



THE SECRETARY-GENERAL

Malta

7 July 2010

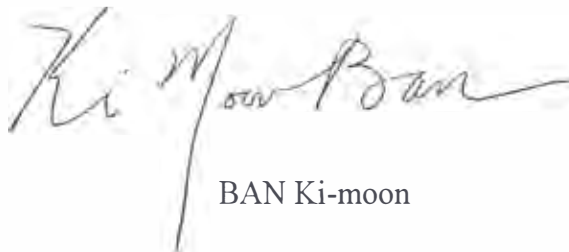
Excellency,

I wish to thank you for your letter dated 24 February 2010 regarding a draft Universal Declaration on Human Responsibilities. I am grateful for your commitment to the promotion and protection of human rights.

As you will recall, the issue of drafting such a declaration was debated in the Commission of Human Rights (CHR) for five years, the last time at the 61st session of the CHR. Its subject matter was contentious and the debates in the Commission were polarized.

Given that the issue of drafting a Universal Declaration on Human Responsibilities led to much controversy in the past, I am concerned that raising it again would have the potential of fuelling a divisive debate. Being especially keen on ensuring that the current human rights system is not diluted, I would encourage you to reconsider the timing of this initiative. In the circumstances, I hope you will appreciate that it would, unfortunately, be inappropriate for me to present the current draft either to the Third Committee or to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.



BAN Ki-moon

His Excellency
Mr. Lawrence Gonzi, KUOM, LLD, MP
Prime Minister of the Republic of Malta
Valletta

10-06346

United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

! URGENT

To: Mr. Nambiar,

Please find attached for your approval and SG's signature a letter addressed to the PM of Malta regarding the draft Declaration on Human Responsibilities. As requested by you, the Political Unit will prepare a note from you to the High Commissioner on this matter raising the issue of their delayed draft response to the original request. Incidentally this matter has never been routed through the Political Unit.

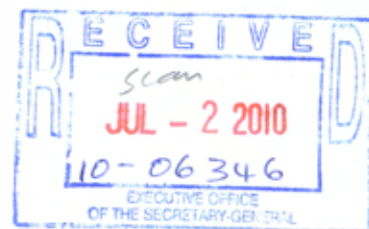
A handwritten signature in black ink, appearing to read 'Nicholas Haysom'.

Nicholas Haysom
7 July 2010

cc: KWS

10-06346

ACTION ✓
COPY ✓



Note to Mr. Nambiar

Draft Declaration on Human Responsibilities ✓

1. In 2000, the Commission on Human Rights (CHR) requested the Sub-Commission to “undertake a study on the issue of human rights and human responsibilities”. The narrow majority with which CHR resolution 2000/63 mandating the study was adopted [22 votes to 21, with 10 abstentions] reflects the divisive nature of this issue.
2. The final study (E/CN.4/2003/105) prepared by Mr. Alfonso Martinez, was presented to the CHR in 2004, along with a pre-draft declaration on human social responsibilities. This pre-draft declaration had not explicitly been mandated, thus further fuelling controversies. Yet, the CHR decided to request OHCHR to seek the views of Member States and stakeholders on this pre-draft declaration. This decision, which was defeated the previous year, was again adopted by a narrow margin.
3. The EU, including the then acceding country Malta, which at the level of ECOSOC unsuccessfully tried to overturn this decision the same year, explained its position against the pre-draft declaration noting that it would undermine the UDHR by creating a conditional linkage between responsibilities and human rights. The EU further explained: "The idea that a State can determine which rights an individual can enjoy in return for the exercise of responsibilities is entirely inconsistent with the fundamental concepts of human rights. Yet, this is the core line of thought in the pre-draft declaration."
4. By contrast, member States supporting the above-mentioned CHR's decision (e.g. Cuba, China, Syria, Russia, Indonesia, Benin, India and Zimbabwe) noted that the UDHR had recognized the link between rights and responsibilities, emphasizing their complementary.
5. The OHCHR compilation of the views received from Member States, intergovernmental organizations and NGOs (E/CN.4/2005/99) was considered at the 61st session of the CHR. Subsequently, the CHR requested the Rapporteur of the Sub-Commission (Mr. Alfonso Martinez) to present a revised study taking into account the comments received [decision 2005/111 adopted by vote of 26 to 25, with 1 abstention]. As the final sessions of the Sub-Commission and the CHR were held the following year, the matter was not re-considered.
6. Malta has prepared a new draft Universal Declaration on Human Responsibilities and seeks the support of the SG, including for its presentation to the Third Committee or the HRC. While the draft declaration is different from the pre-draft previously presented to the CHR, it seems to build on similar concepts. By noting that the “enjoyment and the exercise of human rights imply the execution of corresponding duties”, the preambular part illustrates some of the problematic aspects of the initiative. While in its letter to the SG, Malta refers to statutory derogations from or limitations on human rights, these differ from the proposed concept, in the sense that they do not make the enjoyment of human rights conditional on the behavior of the right-holder.

