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## HUMAN RIGHTS IMPLICATIONS OF WSIS

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### Résumé de l'article

L'auteur énumère les références aux droits humains dans la *Déclaration des Principes* du Sommet mondial sur la société d'information. Il analyse les problèmes avec ces références à deux niveaux. D'abord, ces références sont effectuées dans un vide sociopolitique sans contexte historique. Il n'y a pas de propositions concrètes pour l'allocation de ressources visant leur implémentation. Puis, il se demande si la deuxième phase du Sommet mondial devant se tenir à Tunis en novembre 2005 peut changer cette situation. L'auteur déclare que, compte tenu des tendances politiques et économiques actuelles dans le monde, un changement fondamental n'est pas réaliste. Tout de même, certaines suggestions d'actions possibles liées aux droits humains sont offertes. L'emphase est mise sur le besoin de mesurer l'état des droits de communication dans le monde et de faire avancer la discussion portant sur le droit humain de communiquer.

## HUMAN RIGHTS IMPLICATIONS OF WSIS

By Dr. Cees J. Hamelink\*

The author lists the references to human rights in the World Summit on the Information Society *Declaration of Principles*. He analyses the problems with these references on two levels. First, the references are made in a socio-political void without historical context. There are no proposals for concrete resource allocations for their implementation. Next, he raises the question of whether the second phase of the World Summit in November 2005 (in Tunis) can change this. The author states that, given present political and economic trends in the world, a fundamental change is not a realistic prospect. Even so, some proposals could be offered for possible human rights actions. Special attention is given to the need to assess the state of communication rights in the world and to further the discussion about the human right to communicate.

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The combination of the UN World Summit on the Information Society (WSIS) and the international human rights regime turned out to be an unhappy marriage. Most of the participating UN member states had great reservations about adopting statements that went beyond a reference to Article 19 of the *Universal Declaration of Human Rights (UDHR)*.<sup>1</sup> Even the inclusion of Article 19 and a general reference to the *UDHR* in the Final Statement demanded an enormous investment in lobbying efforts. Also, the civil society media caucus (and in particular the World Press Freedom Committee) showed strong resistance to any move beyond Article 19. In his assessment of the WSIS, the UN Special Rapporteur for Freedom of Information wrote that this treatment of human rights was grossly inadequate.<sup>2</sup>

Part of civil society, in particular, members of the Communication Rights for the Information Society (CRIS) campaign, tried to re-introduce the notion of the human right to communicate into the international debate. This caused heated exchanges during the second WSIS Prepcom in February 2003. The issue of the right to communicate strongly divided even the more progressive part of the civil society family. In order to avoid an unproductive clash of ideologies within civil society, the right to communicate protagonists decided (at a CRIS meeting in February 2003)<sup>3</sup> to steer a compromise course and – at least for the time being – to put this right on the backburner. Ironically enough, after this decision, the right to communicate received global public support, for example, from the Secretary General of the UN (in his message on World Telecommunication Day in May 2003)<sup>4</sup> and from the ITU Secretary General (in a commercial message in *Business Week*).<sup>5</sup> In any case, the CRIS campaign had decided to present at the World Forum on Communication Rights in December 2003 – one of the side-events during the WSIS – merely a *Statement on Communication Rights* and ask for endorsement by its constituency.<sup>6</sup>

Although the way in which the WSIS addressed human rights was certainly inadequate, one must also note that the WSIS *Declaration of Principles*<sup>7</sup> refers frequently to human rights and, where this is not explicitly stated, there are many proposals made in the spirit of international human rights:

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<sup>1</sup> *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.

<sup>2</sup> United Nations Commission on Human Rights, Press Release, “Rights Expert Says Freedom of Expression Largely Neglected at World Information Summit” (17 December 2003), online: UNHCR <<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/9C932D06752A7991C1256DFF005B3526?opendocument>>.

<sup>3</sup> CRIS, Meeting, Headquarters of the World Council of Churches, Geneva, 22 February 2003 [attended by author].

