



Doc. 12777

24 October 2011

Fundamental rights and responsibilities

Report¹

Committee on Legal Affairs and Human Rights

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Summary

Rights, duties and responsibilities cannot be dissociated from each other. Living as members of society inevitably entails duties and responsibilities as well as rights. Some duties are already established in international human rights instruments and national legal orders. These duties are indicative of the existence of unwritten fundamental responsibilities.

Responsibilities can never be so burdensome that assuming them would place the individual's rights, particularly his or her fundamental rights, in jeopardy. Responsibilities should remain reasonable at all times. When a burden is placed on an individual, in the name of the general interest, a fair balance has to be struck between the various interests at stake.

The report identifies a set of general and specific fundamental responsibilities. It emphasises that these fundamental responsibilities can never be construed as impairing, restricting or derogating from the rights and freedoms contained in the European Convention on Human Rights and its protocols, the revised European Social Charter and other international and regional human rights instruments and it calls on all member states of the Council of Europe to take such fundamental responsibilities into account in a proportional way when dealing with individuals.

1. Reference to committee: [Doc. 12287](#), Reference 3694 of 25 June 2010.



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A. Draft resolution²

1. Rights, duties and responsibilities cannot be dissociated from each other. Living as members of society inevitably entails duties and responsibilities as well as rights.
2. The issue of fundamental responsibilities has led to a broad political debate, encompassing all sides of the political spectrum.
3. The Parliamentary Assembly believes that a distinction should be made between duties, defined as legal obligations, and responsibilities, defined as moral ones.
4. Some duties are already established in international human rights instruments and national legal orders. These duties are indicative of the existence of unwritten fundamental responsibilities.
5. Duties imposed by law are subject to the proportionality principle. When a burden is placed on an individual, in the name of the general interest, a fair balance has to be struck between the various interests at stake.
6. Likewise, responsibilities can never be so heavy that assuming them would bring the individual's rights, particularly his or her fundamental rights, into jeopardy. Responsibilities should remain reasonable at all times.
7. Identifying fundamental responsibilities is a sensitive issue. Values dear to the majority prevailing at a given moment should not be unduly imposed on all members of society.
8. The Assembly:
 - 8.1. hereby identifies the following set of fundamental responsibilities:
 - 8.1.1. All individuals have the general fundamental responsibility to treat all persons in a humane way, to be tolerant and to respect the rights of others whilst exercising their own rights;
 - 8.1.2. Furthermore, all individuals have specific fundamental responsibilities to respect and protect human life, to refrain from acts of torture or inhuman or degrading treatment, including practices of exploitation of others, to respect the personal liberty of others, to respect the private life and the reputation and honour of others, to respect and ensure equal treatment and non-discrimination, to acquire an education, to work, to perform civic obligations, including participation in the democratic process, to show solidarity, to act responsibly towards children, the elderly and the disabled and with regard to the environment, and to respect community and private property;
 - 8.2. emphasises that these fundamental responsibilities can never be construed as impairing, restricting or derogating from the rights and freedoms contained in the European Convention on Human Rights (ETS No. 5) and its protocols, the revised European Social Charter (ETS No. 163) and other international and regional human rights instruments;
 - 8.3. calls on the member states of the Council of Europe to take these general and specific fundamental responsibilities into account in a proportional way when dealing with individuals.

2. Draft resolution adopted unanimously by the committee on 21 June 2011.

B. Explanatory memorandum, by Ms Bemelmans-Videc, rapporteur

1. Introduction³

1. Since the conception of the modern human rights movement, after the Second World War, the call to include duties and responsibilities into the human rights framework has never been far away. Notably in the preparation of the 1948 Universal Declaration of Human Rights, fierce debates were held on the role and place of duties in international human rights instruments. While it was generally thought that no rights could exist without duties, especially Western nations often perceived the inclusion of duties into human rights documents as a threat to the protection offered to individuals by human rights law.

2. The topic of fundamental responsibilities, and their relationship with fundamental rights, is a contentious and much debated one. In this report an attempt will be made to sketch, in broad lines, the main arguments put forward in the public debate, and to point at a number of international and domestic instruments which, in one way or another, have dealt with the topic. On the basis of these findings, a list of responsibilities, which can be considered “fundamental” in the European context, is then presented.

2. The debate

3. Questions regarding the duties and responsibilities of individuals are, of course, probably as old as organised society itself. In fact, they have taken an important place in political and philosophical thinking throughout history. From historical figures such as Aristotle, Thomas Aquinas, Niccolò Machiavelli and John Milton, to the Social Contractarians Thomas Hobbes, John Locke, Jean-Jacques Rousseau or the 19th-century philosophers Jeremy Bentham and John Stuart Mill, all of these figures considered individual duties and responsibilities, in one form or another, and often in very different ways, as essential for societal life.⁴

