

Common ethics and common law for managing a unique planet and relationships among an interwoven global community

Contribution to the speech to be addressed by Betsan Martin, on behalf of the Ethics and responsibility forum, at the Costa Rica international meeting of jurists, in June 2013

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Since the industrial revolution, two centuries ago, interdependences has grown dramatically among societies and has changed scale between humanity and biosphere. These interdependences have got to another level after world war 2, with globalization of economy and finance and with the impact of societies on the major equilibrium of the biosphere, as we can see with ozone layer depression, climate change, halieutic resources pollution, reduction of biodiversity and even stratospheric pollution.

Unfortunately, all the institutional, political and juridical regulations are centuries old and have not adapted to the new challenges. The two pillars of the so called international community, the UN Charter and the UDHR do not address these new issues.

This should not be a surprise. In the societal change processes, science, technology and finance move very fast, whereas the shared values on which communities are built and the institutional and juridical basis of the societies move very slowly. Hence the lethal gap everybody can see between the nature of our pressing challenges and the way we face them.

Therefore acting to accelerate these ethical, institutional and juridical changes is the most urgent concrete action. Without such changes all the nice efforts undertaken thanks to the momentum given by the Earth summit remain largely vain.

Many initiatives have been taken over the last forty years to face these lethal gap. And they are actually all useful.

Some come from the UN world as the Montreal, the Carthagena or the Kyoto protocols, the sea law or the different treaties following the Rio declaration, but they are far from reaching their goals, finally depending on the real will of the states to have them really enforced, and on financial solidarities between rich and poor, which remain very weak as there is neither international fiscality nor international court to give them a binding capacity. One must admit that the only efficient regulation is WTO which aim has presently nothing to see with the growing imbalances of the biosphere and the lack of solidarity between societies.

Some others have come from governmental initiatives such as the Den Haag intergovernmental gathering in 1988 when a first statement of interdependence has been adopted by 38 heads of states but without much follow up.

Many others have come from NGO, religious leaders, former political leaders, lawyers, indigenous people, international network of cities. They offer a large range of perspectives but none of them have had an impact on the actual state of the world. They remain scattered and sometimes even competing one against each other, but they should be considered as complementary as each of them has a different focus.

In many respects, the efforts to deal with environmental global issues and with economic interdependences have been parallel more than convergent. The Earth summit has been the occasion, thanks to Maurice Strong, for the drafting of many Earth Charter drafts, but none of them was able to be endorsed by the community of nations as the political leaders were not ready to give up states sovereignty which is the very symbol of the modern ages and the core of their business, nor to give prominence of international laws on the national ones. Therefore, after Rio many new efforts have been undertaken to fill the gap, each initiative with a somewhat different target.

In 2011 Edith Sizoo made a comprehensive survey of all these efforts.

Prior to the global governance issue, lies an ethical and anthropological issue: there will be no possibility to strengthen global regulations if there is no feeling of all human beings that they belong to an unique, interwoven community. And there cannot be such a feeling and the subsequent capacity to manage and protect together a unique and fragile planet if this community cannot agree on core common values. Unfortunately, the diplomatic way to deal with our common issues, which is by now the exclusive feature of international negotiations, far from helping us to make such an ethical and anthropological “jump”, is actually preventing from such a jump. It could be seen once again in 2012 at the Rio+20 international conference: diplomacy means first building “national interests”, which only exists because of the very existence of the states institutions, then negotiating a consensus among national conflicting interests. It does not work anymore and this brings us to highlight our differences, instead of uniting us around common good.

Therefore a vicious circle, fed by the resentments inherited from our history, first and foremost the colonial one. No feeling of a global community then refusal of stronger regulations. No stronger regulations then the so called sovereign states are an obstacle to the emergence of a global community. And any effort to develop international law and regulations is suspected to be a tricky way of the most powerful countries to impose, in the name of the common good, their own selfish interest.

Here comes the issue of ethics. If we are able to build a common ethics, as the condition for the emergence of a global community, we build altogether a plate-form for future international law and a process to raise the conscience of a global community.

