

Muddying the waters

The Draft 'Universal Declaration of Human Responsibilities': No complement to human rights

Introduction

On 1 September 1997, the text of a draft Universal Declaration of Human Responsibilities ('the draft declaration') was launched by the InterAction Council, a group of former government leaders, acting in their personal capacities, with Helmut Schmidt, former German Chancellor, as Honorary Chairperson and Malcolm Fraser, former Prime Minister of Australia, as Chairperson. Composed of 19 articles, the draft declaration tries to elaborate "*norms of good behaviour, including honest dealing, speaking and acting truthfully, commends non-violence and generally showing respect to others*". The InterAction Council would like their draft text to be considered as a complement to the 1948 United Nations' Universal Declaration of Human Rights (the UDHR). They have sent the text to all heads of government and the UN Secretary-General, proposing that the idea be taken up at the 1998 session of the UN General Assembly.

There are parts of the draft declaration with which no one would argue. It states in the preamble that "*[w]e the people of the world thus renew and reinforce commitments already contained in the Universal Declaration of Human Rights*". Some articles are clearly inspired by the UDHR, for example, article 5 which says that "*Every person has a responsibility to respect life. No one has the right to injure, to torture or to kill another person*". Several of the provisions are very general, moral exhortations to every one in the world to live good lives by being honest and not stealing (article 8), being truthful (article 12), respecting one another (article 16), promoting good over evil (article 9), helping the needy (article 10) and not doing to others what you do not wish them to do to you (article 4).

However, in attempting to restate some rights from the UDHR as responsibilities the draft declaration introduces vague and ill-defined notions which can only create confusion and uncertainty. Moreover, the draft declaration undermines the UDHR by describing some rights in a weaker and less precise language than the 1948 Declaration. The draft declaration fails to build on the historical, practical and symbolic importance of the UDHR and contributes little, if anything, to the provisions of existing declarations, world conference documents and international treaties. In short, the draft declaration makes no meaningful contribution to the important discussions that must take place in the UN during 1998. What is needed in the anniversary year of the 1948 UDHR is a commitment, in word and deed, to promote and implement all human rights for all people.

Responsibilities and the Universal Declaration of Human Rights

The concept of duties is not absent from the UDHR. Article 29 states that we all have a responsibility to the people around us, and we can only develop fully as individuals by taking care of each other. All the rights in the UDHR can only be limited by law and only if necessary to protect other people's rights, meet society's sense of right and wrong, maintain order and look after the welfare of society as a whole.

Attention to the issue of responsibility in the year of the 50th anniversary of the UDHR is not amiss. For too long states, who bear the ultimate responsibility for the promotion and protection of human rights, have paid little more than lip-service to the rights set out in the UDHR and enshrined in the many global and regional standards that derive from or have been inspired by it. The 50th anniversary is an occasion for them to face up to their responsibilities. States should be reminding themselves that they developed human rights law as a way of protecting the individual from the potentially arbitrary power of the state and positively to guide the state in how it should implement those individual rights.

In this respect, the draft declaration makes helpful suggestions on enhancing accountability for human rights. In particular, Article 3 says that “[n]o person, no group or organization, no state, no army or police stands above good and evil; all are subject to ethical standards. Every person has a responsibility to promote good and to avoid evil in all things”. This highlights the responsibility of state officials at all levels to respect human rights under all circumstances and could be interpreted to include the refusal to carry out orders that violate internationally recognized human rights, denunciation of human rights violations and action to ensure that human rights violations are halted.

The draft declaration puts an emphasis on duties and responsibilities, apparently because of a fear that the unfettered exercise of human rights will jeopardize society. The preamble warns that “*the exclusive insistence on rights can result in conflict, division and endless dispute, and the neglect of human responsibilities can lead to lawlessness and chaos*”. The articles in the draft declaration on the freedom of the media and freedom of religion are devoted entirely to ways in which these rights should **not** be exercised. Unfortunately, the draft declaration shows a lack of understanding of the richness of existing international human rights standards, starting with the UDHR, which already set out the restrictions that governments may legitimately impose on the exercise of rights to protect society and the rights of other individuals. The standards explain how some rights may be restricted in strictly defined circumstances such as a threat to national security or to protect public order or public health or morals. These legitimate restrictions were carefully negotiated and agreed by states themselves and now have a rich reservoir of authoritative interpretation to guide governments in applying them in practice.