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7. Other provisions contained in Malta's draft may also be debatable (e.g. art. 4 "Every individual must safeguard his physical and mental health"; art. 7 "All individuals must act towards others in a spirit of brotherhood..."; art. 12 "Children have the duty to respect at all times their parent and ... to feed them in case of necessity ..."; art. 15 "Every culture, having its own dignity and its own value, must be respected ..."). In addition to their questionable merit, these issues do not warrant consideration in the context of an international instrument. If such a declaration were ever to be approved, it would seem to create ambiguous space for States to dissolve their human rights obligations even though a declaration is not legally binding.
8. In light of the above, OHCHR recommends that the Secretary General does not support this initiative and that the Maltese Government be kindly advised to reconsider the matter, assessing the impact it may have on the integrity of the human rights system and legal standards that have been developed by the United Nations.
9. Kindly find attached a draft response for the Secretary General to the Prime Minister of Malta for your consideration.



Navi Pillay

1 July 2010



Il Rappresentant Permanenti ta' Malta

The Permanent Representative of Malta

14 March 2010

Dear Mr. Nambiar,

I would highly appreciate if you could kindly forward the enclosed letter dated 24th February 2010 from the Honourable Dr. Lawrence Gonzi, Prime Minister of Malta, addressed to the attention of H.E. Mr. Ban Ki-moon, Secretary-General of the United Nations.

A copy of the letter is attached, for your information.

Please accept the assurances of my highest consideration.

Saviour F. Borg
Ambassador
Permanent Representative

Mr. Vijay Nambiar
Chef de Cabinet
Executive Office of the Secretary-General
Room S-3830 United Nations
New York, NY 10017
(by hand)



THE PRIME MINISTER
MALTA

10-02117

22 February 2010

Excellency,

In the address I gave to the General Assembly on 24 September 2009, I raised the question, often forgotten, of human responsibilities conceived as a necessary complement to human rights enunciated in the Universal Declaration thereon.

I indicated that Malta believes that human duties are intrinsic to the personality, oneness and uniqueness of the human being, and are as inalienable as human rights. Those duties do not arise from laws or obligations but are fundamentally inherent to the human being. Such duties refer to the human beings themselves and to their fellow beings, and in a special manner to their family, to the community at all levels, and to the natural and cultural environment in which their life evolves. The envisaged declaration, strengthening and fulfilling the thrust of the 1948 universal instrument, should mark the work of this Assembly as a consummate service to the international community. It should stand out as a major achievement of the United Nations at the beginning of the third millennium of our era.

A Universal Declaration on Human Responsibilities which Malta wishes to draw up, would underline the necessary link between human rights and human duties since they constitute the two complementary forces of the one human reality.

His Excellency Mr Ban Ki-moon
Secretary-General of the United Nations

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The Universal Declaration of Human Rights refers explicitly to human rights in the first paragraph of Article 29. However, it is to be noted that the Declaration does not specify clearly to what duties it refers.

At regional level, there is a whole chapter, in the 1948 American Declaration of Human Rights and Duties dedicated thereto. Equally, the African Charter of the Rights of Men and of Peoples (1981) after indicating in its Preamble that 'the enjoyment of rights and freedoms implies the fulfilment of duties by each person', covers widely in its second chapter, human duties.

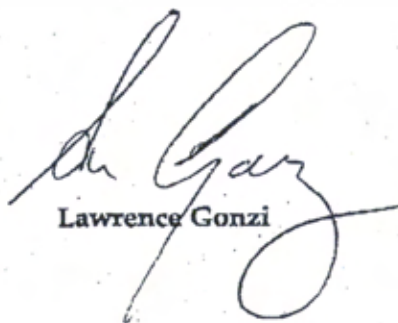
The European Convention on Human Rights to which Malta is a Party expressly lists the permissible statutory derogations to the protected rights, but they are couched in general terms.

While the United Nations has been instrumental in the universal promotion and protection of human rights, our Organisation has yet to embark on an effective debate on human responsibilities, which would hopefully culminate in drawing up a veritable Universal Declaration on Human Responsibilities. Indeed, in Malta's view, the drafting of such a Declaration would produce a real equilibrium between human rights and human duties, a balance called for by many throughout the world.

For some years, a group of legal experts, supported by Malta as well as by several universities, especially in Europe, have been meeting to elaborate such a draft which I am annexing. This draft has the merit of examining human responsibilities in a systematic manner by classifying them into six categories: duties towards one's self, towards others, toward the family, towards the natural and cultural environment, towards the national and towards the international community.

My Government would be very grateful to you, Secretary-General if you could support this present initiative according to the modalities which you may deem desirable. In particular, Malta is at your disposal if you esteem it advisable to present the draft Declaration on Human Responsibilities to the attention of the Third Committee or the Human Rights Council whichever you may deem to be the most appropriate organ to examine this question.

In thanking you, on behalf of the Government of Malta, for what process you may wish to undertake in furtherance of our request, I would like to ask you Secretary-General, to accept the expression of my highest consideration.



Lawrence Gonzi