Many initiatives have been taken to try and discover such common ethics, either through the understanding of the need for planet stewardship, such as the Earth Charter present draft, or by confronting the core values embedded in the different religions, cultures and philosophy, such as Archbishop of Canterbury United religions initiative, or the World parliament of religions or the Hans Kung initiative on global ethics.

From these initiatives we can draw several major conclusions. First, the issue cannot be to discover some kind of “universal truth” or “natural religion”, common to all of them and hidden by layers of traditions (this attempt is a multi-secular western dream, as one can see from middle ages search for the Adamic language, the common language of the whole humanity, prior to Babel tower). Our purpose is more concrete: can we agree, thanks to the contribution of our different cultures, on common principles necessary to manage our unique and fragile planet?

Second, there is a strong convergence to conclude that responsibility shall be at the core of universal ethics for the twenty first century. Actually, this principle is present in every culture, for a simple reason: be a community means that the impact of any community member deeds on the other members matter and must be taken in account. It has to be in each one conscience, with the golden rule “do not do to others what you do not want any other do to you”. And it is embodied in all the community rules, which obliges the one who creates an, offense to an other to compensate in a way or the other, from the Talion law, the harshest way, to our present laws and courts.

But ethics is only ethics; that is it can be reduced to mere lip service as long as it is not incorporated in the society. One can define three levels for the transformation of nice declarations into effective transformations: the personal conscience level; the collective codes of conduct; the law and justice. When one looks at the purpose of the present initiatives in favor of a global ethics, one can see that they differ not by the fact that they present different visions of the ethical principle -they all agree about responsibility- but by different targets. For example, Earth Charter is geared towards the education, with a particular attention to the planet stewardship, whereas the Ethics and responsibility Forum focuses on stakeholders codes of conduct and the adoption of an Universal declaration of human responsibilities as a platform for international law. This is the reason why we should join hands in a comprehensive strategy combining the comparative advantages and social capital of each initiative.

Actually, the elaboration of a new international law based on the concept of universal human responsibility is the most difficult part. Maurice Strong, who was once the strongest supporter of a UN agreed upon fundamental document – it once was the very purpose of the Earth Charter- has given up this ambition. In our opinion, we should not. Of course, the acceptability of an Universal declaration by the so called “international community” remains a challenge. There is a Chinese proverb which says: one cannot cut the handle of a knife with its own blade. For many political leaders and lawyers, accepting such a move is nearly committing suicide as their very power relies on the so called sovereignty of the state and the national scope of law and justice as well as the force to impose sanctions in case a law is violated . But we absolutely need to reach this point, in order to fill the wide gap between the reality of our interdependencies and the ability to address them through international regulations. Every one has still in mind the speech of George Bush senior at the Earth Summit: the American way of life is not negotiable. Which means an absolute irresponsibility towards the impact of this very way of life on the whole planet.

Let us take the example of Bangladesh. Its future is by now very dull, with the rising of the sea due to greenhouse gases and climate change. But since the eve of the twenty first century, the international community has been unable to take any serious measure to curb the present trends and to assume the co-responsibility to prevent Bangladesh and many island countries from disappearing. Which court should they turn to ? Whom to blame and to suit? Who is guilty for this silent crime against humanity ? Neither individuals nor companies or states leaders are held accountable for what is the direct and indirect consequences of their action or inaction. Humanity has never assumed the fact that growing global interdependences should be translated in the fundamental rules of the international community and in international law. We cannot rely anymore on a conception of sovereignty which dates back to the seventeen century and on a definition of responsibility even more ancient.

Is there any other way to build international law than the endorsement by the UN General Assembly of an Universal Declaration of Human Responsibilities? We doubt. Does it mean that nothing is possible in the meanwhile? Of course not. All the contrary, we must combine different and convergent initiatives to pave the ground for an earth braking UN decision which implies the mobilization of many allies. Let me mention some of them.

Including the principle of Universal responsibilities in any national Constitution would be an important step forward. It would necessary bring a change in the way to consider national courts competence; actually, the adoption by the Belgian legislators of the principle of global competence is of limited concrete impact as Belgium is such a small country but it still creates a precedent.