<sup>4</sup> United Nations Information Centre, Press Release, “Message of the UN Secretary-General Kofi Annan” (17 May 2003), online: UNIC <<http://www.un.org.in/news/2003/pr/pr73.htm>>.

<sup>5</sup> International Telecommunication Union, Message, “Creating an Equitable Information Society: Time for Action” (17 May 2005), online: ITU <[http://www.itu.int/newsroom/wtd/2005/sg\\_message.html](http://www.itu.int/newsroom/wtd/2005/sg_message.html)>.

<sup>6</sup> CRIS, Statement, “Statement on Communication Rights” (11 December 2003), online: World Forum on Communication Rights <[http://www.communicationrights.org/statement\\_en.html](http://www.communicationrights.org/statement_en.html)>.

<sup>7</sup> “Declaration of Principles”, *World Summit on the Information Society*, 1<sup>st</sup> phase, 12 December 2003, WSIS-03/GENEVA/DOC/4.

- In paragraph 1 there is a reference to respecting and upholding the *UDHR*;
- In paragraph 3 the *Declaration* reaffirms the 1993 *Vienna Declaration of the UN World Conference on Human Rights*;<sup>8</sup>
- In paragraph 4 there is a reaffirmation of Article 19 of the *UDHR*;
- Paragraph 5 reaffirms Article 29 of the *UDHR*;
- In paragraph 18 it is stated that nothing in this *Declaration* may impair, contradict, restrict or derogate from the principles of the *UDHR*;
- In paragraphs 24 to 28 there are references to universal access to information and to knowledge;
- In paragraph 35 the need to strengthen privacy is mentioned;
- Paragraph 36 says that the use of information resources and technologies for criminal and terrorist purposes should be prevented, while respect for human rights should be secured;
- Paragraph 42 refers to the protection of intellectual property rights;
- Paragraph 45 refers to the management of the radio frequency spectrum in the public interest;
- In paragraphs 52 to 54, cultural diversity, linguistic diversity, and local content are mentioned;
- Paragraph 55 stresses the freedom of the press;
- Paragraph 56 calls for respect for peace, and for the values of freedom, equality, solidarity and tolerance;
- In paragraph 58 it is stated that the use of Information and Communication Technologies (ICTs) and content creation should respect human rights, including privacy and freedom of thought;
- Paragraph 59 warns against abusive use of ICTs and calls for actions and measures against racism, racial discrimination, xenophobia, hatred, violence, and child abuse.

One may conclude that there are sufficient references to human rights. Evidently, they could have been more explicit. Even so, there seems to be a reflection of a moral human rights consensus in the WSIS community. This is also precisely the problem! In international politics, parties may have a common vision on moral standards, but they will usually fundamentally differ when it comes to the political

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<sup>8</sup> *Vienna Declaration and Programme of Action*, UN GAOR, 25 June 1993, UN A/CONF.157/23, online: UNHCHR <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)>.

implementation of these standards. There is, worldwide, a fair degree of commonality in the acceptance of the *UDHR*. This is, however, a moral statement which does not refer to the ways and means of its concrete political realisation. If the *UDHR* had stated ways to realise its normative provisions, the unanimity would have quickly dissolved.

There is a twofold problem with the human rights references in the WSIS *Declaration*:

In the first place, they are de-contextualised. It is as if the WSIS discourse takes place in a societal void without any serious and critical structural analysis of the political-economic context. There is no serious criticism of existing international agreements, such as in the field of telecommunications and intellectual property rights, that undermine human rights provisions, such as universal and affordable service and equitable access to knowledge. There is no criticism of current national security measures that erode privacy rights. There is no criticism of the absence of fair arrangements for the international transfer of technology.

