Fraser, "A Declaration on Human Responsibilities," Address given to the UNESCO Conference (March 30, 1998).
3. Eric Fuchs and Pierre-Andre Stucki, *Au Nom De L'Autre (Editions Labor et Fides 1985)*.
4. Mary Ann Glendon, *A World Made New* (Random House 2001).
5. Hans Kung, "Human Responsibilities Reinforce Human Rights: The Global Ethic Project," Article taken from *Reflections on the Universal Declaration of Human Rights; A Fiftieth Anniversary Anthology*, Published under the auspices of the Netherlands. Ministry of Foreign Affairs, Martinus Nijhoff Publishers, The Hague, 1998.
6. Hans Kung, "Don't be Afraid of Ethics! Why we need to talk of Responsibilities as well as rights," www.interactioncouncil.org.
7. Jacques Maritain, *Human Rights: Comments and Interpretations* (London: Wingate, 1949).
8. Oscar Arias Sanchez, "Some Contributions to a Declaration of Human Obligations," www.interactioncouncil.org.
9. Helmut Schmidt, "It is Time to Talk about Responsibilities," Speech given at Hansung University, Seoul, Korea, October 17, 1999.
10. Kalevi Sorsa, "Rights and Responsibilities", Speech made at International Press Institute (IPI), World Congress in Moscow, 26-28 May, 1998.
11. UNESCO-Cousteau Society Meeting of Experts, *Human Rights for Future Generations*
12. Universal Declaration of Human Responsibilities.
13. Universal Declaration of Human Rights.
14. Declaration on the right and Responsibility of individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144.
15. United Nations Charter.

³³ Richard A. Falk, HUMAN RIGHTS HORIZONS: THE PURSUIT OF JUSTICE IN A GLOBALIZING WORLD 88 (2000).