

The possible impacts of constitutionalization of the Responsibility principle

*Reflection on the survey of the different constitutions of SAARC countries and the
advantage to introduce the responsibility principle in the constitutions*

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Résumé :

The document surveys the eight principles of the Universal declaration on human responsibilities draft and considers the concrete impact of introducing each of these principles in a country constitution. It is part of the discussion of AR21 on the constitutionalization of the responsibility principle in the SAARC countries constitutions

Texte complet :

The impact of constitutionalization of the responsibility principle has to be seen through the combination of the eight principles underlying the general framework of « responsibility principle », with the different fields of human activity and with the different stakeholders

Going through each of the principles gives a first view of the scope.

1. The exercise of one's responsibilities is the expression of one's freedom and dignity as a citizen of the world community.

This principle means that any citizen is justiciable on his/her impact not only on the national community and natural resources but also on the rest of the world. It should be precised by law that the titlement of citizenship means this enlarged notion of justiciability. By reciprocity, any harm committed on the national community by foreigners should be justiciable at a national court whether this harm results from actions committed on the national territory or abroad

2. Individual human beings and everyone together have a shared responsibility to others, to close and distant communities, and to the planet, proportionately to their assets, power and knowledge.

This should call for the elaboration of codes of conduct from the different stakeholders which would be officially endorsed by their members in the way ISO norms are endorsed and then become compelling for those institutions which have endorsed it. This would concern in particular companies CIO, scientists, journalists, academics, civil servants, local and national political leaders, service men, professionals. A specific mention of the sphere of influence of the different stakeholders should be made; this is of particular importance for the transnational corporations which operate in the SAARC countries through juridically independent subsidies or through sub-contractors.

One of the major dimensions of the international economic life is the bilateral agreements between states on the protection of investment or the agreement between states and transnational corporations. The responsibility principle would first oblige recognition of asymetry between the contractors and second would oblige governments to include the eight principles in any international agreement of that kind. That would be essential in case of dispute and ad hoc arbitrage, which refer only to the terms of the agreement. It is legitimate that an international investor asks for guarantees but the counterpart would be that it behaves responsively. Any secrete agreement

clauses would be unconstitutional and the national governments justiciable would they ignore or contradict the responsibility principles

3. Such responsibility involves taking into account the immediate or deferred effects of all acts, preventing or offsetting their damages, whether or not they were perpetrated voluntarily and whether or not they affect subjects of law. It applies to all fields of human activity and to all scales of time and space.

4. Such responsibility is imprescriptible from the moment damage is irreversible.

Combining principles 3 and 4 would introduce a major shift in the trends initiated from the 19th century with the concept of "limited responsibility" of companies. This concept has of course been useful to foster economic initiatives as the shareholders of a company have a risk limited to their own capital invested in the company and not extended to their own private property. However it has now a perverse effect. One should distinguish the "economic risk" linked to the shared ownership of a company and the societal and ecological impact of an economic endeavour. As the economic activities have now a societal and ecological impact, which can be deferred effects and irreversible damage, the useful concept of limited responsibility has become "illimited irresponsibility". And it is precisely the case with anonymous shareholders which have a very limited information and knowledge about the impacts of the company they own a part of.

This is also the case for political leaders who take decisions which can have deferred very negative effects once they are out of charge, as if the fact that they be elected was limiting their responsibility to electoral sanction. One can see that short termism is not only an economic plague but also a political one.

Those two principles also mean a form of extra-territoriality of national jurisdictions as these irreversible impacts most often than not are produced by decisions and deeds outside of the country.

Economic "limited responsibility" can therefore go hand in hand with "illimited responsibility" as far as other impacts are concerned.

5. The responsibility of institutions, public and private ones alike, whatever their governing rules, does not exonerate the responsibility of their leaders and vice versa.

This is a very important principle, as it can be seen with the world 2008 financial crisis. Suing an institution as such and condemning it to a fine is hardly dissuasive even if the new decisions from the US jurisdictions about the national and foreign banks now amount for billions of USD. But whenever it is altogether the institutions and their leaders it becomes really dissuasive. Reason why the UK banking commission recommended to sue the banks CIO whose irresponsible decisions created international damage, whether these decisions were legal or not, considering the reality of the damage and not the legality of the decisions. It is now widely understood that the principle "too big to bail", which justified the public support to the banks after the Lehman Brothers failure, had become "too big to jail" about the CIO of these institutions. This is not accepted anymore by the general public, and the constitutionalization of the responsibility principle would give a solid ground for charging not only the institutions but also their governing bodies, including members of the board.

The same principle should apply to political decisions

A good example is the use of GMO in agriculture. It has been demonstrated that the administrative procedure for allowing new GMO in Europe was based on a co-irresponsibility! I can document the case further if necessary. In particular, Monsanto GMO based on the tolerance to roundup mask the very dangerous impact of roundup in the long term. The same with the irreversible dependency of the small farmers on GMO licences which in some countries have provoked many suicides.

6. The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.

This is a very important point, as well for individuals as for companies, local or national public authorities. It is in particular the case when public "ownership" of water and lands is assimilated to a wise use of them. It is hardly the case. The Chinese public ownership of land and its impact on the peasantry is a good case. The same with the public ownership of water. Therefore the passage from ownership to stewardship or the responsibilities attached to the ownership of natural resources, which directly results from the responsibility principle, creates a completely new situation when apart from the citizens control through elections, local and national governments have to respond about the use of natural resources. This implies a global approach of ecosystems when only a co-responsibility of the different stakeholders can be effective.

An interesting case is the respect of international agreements. The agreement on transnational water basins has recently become enforceable as 35 countries have signed it (the last one being Vietnam). These transnational water basins are a burning issue in SAARC countries. It is clear that the adoption of the responsibility principle in the constitution of the respective countries would create a strong incentive for the government to negotiate a fair sharing of the water resources.

The same principle would of course apply to companies. The management of natural resources in respect of the responsibility principle would be a very strong incentive for the development of "industrial and territorial ecology" -some also call it circular economy- when the waste from one industry is used as raw material for another one. This orientation would soon become mandatory when the responsibility principle is carved in marble.

7. The exercise of power, whatever the rules through which it is acquired, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.

The distinction between legality and legitimacy is now widely (and recently!) recognized as a major one. It concerns as well political power as economic power. Therefore the principle 7 is a strong incentive to define the conditions for the leaders to respond on their decisions. It is also widely recognized that the "agency theory" related to the companies, which define shareholders as the "owners" of the company, acting therefore exclusively for their own interest is inconsistent, even in legal terms (I join the document, unfortunately in French, which gives an international view of the present international debate among lawyers about this point). The responsibility principle would therefore pave the ground for a new management defining the conditions of legitimacy.

8. No one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed.

This principle 8 is of particular relevance for scientists and for SME. I detailed this point in my response to Isis de Palma concerning a "responsibility label" for SME. It means that for any "small" economic actor, the ignorance of the global supply chain they are a part of cannot justify their irresponsibility if there has been no collective effort to unite and to ask for such global assessment.