In the second place, the human rights statements do not contain indications for their concrete implementation. There is no concrete translation of human rights principles into the *Plan of Action*.<sup>9</sup> There are no proposals for the concrete allocation of resources. There are no proposals for remedial measures. Among the many examples is the following: the *Plan of Action* encourages the development of domestic legislation that guarantees the independence and plurality of media.<sup>10</sup> This is a welcome proposal, but rather useless if there is no mention of funding, no mention of anti-cartel laws, and no mention of editorial statutes. Basically, the Plan of Action affirms that the principles in the *Declaration* are good and they should be respected. However, the Plan does not tell us how to do it and does not question whether the international community is at all capable of respecting these principles!

The second phase of the WSIS is presently in preparation and its next meeting is scheduled to be held in Tunisia in 2005. One needs to be an utterly naïve optimist to believe that WSIS II will suddenly shed light on a global human rights culture and offer the world concrete plans for the realisation of human rights in relation to information, communication, and culture.

There are serious obstacles that impede change. Among these are the interests of the key economic and political players. These interests do not match the radical erosion of the power of hegemonic forces that the respect for human rights inevitably entails. There is also the problem of a growing antagonism between state and citizens.

A fundamental change of direction is particularly difficult with regard to the domain of communication rights. There is a lot at stake presently, both politically, with the “war on terrorism,” and economically, with the advent of “neo-liberalism,”

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<sup>9</sup> “*Plan of Action*”, *World Summit on the Information Society*, 1<sup>st</sup> phase, 12 December 2003, WSIS-03/GENEVA/DOC/5.

<sup>10</sup> *Ibid.* at para. 24.

and it impedes a full realisation of these rights. To expect a more robust statement by the international community on communication rights is not realistic, as the issue is at present very sensitive, contested and polarised. In many countries, crucial communication rights are currently suspended as part of the war on terrorism. The protection of cultural rights implies a rule on cultural exemption in world trade, which is not popular with the major trading parties. Intellectual property rights – a rapidly growing and profitable global business – are robustly enforced as trading rights and not as human rights. The commercialisation of knowledge impedes greater equality in access to and use of knowledge. Communication rights imply the preservation of public space that is rapidly withering away worldwide.

What could the international human rights community do? Eight proposals could be offered:

- The permanent monitoring of communication rights worldwide and the use of this measurement as a basis for human rights advocacy;
- The establishment of an International Media Alert System to provide early warning in cases where messages in public media incite to crimes against humanity, for example genocide. Such incitement is, under current international law, a criminal act and should be brought to the attention of the International Criminal Court in The Hague;
- The appointment of a Special UN Rapporteur on the protection of human rights in cyberspace;
- The establishment of an International Court for Human Rights and Fundamental Freedoms with a Special Chamber for information/communication issues and cultural rights;
- The establishment of an international Ombudsoffice for cultural rights as was proposed by the 1995 UNESCO World Commission on Culture and Development<sup>11</sup>;
- The adoption of the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, in particular to address the justiciability of cultural rights;
- The articulation and codification of the human right to communicate;
- In-depth research into the understanding of patterns and motives of communication and cultural rights violations.

Although all these proposals could be further elaborated, special attention will be given in the remainder of this article to the assessment of the state of communication rights in the world and the right to communicate.

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<sup>11</sup> UNESCO World Commission on Culture & Development, *Our Creative Diversity* (1995) at Action 7, online: UNESCO <[http://www.unesco.org/culture\\_and\\_development/ocd/agenda/protect.html](http://www.unesco.org/culture_and_development/ocd/agenda/protect.html)>.

## **Communication Rights**

Communication rights are those human rights – codified in international and regional human rights instruments – that pertain to standards of performance with regard to the provision of information and the functioning of communication processes in society. They encompass the following rights:

### **Freedom Rights**

- The right to freedom of opinion and expression;
- The right to the freedom to hold opinions without interference;
- The right to seek information and ideas through any media and regardless of frontiers;
- The right to receive information and ideas through any media and regardless of frontiers;
- The right to impart information and ideas through any media and regardless of frontiers;
- The right to freedom of thought, conscience and religion.

