

**The 1998 Tällberg Workshop: Human Rights and the Free Market -
Is the Business of Human Rights also the Business of Business?**

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The Meaning and Role of the Universal Declaration of Human Rights

Address

by

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Note: this address was delivered more than half a year before the Global Compact <http://www.unglobalcompact.org/Portal/> was announced in 1999. The purpose of the address was to make an introduction to the Workshop. The address should be read in the light of the fact that the author was asked to present challenges and even to be controversial. The opinions expressed are the author's personal views and do not necessarily reflect the position of the United Nations.

Distinguished colleagues and friends,

Introduction

It is with a sense of great respect and also with great expectations that I address you this morning. You are an illustrious gathering assembled here in Dalecarlia, the home of a people that through the centuries has demonstrated an independent, not to say stubborn mind, rooted in a passion for freedom.

I have been asked to make the introduction to this Workshop by explaining the meaning and the role of the Universal Declaration of Human Rights (UDHR). It is expected that this session should form a basis for the following discussions and also for the recommendations. I have been asked to focus on the purpose of UDHR, which is said to be to create changes of behaviour, thereby causing “conflicts and dilemmas”. I am asked about my assessment of the development of the respect for UDHR and which role I give it in a future political and economic development. Also, I should present challenges to governments and to the business community. I should be “open” and could also be controversial.

Ladies and gentlemen, this is no small task, in particular since I have only twenty minutes at my disposal. But let me give it a try!

I will address three issues: first, the Declaration itself and my assessment of its status and role; second, the challenges that it poses to Governments; and third, the challenges that it poses to business.

The Declaration

First, the Declaration: We all know that it was adopted by the General Assembly of the United Nations on 10 December 1948. It was elaborated in a relatively short time. The Commission on Human Rights, which prepared the draft, convened in January 1947, and completed its task in the summer of 1948. The Declaration was one of the first achievements of the United Nations.

The ideas it expresses are sometimes said to be Western. At first glance, this may seem to be true. The Chairman of the Human Rights Commission at this time was Eleanor Roosevelt, the widow of President Franklin D. Roosevelt. Another well-known and influential member of the Commission was the Frenchman René Cassin. And, yes, many ideas in the Declaration are similar to those expressed in the American Declaration

of Independence of 1776 and the French Declaration on the Rights of Man and the Citizen of 1789.

However, a closer look at the history of the Universal Declaration presents a more comprehensive picture. Prominent members from all over the world participated actively. On the Commission were also members from the Soviet Union, China, Egypt, Iran, Iraq, Syria, India, Lebanon, Chile, the Philippines and Yugoslavia, just to mention a few. It is fair to say that the Declaration has its roots in many religions and cultures. Therefore, it could be said that the Declaration is a crystallization of many ideas, all with a solid basis in the thinking of all humankind; that it sets out rights - civil and political as well as economic, social and cultural - which are there to protect human beings primarily against their own government.

You ask: What is the nature of the Declaration? What status does it have? We are all familiar with norms elaborated at the national level: constitutions; statute law adopted by parliaments; and decrees issued by governments or government agencies. The common denominator of these norms is that they are binding on citizens and corporations as well as on government itself.

At the international level, the picture is more complex. If States want to elaborate norms which are binding on the contracting parties, they use conventions or other kinds of agreements. Such instruments are commonly referred to as treaty law. In general, they are subject to ratification, i.e. necessary legislative steps have to be taken at the national level before a government is in a position to announce that the State is bound by the treaty.

But what is a declaration? Basically, in the present case, it is a document appended to a United Nations General Assembly resolution. Such resolutions are, with some exceptions, not binding on Member States. They are expressions of a common idea, or of a will to observe certain standards - commitments to work in a particular direction. Declarations adopted through resolutions by the General Assembly belong to a category which is often referred to as "soft law".

The interesting factor is that this so called "soft law" often develops into more robust rules. This is the case with UDHR. As a matter of fact, the Declaration is the platform for the International Bill of Human Rights, which encompasses also the International Covenant on Economic, Social and Cultural Rights of 1966 and the International Covenant on Civil and Political Rights of the same year, with its two Optional Protocols. The Covenants are binding on the States that have ratified them. The number of ratifications has now reached 137 and 140 respectively.