Fostering the ISO26000 process is a second way forward. ISO26000 has been endorsed by many countries, including European Union and China. This new indicative norm introduces the concept

of “societal responsibilities” for companies, a concept close to the one of “universal responsibilities” as, according to such a concept, companies can be held responsible for the deeds of their subsidiaries or sub-contractors. It can help major countries, such as European Union, to privilege companies which decided to comply with the ISO26000 norms, paving the way for an evolution of international trade regulations. In a different way, US legislators have decided that all companies, whether American or not, as soon as they are registered at the New York stock exchange, should comply with anti-corruption internal US rules. We can also think of strengthening OECD indicative norms on responsible investment to instill the very concepts of the UDHRsp;

A third way is through existing international agreements and conventions on sectoral issues such as biodiversity, protection of natural balances and resources, or climate change. Southern countries can open the debate on the ecological debt of former developed countries. The major principles of the UNHRsp could here again be instilled, such as the principle of nonprescription of the responsibility of impact (in the centennial line of distinction between negative impact and crime), the co-responsibility of persons and institutions, the functional sovereignty (that is any state has a stewardship responsibility on its own resources). If we want the UDHRsp principles to become self evident we should trace all the premises existing in previous international agreements and have a pioneering approach for their evolution. On that respect UICN jurists could be the leaders. Recently they realized a survey of the correspondence between the Earth Charter principles and different international agreements. This effort should be made for all the different initiatives.

Relating to the first level of ethics, that is personal conscience, we should consider a synergy between the E&R international forum and the Earth Charter promoters to try and influence the education curricula all over the world. In Brazilia, in 2010 the first international meeting of youth took place, with delegates from over 50 countries. They elaborated and endorsed what can be considered as the youth personal Universal declaration on responsibilities: “we are going to take care of the planet”. There are follow up of this declaration in different countries, including European Union. It paves the way for co-responsibility charters committing the youth themselves, the education system and local authorities. Earth Charter has its own achievements with the evolution of education programs in different countries and partnerships with educators networks.

At the second level of ethics we should join hands to foster professional codes of conduct, such as the scientists one or the one of companies professionals: the fact that these codes include acknowledgment of responsibility on societal impacts, whether these impacts were predictable or not, and that ILO could consider these codes for larger endorsement would be another way to make this new concept of universal responsibility familiar at an international level.

We yet mentioned the Bangladesh and AOSIS case. At the last COP meeting of the Kyoto agreement, the Philippine representative made a moving pledge in favor of international consideration for the negative impact of climate change on its country. But it remains a speech. If Bangladesh, AOSIS countries or Philippine would join hand and go to the international court of justice, as a new kind of a class action on genocide by contributing to a climate change going to destroy their country, and if it was relayed by an Internet world campaign, no doubt it would deeply influence the international agenda.

Last but not least we could take advantage of the fact that responsibility is the “hidden face of human rights”, as the renowned Belgian jurist François Ost puts it, to use as much as possible the human rights regional courts to introduce universal responsibility principles, stating that there is no efficiency of human rights when there is no corresponding responsibility somewhere. Over the last decades, cross-jurisprudences among regional human rights jurisdictions has developed and with the help of UICN jurists new cases linking rights and responsibilities could be brought to the court. Of course, under these international laws, it is only the states which can be suited but it would

complement the ISO principles applying to companies, even by expanding to states the ISO 26000 considerations on societal responsibilities.

And finally there is the work among the lawyers themselves. Mireille Delmas Marty, a French acclaimed international jurist, says that by now international law is somewhere between pathology and metamorphosis, and much closer presently to pathology. And as would say a judge at the US supreme court, “we are doing a Penelope work, destroying every night, as national legislators, what we have woven during the day, as international law thinkers”. It means that we need to build among the jurists community itself a coalition in order to acknowledge the in-adaptation of the law to the present state of the world and to promote a true metamorphosis. Just after World war two, the precursor work of Robert Algo related to the Nazi crimes against humanity opened new avenues to the international law, including the creation of the International court of justice. It is the same cutting edge action that an international group of jurists must now undertake to get to the acknowledgment that in front of global interdependences and irreversible impact of our ways of life on the planet, universal responsibility is to become a Jus Cogens.