### **Protection Rights**

- The right to the protection of informational privacy and the confidentiality of communications;
- The right to protection against forms of public communication that are discriminatory in terms of gender, race, class, ethnicity, religion, language, sexual orientation, or physical or mental condition;
- The right to protection against propaganda for war;
- The right to protection against incitement to genocide;
- The right of prisoners of war to protection against public exposure;
- The right to protection of the presumption of innocence;
- The right of the child to protection against injurious materials.

### **Cultural Rights**

- The right to freely participate in the cultural life of one's community;
- The right to enjoy the arts;

- The right to share in scientific advancement and its benefits;
- The right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author;
- The right to a fair use of copyrighted work for purposes like criticism, comment, new reporting, teaching or research;
- The right to express oneself in the language of one's choice, and particularly in one's mother tongue;
- The right to adequate provisions created for the use of minority languages where needed;
- The right to promote, protect and preserve the identity, property and heritage of cultural communities;
- The right of children to media products that are designed to meet their needs and interests and foster their healthy physical, mental and emotional development.

The state of these rights is an essential yardstick for the democratic quality of political systems, for the cultural sustainability of societies, and for the level of human security in the face of rapid technological development.

If it would be possible to develop a reliable, consistent, valid, and re-usable instrument for the assessment of country performance in the field of communication rights, this would be a crucial tool for human rights advocacy. In seeking relevant and effective models of media governance, communication rights can be seen as an essential normative standard. Advocating and designing democratic forms of local, national, regional, and global media governance does require adequate access to knowledge about the state of communication rights around the world. Ideally, this would require a regular and worldwide monitoring of the state of the art with respect to communication rights. Evidently, some data is already available and could be collated from such sources as the IFEX, Index on Censorship, Article XIX, the Electronic Frontier Foundation, the Gender Monitoring Media programme, the APG Gender Programme, and On Line/More Colour in the Media. Putting this existing data together demands the development of a meaningful and coherent analytical framework.

The result could be a composite index that focuses on those societal domains where communication rights are especially relevant and in need of a strong defence. These domains are gender, ethnicity, children, arts, journalism, and citizenship:

*Gender:* With 50% of the population in most societies being female, there is great urgency to achieve gender equality of representation and participation in media and advanced ICTs. Indeed, communication rights make special reference to the rights of women in terms of non-discriminatory representation and full participation in media decision-making.



*Ethnicity:* Increasingly, societies around the world are multi-ethnic. Different ethnic groups have to find ways to co-exist in constructive and peaceful ways. Media offer a dangerous potential for war-mongering, but also create a public forum for multi-ethnic dialogue. This has implications for participation, representation and linguistic diversity. As such, communication rights also make special reference to the presence and participation of ethnically diverse groups in the media as well the promotion of the production and dissemination of contents relevant to a variety of ethnic representations.

*Children:* Since the 1980s, children have been recognised in international law as subjects of human rights law. It is in the interest of future sustainable societies that children's rights are also realised as communication rights. Communication rights are of special importance to children's rights in terms of free speech, privacy protection, access of information, and the production and dissemination of relevant content.

*The arts:* The non-material, spiritual, and intellectual backbone of societies consists of the richness of their cultural heritage. Particularly in view of the process of economic globalisation and emerging fundamentalist religious protests against artistic expressions, cultural heritages need robust protection and promotion. In the arts domain, communication rights make special reference to the production and dissemination of a variety of artistic expressions, as well as an intellectual property rights system that benefits all forms of artistic production.

*Journalism:* In emerging information societies, this is a key professional activity that needs to be embedded into an environment that facilitates professional independence as well as professional accountability. Communication rights are especially important to the protection of editorial independence and the provision of socially accountable public information.

*Citizenship:* At the core of all communication rights are the citizens. They need reinforcement of their basic rights to free speech, access to information, and confidentiality of private communication. In the citizenship domain, communication rights make special reference to the protection of the citizen's right to inform, to receive information about matters of public interest, to free access to information necessary for the execution of democratic responsibilities, to protection of the private sphere, and to participation in society's cultural life.