In addition, to this, the Declaration is the source of inspiration for many other instruments in the field of human rights. To give you an idea, I should like to mention:

- The International Convention on the Elimination of All Form of Racial Discrimination of 1963 (150 ratification and accessions);
- The Convention on the Elimination of All Forms of Discrimination against Women of 1979 (161 ratifications and accessions);
- The Convention on the Political Rights of Women of 1952 (110 ratifications and accessions);
- The Convention on the Rights of the Child of 1989 (191 ratifications and accessions);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (105 ratifications and accessions).

Also, the Declaration has served to inspire treaty-making at the regional level. Conventions such as the European Convention on Human Rights of 1952, the American Convention on Human Rights of 1969 and the African Charter on Peoples' and Human Rights of 1981, have all been inspired by the Declaration.

No doubt, the Declaration has also been a source of inspiration to legislators at the national level, in particular in the drafting of new constitutions. A hallmark of any modern constitution is a chapter on basic rights and freedoms.

In sum, the UDHR has had enormous importance in influencing the thinking in the field of human rights during its fifty years in existence. In the meantime, and because of this, the Declaration has undergone a metamorphosis. There are those who would challenge this, but I would argue that the Declaration has now developed into another and higher category of international law. From its "soft law" nature in 1948, it has developed into customary international law, i.e. norms binding upon all States, because of their general acceptance and application. Thus, today UDHR is binding on all States, or erga omnes, as is often said in a Latin legal/technical term. This means that States have to look at the Declaration with even greater respect today. Also, it gives citizens, non-governmental organizations, and the business community a more solid platform from which to argue in defence of human rights. The very important work that is done by non-governmental organizations, such as Amnesty, should be mentioned in particular.

In this context, it should also be noted that a whole system of international monitoring mechanisms has developed, based on the International Bill of Human Rights. The United Nations Commission on Human Rights and the United Nations High Commissioner for Human Rights (presently Mrs. Mary Robinson) serve as the umbrella institutions in promoting respect for human rights worldwide. At the same

time, many of the treaties in this field establish committees that perform more in depth scrutiny of how States Parties follow their obligations. In many cases these committees may examine matters raised by individuals who claim that their rights have been violated.

To sum up on this point: The Declaration now stands as a bulwark in the defence of human rights. Certainly, arguments can be made about the exact meaning of some of its articles. A close analysis of the provisions and their history also gives room for different opinions. But there is no doubt that the Declaration has an important role to play also today and will continue to play an important role in the future. It has acquired binding force as customary international law.

Challenges to governments

Now, to my second point: challenges to governments. The first challenge to governments is that they must ascertain that they themselves live up to the standards encompassed in the UDHR. This can be a painful exercise. No government likes to admit that human rights are violated in its territory. My eleven years as the agent of the Swedish Government before the European Commission and Court of Human Rights in Strasbourg, have given me a special insight into this phenomenon. Let me illustrate!

The task of this agent is to defend the government against accusations by citizens or residents of its own country, of violations of human rights. Needless to say, this must be done with both skill and determination. But you do not have to be a lawyer to understand that, if a norm is set up and if there is established a court or other institution to examine whether you are in compliance or not, eventually you will be found in violation. This is what happened to Sweden. I recall vividly the expressions of disbelief when the members of the Swedish Cabinet were informed of the first case which Sweden lost before the European Court of Human Rights. As agent, you then had to assume a completely different role, not seen by the public. You became the advocate of the system for the protection of human rights and for the obvious interest of your government's compliance with that system. You had to explain to those in charge that Sweden simply had to comply. In most cases, this meant that we had to change the national legislation governing the issue that was lost before the Court.