The Universal Declaration of Human Rights in historical context

The draft declaration understates the historical, practical and symbolic significance of the UDHR which has been a cornerstone of the UN's human rights work for nearly five

decades. It has been the source of most current human rights standards including the main human rights treaties - the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. All but two states¹ are party to this last treaty, and every member of UN has committed to at least one of them by becoming a state party. The UDHR has been the basis for many national laws and constitutions. In 1993, at the UN World Conference on Human Rights, its essential tenets were affirmed by 171 states and it has informed the deliberations at other UN global conferences, including the UN World Summit on Social Development and the Fourth UN World Conference on Women, both held in 1995.

In addition, the UDHR has inspired many individuals and nations during times of oppression. In January 1997, President Nelson Mandela of South Africa said:

*“The Universal Declaration [of Human Rights] was adopted in San Francisco in the same year, and only a few months after, the first government which was determined to apply a policy of absolute apartheid came to power in South Africa. For all the opponents of this pernicious system, the simple and noble words of the Universal Declaration were a sudden ray of hope at one of our darkest moments. During the many years that followed, this document, solemnly adopted by the most representative international body in existence, served as a shining beacon and an inspiration to many millions of South Africans. It was proof that they were not alone, but rather part of a great global movement against racism and colonialism, for human rights, peace and justice”.*²

Weakening universally recognized human rights

A number of the provisions in the draft declaration undermine the UDHR, and other human rights standards deriving from it, because they refer to specific rights in a weaker

¹Only the USA and the collapsed state of Somalia have yet to ratify the Convention.

² Message to the Commemorative Workshop on the UDHR, Warsaw, Poland, 30-31 January 1997

manner, leave out important elements of the guarantees or introduce vague and ill-defined concepts. The following are some examples.

- The UDHR enshrines the rights of everyone not to be discriminated against on grounds such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status. Yet the draft declaration weakens this by only saying that everyone should “*treat all people in a humane way*” regardless of personal attributes. The general right not to be discriminated against is lost.
- The draft declaration weakens the inalienable economic and social rights set out in the UDHR and elaborated at recent international UN conferences, such as the right to adequate health care and food. The draft declaration only provides that all people have a responsibility to “*make serious efforts to overcome poverty, malnutrition, ignorance and inequality*” if they are “*given the necessary tools*”. The vague concepts of “*serious efforts*” or “*necessary tools*” weaken the guarantees in the UDHR.
- The draft declaration loses much of the richness, specificity and detail of the UDHR. Equal access to education is mentioned but the rest of the elements of this right, as set out in Article 26 of the UDHR, are lost, including the right to free education to a certain level and the purpose education should fulfill. A brief reference to the right to privacy loses the richness of the right not to be subjected to arbitrary interference with one’s privacy set out in Article 11 of the UDHR. The draft declaration says that marriage “*requires love, loyalty and forgiveness and should aim at guaranteeing security and mutual support*”, without reiterating the full rights relating to marriage set out in Article 16 of the UDHR.
- The ill-defined concept of “*sensible*” family planning provides little guide to rights to family and reproductive and sexual health. The draft declaration also introduces the undefined concepts of “*inhumane behaviour*” and the responsibility not “*to injure*” people, without explaining whether they are the same or different from the concepts of torture and cruel, inhuman or degrading treatment or punishment in Article 5 of the UDHR.

The fact that the draft declaration reaffirms the UDHR in general terms does not help to interpret the significance of why certain rights in the UDHR are expressly mentioned, truncated, reworded or left out. Why is the right to privacy mentioned but not the rights to peaceful assembly, freedom of movement or choosing one’s government in periodic elections? The omissions and the rewording of rights in the UDHR bring confusion rather than clarity. In contrast, the UDHR, and the treaties and jurisprudence

which have evolved since, provide detailed and universal principles identifying the rights which are due to all human beings, the contents of these rights and the limitations that may be placed on these rights.

The draft declaration refers to protection of the environment and the need for sustainable development in very general terms in articles 7 and 8, yet states have already agreed both the conceptual approach and detailed programs of action at the UN Earth Summit held in Rio de Janeiro in 1992 and the World Summit for Social Development held in Copenhagen in 1995. The brief references to issues affecting women, such as avoiding sexual exploitation (article 16), family planning (article 18) and marriage (article 17) are a shadow of the detailed and practical measures agreed at the Fourth UN World Conference on Women held in Beijing in 1995. It is the outcomes of these meetings, and in particular, the 1993 World Conference on Human Rights, that have helped to turn the rights and responsibilities set out in the UDHR into concrete programs of action. It is the international human rights treaties and non-treaty standards that have flowed from the UDHR that have given a rich understanding to the rights enshrined in the UDHR.