Once collected and analysed, the data would be held by an international clearing house, the Observatory for Communication Rights. Reports could be published as regular publications, like the UNDP Human Development Report or UNESCO's reports on culture, knowledge, or communication. Making the results of the monitoring of communication rights publicly available helps the critical debate, and might have some deterrent effect on countries that score very negatively on communication rights. If the data indicated patterns of systematic violations of communication rights, they could be presented through international NGOs to various UN human rights committees or to the Special Rapporteur on Freedom of Information

for the UN High Commissioner on Human Rights. In cases where such provisions as the prohibition of incitement to genocide are infringed upon, the International Criminal Court at the Hague would be a possible addressee.

The measurement of human rights performance is not without its methodological problems.<sup>12</sup> Important questions that have to be addressed are whether country rankings are possible and useful, and whether a composite index can ever be sufficiently reliable. A United Nations expert workshop in 1999, dealing with indicators for civil and political rights, warned that “composite indexes were unreliable, as they revealed problems without individually pinpointing them and thus making them amenable to solutions.”<sup>13</sup> The experts also addressed the problem that, whereas institutional arrangements in the field of human rights can be assessed in positive versus negative ways, the quantification of human rights policy measures is not possible. A difficult problem is also the mixing of quantitative and qualitative measurements.

The essential methodological question is, obviously, by which main indicators can the implementation of communication rights be measured? A possible methodological model would be to take the six cross-cutting fields (gender, children, ethnicity, arts, journalism, and citizenship) and, in each field, to measure country performance with the indicators of law, policy and practice. The measurement question then becomes what is law, policy and practice in these fields?

Law, as an indicator, measures the formal acceptance of pertinent treaty obligations through processes of ratification. This could be a yes/no response to questions in relation to treaty obligations in the fields of gender, ethnicity, children, culture and journalism. Policy, as an indicator, is already more difficult. Do countries take policy measures to reinforce their treaty obligations in the six fields? For example, do they regularly submit reports to the relevant UN Committee? Do they allocate resources to the realisation of treaty obligations? Practice, as an indicator, is the hardest to measure. It would measure whether there exists a common practice of respecting communication rights in the six fields. This would probably have to be a qualitative assessment by the relevant epistemic community. Epistemic communities consist of networks of professionals who have expertise in a domain and who can claim to have policy-relevant knowledge within that domain.<sup>14</sup> The relevant epistemic community in different countries would have to be identified for each of the six fields.

The core weakness of the international human rights regime remains the lack of implementation. For the development of a human rights culture, it is essential that societies be constantly reminded of what significance they attribute – in concrete

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<sup>12</sup> See e.g. Dipak K. Gupta, Albert J. Jongman & Alex Schmid, “Creating a Composite Index for Assessing Country Performance in the Field of Human Rights: Proposal for a New Methodology” (1994) 16:1 Hum. Rts. Q. 131; Helen Watchirs, “Review of Methodologies Measuring Human Rights Implementation” (2002) 30:4 J. L. Med. & Ethics 716.

<sup>13</sup> Watchirs, *supra* 12 at 718.

<sup>14</sup> Adapted from Peter Haas, “Introduction: Epistemic Communities and International Policy Coordination” (1992) 46:1 Int’l. Org. 1 at 4.

socio-political and economic reality – to their formal human rights commitments. In particular, the case of communication rights deserves a permanent monitoring of actual conditions and likely trends. If it would be possible to develop a reliable, consistent, valid and re-usable instrument for the assessment of country performance in the field of communication rights, this would be a crucial tool for human rights advocacy:

Evidence from the data, and arguments based on them, should stimulate human rights policymaking and legal reform. Non-governmental organisations could use the findings to base or increase the impact of their critiques of governments, and as an advocacy tool to lobby for change and focus their activities as part of the epistemic community.<sup>15</sup>

