

# The 2003 Graham Spry Memorial Lecture: Toward a Human Right to Communicate?

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*Abstract:* 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 This reflects an outdated conception of communication as “distribution.” Communication is interaction: a process of personal and public dialogue! The shift from distribution to interaction requires the adaptation of human rights standards to the new reality of global interactive technologies and the emergence of networking in many social domains.

Résumé : Les critères actuels pour les droits humains internationaux ont principalement trait à la dissémination de l'information, à la consultation en information et à l'enregistrement de l'information. Presque toutes les lois décrivent la communication comme portant sur le « transfert de messages ». Une telle approche reflète une conception périmée de la communication comme effectuant une « distribution ». La communication est plutôt une interaction : un processus de dialogue personnel et public! Ce passage de la distribution à l'interaction requiert que l'on adapte les critères pour les droits humains à la nouvelle réalité des technologies interactives mondiales et à l'émergence de réseaux dans plusieurs domaines sociaux.

*Keywords:* Human rights; Information society; Law/legislation; Democracy

## **From distribution to interaction**

Human beings interact with each other in myriad ways. As for other animals, these interactive processes are of vital importance. The human species has—differently from other species—developed a special tool for its interactions: 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.” It is unfortunate that in much popular and aca-

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democratic discourse the word “communication” is employed in such a cavalier fashion. Ignoring its original meaning—creating 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 & Van Kaam (1982), four patterns can be distinguished as follows:

- the dissemination of messages (Bordewijk & Van Kaam call this “allocation”)
- the consultation of information (as in libraries or on the Web)
- the registration of data (for public or private purposes)
- 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 & Weaver (1949) introduced their mathematical theory of communication. Their model described communication as a linear, one-way process. This is, however, a very limited and somewhat misleading conception of communication, which ignores that in essence “to communicate” refers to a process of sharing, making common, or creating a community. Communication is used for the dissemination of messages (as in the case of the mass media), for the consultation of information sources (like searches in libraries or on the World Wide Web), for the registration of information (as happens in databases), and for the conversations that people participate in. In international human rights law, only provisions on the protection of confidentiality refer—albeit insufficiently—to the fourth pattern: the conversational mode.

In 1969 Jean d’Arcy introduced the right to communicate by writing. “The time will come when the Universal Declaration of Human Rights (UDHR) will have to encompass a more extensive right than man’s right to information... This is the right of men to communicate” (D’Arcy, 1969). The motivating force for this new approach was the observation that the provisions in human rights law such as Article 19 in the Universal Declaration of Human Rights do not adequately deal with communication as an interactive process. Article 19 addresses one-way processes of seeking, receiving, and disseminating information and ideas. It deals with communication in the sense of “transfer of messages.”

The discussion on a right to communicate focuses on the conversational mode of communication, and its proponents argue that communication in the sense of conversation or dialogue needs special protective and enabling provisions. Human rights law—in both Article 19 of the UDHR and Article 19 of the International Covenant on Civil and Political Rights—covers the fundamental right to freedom of opinion and expression. These articles are undoubtedly an essential basis for processes of dialogue among people, but they do not directly pertain to interactive processes. They protect the freedom of the speaker at Hyde Park Corner to whom no one has to listen and who may not engage in interaction with anyone in his audience. The articles also refer to the freedom to hold opin-

ions: this pertains to opinions inside your head that may serve the communication with yourself but bear not necessarily any relation to communication with others. They mention the right to seek information and ideas: this provides among others for the freedom to gather news. Highly important, but no provision for processes of exchange. The articles also contain the right to receive information and ideas: this is in principle also a one-way process; the fact that I can receive whatever information and ideas I wish to does not imply I am involved in a communication process. Finally there is the right to impart information and ideas: this refers to a form of dissemination that goes beyond the mere freedom of expression but it does not pertain to interactive processes. In sum, all the provisions in the “freedom of information” articles in international human rights law address one-way processes of transport, reception, consultation, allocution, and do not pertain to the two-way process of conversation. Even if the news and entertainment media would have a maximum freedom of expression and would have fullest possible access to information sources, this would not guarantee that people are enabled to participate in societal dialogues.

The emerging reality of global interactive technologies and the expansion of societal networking calls urgently for a shift from the prevailing distribution paradigm to an interaction paradigm. This shift would also require the adaptation of human rights standards to the new reality of interaction.