The confusion in the draft declaration undermines the universality and indivisibility of all human rights - by which we mean that all human rights should be enjoyed by all people, at all times, and no one set of rights can be enjoyed at the expense of other rights. The point has been made by Kofi Annan, Secretary-General of the UN:

*"It is true that no single model of human rights, Western or other, represents a blueprint for all States in the transitional world. Human Rights are not found in dusty legal libraries, but in the hearts and minds of human beings. But let there be no doubt -- there are some very basic standards of human behaviour, violations of which are simply unacceptable... Do not African mothers weep when their sons and daughters are tortured by agents of oppressive rule? Do not African fathers suffer when their children are unjustly sent to jail? Is not Africa as a whole the poorer when one of its voices is silenced? Human rights are African rights. They are also Asian rights; they are European rights; they are American rights. They belong to no government, they are limited to no continent, for they fundamental to humankind itself. "*³

The UDHR recognises freedom from fear and freedom from want as the two sides of the same coin. People cannot advance their economic, social and cultural rights without the political space and civil freedom to do so; violations of civil and political

³ Statement by Kofi Annan to the fourth annual benefit dinner for the *Facing History and Ourselves* programme, delivered in New York on 14 October 1997.

rights, such as torture or unfair trial, add nothing to a state's economic development. In 1998, we need to see the universality and indivisibility of all human rights develop into universal action to make all human rights a reality for all humankind.

1998: A YEAR FOR HUMAN RIGHTS

A truly universal culture of human rights does mean that everyone is aware of their own rights and of the rights of their fellow human beings. Human rights are rooted in common concepts of human dignity and justice. Human rights defenders, particularly those whose rights have been violated because of their stand on the human rights of others, demonstrate the need for all people to be able to claim the rights they have been promised in human rights instruments such as the UDHR. A year ago, the UN General Assembly, through Resolution 51/88, invited states to:

“review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration of Human Rights, to identify obstacles and ways in which they can be overcome to achieve progress in this area, to undertake additional efforts and to develop programmes of education and information, with a view to disseminating the text of the Declaration and arriving at a better understanding of the universal message”.

This is the route governments should be taking to encourage responsibility for human rights 50 years after the adoption of the UDHR and five years after the UN World Conference on Human Rights.

- **The first step that governments can take to enhance responsibility for human rights is to ensure that everyone under their jurisdiction knows what the UDHR says.**

At the UN World Conference on Human Rights, held in Vienna in 1993, timetables were set for the universal ratification of two human rights treaties deriving from the UDHR. Every UN member but two, Somalia and the United States of America, are now party to the Convention on the Rights of the Child, for which the aim was universal ratification by 1995. The goal for universal ratification of the Convention on the Elimination of All Forms of Discrimination against Women was the year 2000; it now has 161 states parties.

- **Amnesty International recommends that at the 1998 session of the General Assembly timetables are set for the universal ratification of other human rights treaties deriving from the UDHR - the International Covenant on**

Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990 but still lacking the 20 ratifications needed to bring it into force.

While ratification of international human rights treaties is a welcome sign of governments' commitment to human rights, it is not sufficient by itself. The UN, including the General Assembly, should urge that:

- **all governments examine any limiting reservations or interpretative statements to international human rights treaties with a view to their withdrawal;**
- **all governments look at the implementation of treaties to which they are a state party; take steps to ensure that their reports to the relevant treaty bodies are submitted on time and in full and examine national legislation, policy and practice to ensure their broadest and most effective implementation.**

Particularly on the 50th anniversary of the UDHR, governments and the UN should give close attention to the situation of human rights defenders, including those whose human rights have been violated because of their defence of the rights set out in the UDHR. To this end, the UN and its members should:

- **urge the adoption by the UN General Assembly in 1998 of the draft Declaration on Human Rights Defenders which has already been adopted by the UN Commission on Human Rights at its 1998 session.**

As acknowledgement of their responsibilities under the UDHR, all heads of state should sign Amnesty International's pledge for the 50th anniversary of the UDHR:

***“I will do everything in my power to ensure that the
Universal Declaration of Human Rights
becomes a reality throughout the world” .***

Annex:

*Text of the draft Universal Declaration of Human Responsibilities produced by the
InterAction Council*

Universal Declaration of Human Responsibilities

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and implies obligations or responsibilities,