## The human right to communicate

Human beings interact with each other in a myriad of ways. Just as is the case with other animals, interactive processes among human beings are of vital importance. The human species has developed a special tool for its interactions. This tool is language. Probably some 50,000 years ago, forms of symbolic interaction or communication through language emerged. The use of language is essential to the type of communication we call “conversation.” Actually, it is unfortunate that in much popular and academic discourse, the word “communication” is employed in such a cavalier fashion. Ignoring its original meaning, “to create community,” communication has come to represent different patterns of information transfer. In all societies, we see different patterns for the traffic of information among people. Following a proposal by Bordewijk and Van Kaam, four patterns can be distinguished:<sup>16</sup> the dissemination of messages (Bordewijk & Van Kaam call this “allocation”),<sup>17</sup> the consultation of information sources (as in libraries or on the Web), the registration of data (for public or private purposes), and the exchange of information among people: the modality of “conversation.”

Current international human rights standards cover mainly the dissemination of information, the consultation of information, and the registration of information. Practically all human rights provisions refer to communication as the “transfer of messages.” This reflects an interpretation of communication that has become rather common since Shannon and Weaver introduced their mathematical theory of communication.<sup>18</sup> Their model described communication as a linear, one-way process.<sup>19</sup> This is, however, a very limited and somewhat misleading conception of communication. It ignores that, in essence, “to communicate” refers to a process of sharing, making common, or creating a community. In international human rights

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<sup>15</sup> Watchirs, *supra* note 12 at 728.

<sup>16</sup> Jan L. Bordewijk & Ben van Kaam, *Allocutie* (Baarn: Bosch & Keuning, 1982).

<sup>17</sup> *Ibid.*

<sup>18</sup> Claude Shannon & Warren Weaver, *The Mathematical Theory of Communication* (Urbana, University of Illinois Press, 1949).

<sup>19</sup> *Ibid.*

law, only provisions on the protection of confidentiality refer – albeit insufficiently – to the above mentioned fourth pattern, the conversational mode.

The key components of a human right to communicate can be construed from the situations in which people are deprived of the freedom to exercise this right. This is the case when people (either individuals or groups) are excluded from the public dialogue. This occurs, for example, whenever hearing-impaired individuals have inadequate access to the use of sign language. It also occurs when there are insufficient language provisions for migrant communities. In these communities people need the linguistic capacity to converse both with the dominant culture of their new homelands and with their own roots.

Like all other human rights, the right to communicate has both negative and positive dimensions. The negative one involves the absence of interference with the exercise of the freedom to engage in public and private dialogues. The positive one entails enabling people to exercise this right. Conversation is a demanding art which needs to be learned. In many societies, people have neither time nor patience for dialogical communication. Dialogues have no short-term, certain outcomes. This conflicts with the spirit of modern, achievement-oriented societies. Moreover, the mass media are not particularly helpful in teaching people the art of conversation. Much of their content is babbling (or endless talking without saying anything), hate speech, advertising blurbs, sound bites, or polemical debate. The requirements for a meaningful dialogue begin with the need for an internal dialogue. This implies that all participants question their own judgments and assumptions.

The critical investigation of our own assumptions is, however, a major challenge as we are often ignorant about our basic assumptions. Assumptions are the mental maps that we tend to follow uncritically. We all have different and often conflicting assumptions, especially when we come from different cultures. Equally difficult is the suspension of judgment, since we are strongly attached to our opinions and assessments and prefer them to uncertainties. Dialogue also requires the capacity to listen and to be silent. Learning the language of listening is very hard in societies that are increasingly influenced by visual cultures, as listening demands an ear-centred culture. The mass media offer *talk* shows, not *listen* shows. Dialogue can only take place where silence is respected. This borders on the impossible in modern societies, where talking never seems to stop and where every void needs to be filled.

To sum up, dialogue is an extremely difficult form of speech that must be learned. The essence of dialogue could and should be taught in the early stages of people's lives, in school, at home, and through the media.