#### **On the defence of human rights**

It could even be argued though that the conversational mode is essential to the overall defence of human rights standards. This argument could be based upon the following five considerations: the search for identity, the sustainability of communities, the essence of democratic arrangements, the requirements of ethical decision-making, and the essential obstacle to the realization of human rights.

#### **On the search for identity**

It is probably a universal experience that people want to find out who they are. There seems to be throughout history and across cultural boundaries a basic need to define human identity.

This search to know who we are requires conversation with others. The discovery of our identity cannot be achieved in solitary condition. We need others to provide us with feedback on our thoughts, to talk back to us, and to respond to our questions. Equally, we need to be heard by others. This is a learning process that forms an integral part of a human rights culture in which people are taken seriously and treated with respect. As with all other learning processes, the core is symbolic interaction and the freedom to participate in it.

#### **On the sustainability of communities**

Most people—with very few exceptions—live in communities. These communities would not be sustainable if people were only engaged in allocution, registration, and consultation. In communities people need to share language in conversation in order to understand each other. Mutual understanding is not possible without dialogue. This becomes even more critical as communities—

through changes in global demographics—evolve into multicultural and multi-religious communities. Lest these new communities get entangled in violent and possibly lethal conflict, and thus the gross violation of human rights, the freedom of their members to engage in societal dialogue is vitally important.

**On the essence of democracy**

A key difference between democratic and non-democratic systems is that in democracies the “governed” are heard by the “governors.” Democracy is at the core a process of deliberating; it is a discursive process. Without conversation between the electorate and the elected as well as *within* the electorate, the democratic ideal is replaced by fascist, bureaucratic, or plutocratic systems of government. As a matter of fact we find in today’s politics that such systems have in many countries replaced more democratic arrangements. As the freedom to engage in public and critical political dialogue becomes restricted with such justifications as “war on terrorism” and “national security,” a right to communicate becomes urgently needed in order to expose the deception of pseudo-democracies. The democratic process is essential to the effective protection of human rights standards.

**On discursive ethics**

In the history of moral philosophy, a common feature of different schools of moral thought is that they consider normative judgments based upon self-interest generally not morally justified. “From ancient times, philosophers and moralists have expressed the idea that ethical conduct is acceptable from a point of view that is somehow universal” (Singer, 1979, p. 10). Thinkers as diverse as Kant, Hume, Bentham, Rawls, Sartre, and Habermas “agree that ethics is in some sense universal...that the justification of an ethical principle cannot be in terms of any partial or sectional group” (Singer, 1979, p. 11). The demand for universalization has been articulated by Habermas in the following way. “A norm is justified only if it is ‘equally good’ for each of the persons concerned” (Habermas, 1993, p. 68). In Habermas’ approach to moral justification, the essence is the dialogue among the community of moral subjects. He argues for a communicative, intersubjectivist approach. “Whether a norm is justifiable cannot be determined monologically, but only through discursively testing its claim to fairness” (McCarthy in Habermas, 1993, p. viii). Discourse ethics “bases the justification of norms on the uncoerced, rational agreement of those subject to them” (McCarthy in Habermas, 1993, p. x). As Habermas concludes, “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse” (1993, p. 66). This proposal for a discursive ethics requires the freedom for people to engage in forms of public and private dialogue. If the moral standards of international human rights have to be understood, explored, and applied in ethical decision-making, this requires dialogue among all those concerned.

**On the obstacle to a human rights culture**

The basic obstacle to the realization 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 (tribe, family, clan, race, gender, or whatever) should be granted to those who do not matter to them. The basic premise of the human rights culture as enshrined in the Universal Declaration of Human Rights 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 (“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 them. 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 not 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.

**Deprivation of the right to communicate**

If these considerations provide a valid argument for the claim to include a human right to communicate in the human rights catalogue, it needs to ask whether people can be deprived of the freedom to exercise this right. I would argue that this may be the case in the following situations:

*In case the confidentiality of the conversational mode is not adequately secured.* There are at present in international law and in many national legal systems, provisions for the assurance of privacy and confidentiality of communications. However, recent events—in particular the “war on terrorism”—have demonstrated that the defence of privacy is easily eroded and concedes its claim to considerations of national security. Much more care should be applied than is currently the case when fundamental rights are suspended and there must be (international) legal guarantees that suspension can only be allowed for purposes that are democratically established; i.e., if no other solutions are available, if the suspension is effective relative to the defined purposes, and if any suspension is of temporary duration only.