Whereas the exclusive insistence on rights can result in conflict, division, and endless dispute, and the neglect of human responsibilities can lead to lawlessness and chaos,

whereas the rule of law and the promotion of human rights depend on the readiness of men and women to act justly,

whereas global problems demand global solutions which can only be achieved through ideas, values, and norms respected by all cultures and societies,

whereas all people, to the best of their knowledge and ability, have a responsibility to foster a better social order, both at home and globally, a goal which cannot be achieved by laws, prescriptions, and conventions alone,

whereas human aspirations for progress and improvement can only be realised by agreed values and standards applying to all people and institutions at all times,

Now, therefore,

The General Assembly

proclaims this Universal Declaration of Human Responsibilities as a common standard for all peoples and all nations. To the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall contribute to the advancement of communities and to the enlightenment of all their members. We the peoples of the world thus renew and reinforce commitments already proclaimed in the Universal Declaration of Human Rights; namely, the full acceptance of the dignity of all people; their inalienable freedom and equality, and their solidarity with one another. Awareness and acceptance of these responsibilities should be taught and promoted throughout the world.

Fundamental Principles for Humanity

Article 1

Every person, regardless of gender, ethnic origin, social status, political opinion, language, age nationality, or religion, has a responsibility to treat all people in a humane way.

Article 2

No person should lend support to any form of inhumane behaviour, but all people have a responsibility to strive for the dignity and self-esteem of all others.

Article 3

No person, no group or organisation, no state, no army or police stands above good and evil; all are subject to ethical standards. Everyone has a responsibility to promote good and to avoid evil in all things.

Article 4

All people, endowed with reason and conscience, must accept a responsibility to each and all, to families and communities, to races, nations, and religions in a spirit of solidarity: What you do not wish to be done to yourself, do not do to others.

Non-Violence and Respect for Life

Article 5

Every person has a responsibility to respect life. No one has the right to injure, to torture or to kill another human person. This does not exclude the right of justified self-defence of individuals or communities.

Article 6

Disputes between states, groups or individuals should be resolved without violence. No government should tolerate or participate in acts of genocide or terrorism, nor should it abuse women, children or any other civilians as instruments of war. Every citizen and public official has a responsibility to act in a peaceful, non-violent way.

Article 7

Every person is infinitely precious and must be protected unconditionally. The animals and the natural environment also demand protection. All people have a responsibility to protect the air, water and soil of the earth for the sake of present inhabitants and future generations.

Justice and Solidarity

Article 8

Every person has a responsibility to behave with integrity, honesty and fairness. No person or group should rob or arbitrarily deprive any other person or group of their property.

Article 9

All people, given the necessary tools, have a responsibility to make serious efforts to overcome poverty, malnutrition, ignorance, and inequality. They should promote sustainable development all over the world in order to assure dignity, freedom, security and justice for all people.

Article 10

All people have a responsibility to develop their talents through diligent endeavour; they should have equal access to education and to meaningful work. Everyone should lend support to the needy, the disadvantaged, the disabled and to the victims of discrimination.

Article 11

All poverty and wealth must be used responsibly in accordance with justice and for the advancement of the human race. Economic and political power must not be handled as an instrument of domination, but in the service of economic justice and of the social order.

Truthfulness and Tolerance

Article 12

Every person has a responsibility to speak and act truthfully. No one, however high or mighty, should speak lies. The right to privacy and to personal and professional confidentiality is to be respected. No one is obliged to tell all the truth to everyone all the time.

Article 13

No politicians, public servants, business leaders, scientists, writers or artists are exempt from general ethical standards, nor are physicians, lawyers and other professionals who have special duties to clients. Professional and other codes of ethics should reflect the priority of general standards such as those of truthfulness and fairness.

Article 14

The freedom of the media to inform the public and to criticise 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 of dignity must at all times be avoided.

Article 15

While religious freedom must be guaranteed, the representatives of religions have a special responsibility to avoid expressions of prejudice and acts of discrimination toward those of different beliefs. They should not incite or legitimise hatred, fanaticism and religious wars, but should foster tolerance and mutual respect between all people.

Mutual Respect and Partnership

Article 16

All men and all women have a responsibility to show respect to one another and understanding in their partnership. No one should subject another person to sexual exploitation or dependence. Rather, sexual partners should accept the responsibility of caring for each others' well-being.

Article 17

In all its cultural and religious varieties, marriage requires love, loyalty and forgiveness and should aim at guaranteeing security and mutual support.

Article 18

Sensible family planning is the responsibility of every couple. The relationship between parents and children should reflect mutual love, respect, appreciation and concern. No parents or other adults should exploit, abuse or maltreat children.

Conclusion

Article 19

Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the responsibilities, rights and freedoms set forth in this Declaration and in the Universal Declaration of Human Rights of 1948.