4. More recently, the call for a greater emphasis on duties and responsibilities has received significant attention through a number of private and political initiatives. Generally, proponents of a greater emphasis on duties and responsibilities feel that individual rights have been over-stressed in today's society, and that a neglect of individual duties and responsibilities has led to a kind of individualism that is detrimental to human life in general, and to community life in particular. This perceived decline in private and public morality is said to be the cause, or at least the catalyst, of many modern-day social problems. It is therefore not surprising that the issue of duties and responsibilities is one which has been raised among communitarians and like-minded authors.⁵ They are, however, not the only ones who have made such an appeal. As we will see, a similar concern can be found among the representatives of the world's religions who, in response to these concerns, have entered into a quest for a “global ethic”. The InterAction Council, a private organisation composed of former heads of state and government, picked up the idea, and drafted a declaration of human responsibilities. The United Nations Commission on Human Rights requested the Sub-Commission on the Promotion and Protection of Human Rights, a body composed of independent experts, to study the issue of “human rights and human social responsibilities”. The wide variety of individuals and organisations interested in the topic seems to indicate that duties and responsibilities cannot be associated with one or more specific political, philosophical or religious pressure groups. Rather, there seems to exist a widespread perception, by many actors across the political spectrum, that an approach to human rights which incorporates more distinctly duties and responsibilities could, perhaps, provide an answer to a number of contemporary societal problems. As one author put it, in commenting on the lack of focus on duties by traditional legal scholars in the wake of the French Revolution, “They did not sense, or were unwilling to understand, that it was impossible in a realistic vision of democracy to separate citizens' rights from their duties to the community. For, if the first override the second, the idea that the individual can expect everything from the State without owing it anything is strengthened, distorting from the outset the terms of the social contract, with all the unfortunate effects that this truncated presentation may eventually have on mentalities”.⁶

3. I would like to express my thanks for the help obtained from Professor Paul Lemmens and Mr Michaël Merrigan of the Katholieke Universiteit Leuven. A background paper prepared by them has served as the principal source of this report.

4. For a more detailed overview of these figures and their concept of individual duty, see D. Hodgson, *Individual Duty within a Human Rights Discourse*, Aldershot, Ashgate, 2003, pp. 7-28.

5. See, for example, in American literature, M. A. Glendon, *Rights Talk: the Impoverishment of Political Discourse*, New York, Simon & Schuster, 1991; A. Etzioni, *The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda*, London, Fontana Press, 1995, and, in British literature, D. Selbourne, *The Principle of Duty: An Essay on the Foundations of Civic Order*, London, Abacus, 1997.

6. B. Jeanneau, “Vraie ou fausse résurgence des déclarations des devoirs de l'homme et du citoyen”, in *Territoires et liberté: mélanges en hommage au doyen Yves Madiot*, Brussels, Bruylant, 2000, p. 315.

5. It is true that there is also opposition to the idea of a greater emphasis on duties and responsibilities. However, opponents generally do not take issue as such with the identification of certain moral or even legal obligations. Most people would probably agree that all individuals have – at least some – responsibilities towards their family, other individuals, the community and the state. The opponents sometimes contest the existence of a moral crisis or its gravity, and they may claim that an unjustified nostalgia lies at the basis of the responsibilities movement.⁷ The main fear, however, is that responsibilities, especially when legally enforceable, would threaten individual human rights protection. The opponents point at the history of human rights as a protective mechanism against arbitrary state interference. Historically, duties have been abused all too often by (authoritarian) regimes to curb the legitimate rights of citizens. Therefore, opponents argue, it would be better to leave the imposition of duties to the domestic legal systems, while the protection of human rights can be organised on an international or supranational level. These fears are not wholly unjustified. The risk of duties and responsibilities being abused therefore needs to be neutralised.

6. As has been pointed out in literature,⁸ it would seem that duties and responsibilities are in fact already widely recognised, both under international and regional human rights instruments and in the various domestic legal systems. While this fact can be considered an argument against a greater emphasis on duties and responsibilities at the international level, it should also be seen as an argument allowing for a further normative development concerning duties and responsibilities – as long as the protection of individual rights is safeguarded.

7. Whether or not one agrees with the argument of a moral crisis and a loss of community awareness, it has become increasingly clear over the last few years that the issue of duties and responsibilities has taken up an important place in the political debate across Europe.

8. One domain, for example, in which duties and responsibilities can play an important role, is that of “responsible citizenship”. Living as members in a given society inevitably entails duties and responsibilities. In some of our societies there is the perception that many individuals have lost connection with the broader community of which they are members, and that there is a need to identify the core values and to remind people of them. In the Netherlands, for instance, the Ministry of the Interior launched in 2009 a discussion on the implications of citizenship, with a view to drafting a “Charter of Responsible Citizenship”. It commissioned a report, which was published in January 2010, identifying a number of core values that according to a survey were considered important in Dutch society. The authors identified a number of such values, around the following elements of responsible citizenship: “living together in a positive atmosphere”, “caring for each other”, “focus on the future” and “commitment towards society”.⁹

9. In the United Kingdom, the previous government launched a debate on drafting a bill of rights and responsibilities. The title indicates that the government sought to underline the importance of responsibilities. In a Green Paper presented to parliament in 2009, the authors perceived a “social and economic change” that “has altered public attitudes”. According to them, this change “has encouraged the rise of a less deferential, more consumerist public”.¹⁰ The paper argues that in this “atomised society” rights have been, to an extent, “commoditised”, which “is demonstrated by those who assert their rights in a selfish way without regard to the rights of others”.¹¹ A number of responsibilities for members of the United Kingdom society are proposed, such as “treating National Health Service and other public sector staff with respect”; “safeguarding and promoting the well-being of children in our care”; “living within our environmental limits”; “participating in civic

7. See, for example., B. Saul, “In the shadow of human rights: human duties, obligations, and responsibilities”, Column 32, *Human Rights Law Review* (2001), pp. 569-570.