*In case people (individuals or groups) are excluded from public and/or private dialogue.* This is—for example—the case whenever deaf people have inadequate access to the use of sign language. This 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.” Exclusion from the public dialogue also affects people in mental institutions and prisons and, in many societies, both the elderly and the young.

*In case there is no public space.* The public dialogue needs spaces where it can be conducted. This is increasingly a serious problem in societies where the privatization “fever” transforms formerly public spaces into privately owned properties. What used to be the public marketplace has now often become the modern shopping mall where private guards control people’s expressions and movements.

*In case people are not listened to.* This is a very common experience in many so-called democratic societies. Actually, the widespread ignoring of people’s voices has created around the world a tremendous loss of trust in the political system. There is a widespread feeling among the electorates in democracies that it does not matter whatever you say, you will not be heard.

*In case the positive dimension of the right to engage in the conversational mode is not secured.* Like all other human rights, the right to communicate has both negative and positive dimensions. The negative refers to the absence of interference with the exercise of the freedom to engage in public and private dialogues. The positive refers to 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 and certain outcome. 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 (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 the internal dialogue. This implies that all participants question their own judgments and assumptions. The critical investigation of our own assumptions presents, 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, and certainly 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, whereas listening demands an ear-centred culture! The mass media offer “talk shows,” not “listen shows.” Yet 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.

In sum, dialogue is an extremely difficult form of speech that requires learning. 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.

### **Protecting the right to communicate**

So far I have argued that the recognition of the right to communicate (in the sense of interacting through conversation) is essential to the overall defence of human rights standards. I have also argued that this right needs protection and implemen-

tation. The conclusion is that the failure to effectively protect the right to communicate does considerable harm to the realization of a human rights culture.

The next question then is whether the concern about the need for people's engagement in dialogue should be considered a mere moral claim. In an ideal world this would be sufficient. In a far from perfect world, moral claims are commonly ignored and have mainly rhetorical, ceremonial functions. The claim to the human right to communicate—in order to be effective—would need a robust basis in international law. This is likely to be a very complex endeavour. For one thing, because we would have to expand the current—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 violated by the companies where they work. The right of kids to seek information is often violated by their parents.

In discussion about the right to communicate, often the fear is expressed that expanding the human rights regime with a new right might endanger the existing provisions. However, international law is a living process, it still expands; and also the catalogue of human rights has considerably grown over past years to include new rights and freedoms without endangering the basic standards as formulated in the Universal Declaration of Human Rights. 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. New topics have been addressed, such as biodiversity 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 Universal Declaration of Human Rights and amend them. That would be a very dangerous route to take, as the international community would today certainly not adopt a document so far-sighted as the declaration of 1948.

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. It is, rather, whether one is for or against the realization of communication in the conversational mode as essential to the overall defence of human rights.

### **Conclusion**

After its first phase (December 2003 at Geneva), the UN-convened World Summit on the Information Society will (in 2005 at Tunis) continue to address some of the most important issues and concerns in the field of information and communication. The summit is inspired by the desire to find a common vision on the informational developments that currently affect most societies and that are conveniently bundled under the heading of the "information society."

The most significant achievement of the international community since the Second World War is the articulation and codification of a broad range of fundamental human rights. It would therefore seem only logical that the normative framework of human rights standards should shape that common vision. As a matter of fact, over the past decades the international community has already adopted and often confirmed as binding law an impressive variety of human rights standards that relate to information and communication.

Following this, the WSIS should remind the international community of all that has been achieved already and stress the importance to seriously identify and remove major obstacles to the urgently needed implementation of existing provisions. The WSIS could also point out that the essential omission in “human rights for the information society” is the lack of human rights provisions for the conversational mode of communication or for communication as an interactive process. As UN Secretary-General Kofi Annan stated in his World Telecommunication Day (May 17, 2003) message, the primary goal of the WSIS is “helping all of the world’s people to communicate.”

If indeed all the world’s people should be assisted in participating in the public and private conversations that affect their lives, the international community will have to secure the conditions under which such processes can take place. Conversational communication among individuals and groups—whether in public and/or in private—should be protected against undue interference by third parties. It needs confidentiality, space, and time, and requires learning the “art of the conversation.” It also calls for resources for multilingual conversations and for the inclusion of disabled speakers. All of this requires a commitment from the multi-stakeholder community of governments, intergovernmental organizations, civil society, and business. A WSIS statement on the “right to communicate” would broadcast to the world a strong signal for the mobilization of this commitment!

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