

## 30 ARTICLES ON THE 30 ARTICLES

### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL

#### Article 29: Duty to Your Community

So far, the Universal Declaration of Human Rights (UDHR) has concentrated on rights that every person has simply by virtue of being born human. Now Article 29 says the corollary of rights is duties. We all have a duty to other people, and we should protect their rights and freedoms.

Fernand Dehousse, the Belgian representative to the United Nations while the UDHR was being drafted, said that Article 29's first paragraph "quite properly established a sort of contract between the individual and community, involving a fair exchange of benefits."

Article 29 also says rights are not unlimited. If they were, social balance and harmony would be impossible. It seeks to link the exercise of rights with the interests of the world community, which the United Nations had been set up in 1945 to represent.

Two early draft versions included these provisions: "These rights are limited only by the equal rights of all," and "Man is essentially social and has fundamental duties to his fellow-men. The rights of each are therefore limited by the rights of others."

"Human rights face a stress test today. We face a bare-knuckled, multi-directional brawl about the legitimacy and necessity of rights. We will need to mobilize a much larger community to defend our collective rights. And this is a fight worth fighting."

—Zeid Ra'ad Al Hussein

Neither survived in its original wording, but the meaning they convey is close to the final version, which says "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others..."

At an individual level, it has long been accepted that we ought not to infringe on the rights of others while exercising our own rights. As the well-known 1919 formulation by a judicial philosopher put it: "Your right to swing your arms ends just where the other man's nose begins."

What is less well known is that the Declaration of *rights* could well have been a "law of human rights and duties." Canadian law professor John Humphrey, who was also the first director of the UN Human Rights Division, scoured dozens of national

constitutions for inspiration for his first draft of the UDHR. His original draft said the exercise of rights was limited by the “just requirements of the State.” As we shall see, that idea was viewed as problematic by the other drafters.

Eight months before the UDHR was adopted on 10 December 1948, the American Declaration of the Rights and Duties of Man had been agreed in Bogota, Colombia.

It was a seminal document in the development of international protection of human rights. Some of its 28 provisions, such as the right to a fair trial, are also found in the UDHR. Others – like the duty of children “to honour their parents always” – are not.

At the time, Latin America was largely democratic, and military dictatorships were decades in the future. Even so, delegates from other countries saw the danger that governments might use such “duties” to limit human rights in unpredictable, unacceptable ways, and declined to accept the concept.

They were particularly concerned about the duties in the American Declaration “to obey the law and other legitimate commands of the authorities of his country,” and “to render whatever civil and military service his country may require for its defence and preservation.”

This, they perceived as opening a Pandora’s Box that might unravel the whole delicately interlaced structure of individual rights and freedoms.

What would happen if these duties came into conflict with human rights of expression, association, religion, and political participation? The UDHR drafters feared some of the language in the American Declaration (and even some of the language that appeared in early drafts of the UDHR) would allow States to impose any limitations they liked on the rights of individuals.

Since 1948, international jurisprudence has made it clear that some rights cannot be limited at all, and others can be limited only under certain conditions: restrictions can only be prescribed by law; they must serve one of the purposes listed by international law; and they must be proportional to the purpose in terms of their severity and intensity.

UN High Commissioner for Human Rights Human Rights Michelle Bachelet has warned that “increasing numbers of leaders no longer pretend to care about human rights, and seek to clamp down on civil society, often using national security as the pretext.” In so doing, they are distorting the notion, contained in Article 29, that individual rights may be legally constrained by “the just requirements of morality, public order and the general welfare in a democratic society.”

Not only that, they are ignoring the very last words of Article 29 which stresses nothing should occur which is “contrary to the purposes and principles of the United Nations.”

**This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70<sup>th</sup> anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.**

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