I remember when we had to convince the government that, because of a lost case in Strasbourg, we had to make changes in the laws governing access to courts in administrative matters. Olof Palme, then Prime Minister, who, within the country, was known by some as a socialist with limited concerns for the individual, drew the right conclusions. When we explained to him that non-compliance would result in complete loss of credibility when he wanted to address human rights violations by others, he understood. When the details of the proposal was presented to him, he asked me: "Do

you think that this will be sufficient? If so, a load would be off my mind.”

But the challenge to governments is also to stand fast when others violate human rights. It takes courage to point out publicly that you are concerned about human rights in other countries. As agent for the Swedish Government together with colleagues representing other governments in a case against another State, I felt the pressure. In particular, there were negative reactions from the business community, including suggestions that contracts were being terminated. (Incidentally, I have heard that this may happen also when Sweden beats some other country in a game of football.) The dilemma for the government is to uphold the standard also when such consequences occur. This may not be easy, if you hear from the business community in your own country: “Do not offend them! We have an interest in having good relations with the government in that country.”

The dilemma is the result of another dilemma: The international work in the field of human rights has in a sense changed from a relatively objective process handled by lawyers on the basis of established norms, to a politicized exercise where the actors are diplomats following directives from capitals of a more political nature. The United Nations Commission of Human Rights stands as an example.

Also, it is difficult to achieve a true solidarity among governments. Unfortunately, where one or more governments are prepared to stand up and challenge the situation in a third country, there might be those that are prepared to step in behind the scenes and reap the harvest of the deteriorating situation among this third country and the others.

Lastly in this context, the challenge is also to be consequent. Human rights is part of international law, and this law cannot be applied in a selective manner. It is not a smorgasbord where you can pick and choose. I repeat what I said at the Fiftieth Anniversary of the International Bar Association last year: It is a tragedy that today, when there is only one superpower left on the arena, this power complains in many directions about violations of human rights, while at the same time it is violating its own clear obligation under international law to pay its dues to the United Nations. What credibility does it give if you apply international law only when you think that it serves your own interests?

To sum up on this point: The challenge to governments is to live up to their obligations under the Declaration and the other parts of the international human rights law. They should bow in solidarity to the dictates of the laws that they themselves or their predecessors have created. They should subject themselves to existing international human rights monitoring mechanisms.

Challenges to business

I have now come to my third point: challenges to business. Strangely enough - or perhaps this is not so strange after all - the challenges to business are similar to those that governments face: To act in solidarity to address abuses of human rights. There is, however, one important difference: business is business! If your figures go red, you are out. It is, therefore, obvious that there are certain limits to how business can act. I will revert to that in a little while.

Let us first look at the question: Is the UDHR binding on business? At first glance one is tempted to say no. The Declaration is an instrument that is mainly operational at the constitutional level, setting norms for the exercise for legislative power and the exercise of authority in a public law setting. But is this all there is to it?

My challenge to business is the following. Today, fifty years later, business is reaching into hitherto unimagined fields. Many enterprises are transnational with thousands of employees and economies that outsize the economies of many States. In some countries, these giants are even seen as a threat to national sovereignty and a factor that risks making government irrelevant. In what sense is this power different from the power against which the UDHR is meant to protect the individual? And it is not true that, wherever power is exercised, it should be subject to scrutiny. Are we heading in a direction where real power is being gradually transferred to wood-panelled board rooms, to powerful entities who are subject to the scrutiny only of an annual meeting of shareholders whose main interest may be that the Board and the Chief Executive Officer make certain that shareholders' profits are as high as possible?

Please do not think that I am critical of business as such - on the contrary. Like sailing, business is necessary! This is also being realized by many newly independent States and developing countries. It is no good asking for money for development, believing that this will solve all your problems. No, the only certain road to development is to develop one's own business and trade!

Because of this, business has in my view a responsibility to seek guidance in the Declaration and in the other instruments for the protection of human rights. From this also follows that business has an enormous potential to protect human rights. But now we are back in the vicious circle again! I assume that a company that starts making demands on compliance with human rights norms before it invests in a country may not be particularly welcome. And if the company insists, unfortunately, there may be others who would be only too happy to reap the harvest of their competitor's loss. As among governments, also in business solidarity is a requirement. But how do you achieve this solidarity? And in business at that? Let me offer the following hypothesis.