People are also deprived of the right to communicate when they are not listened to. This is a very common experience in many so-called democratic societies. Actually, the widespread subsumption of people's voices has created a tremendous loss of trust in the political system around the world. There is a widespread feeling among the electorates in democracies that, regardless of what they say, they will not be heard. The right to be part of the societal dialogue implies, however, the right to be heard.

In order to be effective, the claim to the human right to communicate would need a robust basis in international law. This is likely to be a very complex endeavour. For one thing, we would have to expand the currently predominantly vertical meaning of human rights into the domain of horizontal human relationships. Human rights – and certainly information and communication rights – are violated by state authorities and institutions in the public sphere, but they are possibly even more universally violated by actors in the private sphere. Examples abound. The right to free speech for students is often violated by school boards. The right to privacy of employees is routinely violated by their employers. Children's rights are often violated by their parents.

One fear about the establishment of a human right to communicate is that expanding the human rights regime with a new right might endanger the existing provisions. International law is a living process. It continues to expand. The catalogue of human rights has grown considerably over the past few years to include new rights and freedoms without endangering the basic standards as formulated in the *UDHR*. New rights are being discussed by the international community, such as the right to development. New rights-holders have been introduced, such as children (in the *Convention on the Rights of the Child*).<sup>20</sup> New topics have been addressed, such as bio-diversity and cyber crime.

There should be no reason why adding the right to communicate would be a problem, as long as one leaves the existing framework as is. The last thing that anyone should try to do is to break open the articles of the *UDHR* and amend them. To do so would be a very dangerous route, as the international community would today certainly not adopt a document as far-sighted as the *Declaration* of 1948.

The right to communicate was fathered by Jean D'Arcy in 1969.<sup>21</sup> He was motivated by a genuine concern for communication as an interactive process. Unfortunately, his proposal was hostage to heated debates on a new international information order, the controversy regarding the MacBride commission and its report, and Cold War hostilities. In the process, d'Arcy's baby was thrown out with the bath water. It is very unfortunate that a fruitless international confrontation over an ill-defined and ill-understood concept obscures an issue of great importance in societies where information and knowledge are increasingly key resources and where so many people are excluded from, hampered in, or not enabled to engage in the mode of conversation.

The basic obstacle to the realisation of human rights is not the lack of legal enforcement or the lack of robustness in their articulation. It is primarily the fact that most human beings do not accept that the respectful treatment they are willing to give to their own circle (such as tribe, family, clan, race, gender, etc.) is also granted to those who do not matter to them. The basic premise of the human rights culture as

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<sup>20</sup> *Convention on the Rights of the Child*, GA Res. 44/25, UN GAOR, 1989, Supp. No. 49, UN Doc. A/44/49, online: UNICEF <<http://www.unicef.org/crc/crc.htm>>.

<sup>21</sup> Jean d'Arcy, "Direct Broadcast Satellites and the Right to Communicate" (1969) 118 *European Broadcasting Union Review* 14.

enshrined in the *UDHR* is that “all people matter.” But this is a moral proclamation, not a historical and political reality. The reference to the commonness of human beings (that “we are all human”) is not sufficient to get people to treat those they do not see as part of that common humanity in a respectful way. The differential treatment of insiders versus outsiders is not necessarily based upon moral depravity. It is often inspired by perceptions of the risks the others pose to people. If you can be totally secure about your own position and do not feel threatened by the others, it becomes relatively easy to treat them as no different from the members of your tribe. In a state of security, it also becomes easier to feel empathy with the situation of the others. Only under these conditions will it become possible for human beings to see human similarities as more decisive than differences. The creation of security and empathy – vital to the defence of human rights – cannot come about by dictate. It needs to evolve through societal dialogue.

Only if we can agree on the essential importance of the human freedom to engage in processes of symbolic interaction can we make some progress. Therefore, the key question to pose is not whether one is for or against a right to communicate, but whether one is for or against the realisation of communication in the conversational mode as essential to the overall defence of human rights.