In business, competition is a must. In this competition some companies will emerge as profitable, while others will be driven out of the market. My theory is that, basically, it is the “good” business that prevails. They often act in high visibility, and are as a matter of fact not seldom subject to close and critical scrutiny by government agencies, non-governmental organizations and other interested groups.

I cannot see that this phenomenon would not continue also if you added another element to the annual report: human rights. Yes, I know your first reaction: crazy bureaucrat with no sense of the realities of the business world; a figment of the brain of someone who has never set foot in a board room.

Of course! You are right! This bureaucrat is completely out of touch with realities. This idea will just be a burden to any company. But wait a minute! Let us see what happens if we approach the matter in a business-like manner. Let us practice some lateral thinking here! Why not turn the presumed negative factor in the annual report into a positive element? Shareholders are human beings too. Many influential shareholders are institutions whose board members are prominent personalities, sometimes scientists and persons who want to be recognized as pillars of their societies; persons who engage in culture and philanthropy. To such people, a few lines on human rights in the annual report may not be so bad after all - mentioning efforts to work for the protection of these rights; recognizing difficulties and dilemmas.

This thought is not altogether new. Initiatives have already been taken, in particular by business itself. The incentives are many: the public does not want to buy goods that has been produced under abuse; a poor human rights record undermines investors’ confidence and workforce morale; a lack of social responsibility attracts negative attention. Partnerships have been established with codes of conduct and openness to impartial inspections of companies and their subcontractors in other countries.

It struck me: Why not engage in elaborating a business code, based on the UDHR? I see this issue also as closely linked to the fight against corruption, where new norms will apply in the OECD countries. Combine the two, because corruption basically serves those who also in other ways abuse the citizens of their country.

And what about the Chief Executive Officers? I certainly do not want to be presumptuous and point fingers. You just do not become Chief Executive Officer of a major enterprise without many good qualifications. These personalities must be highly educated and circumspect. Some of them are present here today. But why not take an unusual step, a step which would no doubt send a shockwave through the world business

community? Why not form a new international non-governmental organization: Chief Executive Officers for Human Rights!

The purpose could be to unite around a common interest and responsibility to help ascertaining that human rights are protected in all countries in the future. And if this objective is not convincing enough, why not the motto: "Let's make good customers of all these people!" I would have to admit, though, that the latter formulation sounds too frivolous to my ears.

In any case, if a few set the example, I am sure that the phenomenon would spread. And I can promise you one thing: Such an organization would immediately attract the attention of the most prominent, knowledgeable and realistic scholars in human rights; and they would be prepared to give advice - pro bono. Why not connect the business network of the world with the human rights network of the world? In this way you could create solidarity around this fundamental issue in the business world. The competition must always be there. But, when you make decisions to invest, please compete on your own terms and do not connive when it comes to respect for human rights.

However, I am fully aware that I have presented a fairly simplistic picture of a very difficult dilemma. How high should the human rights standard be set? Good investments are in the interest of all countries. They generate positive effects to society as a whole. They are necessary to achieve development, better living conditions and - better respect for human rights! Therefore, one cannot let the best be the enemy of the good. A balance has to be struck. And this is precisely where I see the real challenge to the business community: How do you strike this balance? When is it appropriate to make business conditional upon a better human rights record? And when is it appropriate to engage in business in spite of a doubtful human rights record and instead try to encourage observance of these rights by setting a good example? Maybe these are questions that we could discuss at this Workshop.

Lastly: charity begins at home. Do not forget to look to the human rights situation in your own country. Remember the parable in Matthew 7:3: "And why beholdest thou the mote that is in thy brother's eye, but considerst not the beam that is in thine own eye?" I am certain that you will find the same thought in the Quran or the Torah, and in Hinduism or Buddhism or in any other philosophy of life. To credibly address human rights issues, you must first be prepared to look at yourself.

And, in closing, do not forget one very important common denominator between UDHR and business. The Declaration is universal! So is also, in a sense, business!