8. See, for example, J. H. Paust, “The other side of right: private duties under human rights law”, 5 *Harvard H.R.J.* 51 (1992); C. R. Sunstein, “Rights and their critics”, 70 *Notre Dame Law Review* 727 (1995); International Council on Human Rights Policy, *Taking Duties Seriously: Individual Duties in International Human Rights Law: A Commentary*, International Council on Human Rights Policy, Versoix, Switzerland, 1999; B. Saul, “In the shadow of human rights: human duties, obligations, and responsibilities”, Column 32, *Human Rights Law Review* (2001); D. Hodgson, *supra* footnote 4; J. H. Knox, “Horizontal human rights law”, 102 *Am. J. Int’l L.* 1 (2008); L. Lazarus, B. Goold, R. Desai and Q. Rasheed, *The Relationship between Rights and Responsibilities*, United Kingdom Ministry of Justice Research Series 18/09, London, Ministry of Justice, 2009, www.justice.gov.uk/publications/docs/research-rights-responsibilities.pdf.

9. D. Verhue and S. Roos, *Bouwstenen van burgerschap. Een onderzoek in het kader van het handvest voor verantwoordelijk burgerschap*, report commissioned by the Dutch Ministry of the Interior, November 2009, Amsterdam, www.rijksoverheid.nl/onderwerpen/democratie-en-burgerparticipatie/documenten-en-publicaties/rapporten/2010/01/20/onderzoek-bouwstenen-van-burgerschap.html (Dutch).

10. “Rights and Responsibilities: Developing our Constitutional Framework”, Green Paper presented to parliament by the Lord Chancellor and Secretary of State for Justice and the Minister of State, Ministry of Justice, March 2009, p. 17, www.justice.gov.uk/publications/docs/rights-responsibilities.pdf.

11. *Ibid.*

society through voting and jury service”; “assisting the police in reporting crimes and co-operating with the prosecution agencies”, “as well as general duties such as paying taxes and obeying the law”.¹² However, the government stressed that the rights in the European Convention on Human Rights (ETS No. 5, “the Convention”) “cannot be legally contingent on the exercise of responsibilities”.¹³ This Green Paper has spurred an intense debate on the role of rights and responsibilities in the United Kingdom.¹⁴

10. It is clear that trying to identify fundamental responsibilities is a highly sensitive issue. There is always the risk that values dear to the majority prevailing at a given moment are unduly imposed as conduct norms or even legally enforceable duties on all members of society. This risk is particularly present when the idea of a responsible citizenship and of fundamental responsibilities is applied in the context of integration of newcomers, notably immigrants, in a given society. While the receiving society undoubtedly may legitimately expect from newcomers that they respect certain fundamental values, there is also the need for society to respect the fundamental rights of all individuals, including those belonging to a minority. A mutual respect is needed. Duties and responsibilities can therefore not be disconnected from fundamental rights.¹⁵

3. Rights, duties and responsibilities, and the relationship between them

11. Later in this report I will deal primarily with responsibilities, not with duties. Different meanings have been attributed to these notions. I choose to understand responsibilities as moral or ethical obligations, and duties as obligations imposed by law.¹⁶ In this respect, I fully subscribe to the distinction made by Mr Martelli in his 1998 report to the Parliamentary Assembly between “mandatory obligations towards the state and towards others” (duties) and ethical and moral obligations (responsibilities).¹⁷

12. “Responsibilities”, being of a moral and ethical nature, thus require a very different approach than “duties” and “human rights”, which have a distinctly legal nature. As Mr Martelli noted: “If a state were to dictate rules for all human behaviour, this would represent a negation of freedom and of human rights, since everyone should be responsible for his or her own moral and ethical behaviour. The result would be a totalitarian state, incompatible with the principles and values of the Council of Europe. Moral attitudes should remain in the realm of an individual’s free choice.”

13. Mr Martelli therefore warned against conflating the legal domain, on the one hand, and the moral and ethical domains, on the other hand. For this reason, he pointed at the principal danger involved in listing individual responsibilities at the international level: “Placing rights and moral obligations on the same level entails the risk of reducing the effectiveness of these rights, by ignoring their legal force, which is stronger than a question of morality. This is also why it does not seem desirable that each time reference is made in an Assembly document to a human right, a corresponding obligation should be systematically added.”

12. Ibid., p. 19.

13. Ibid., p. 18.

14. For arguments in this debate, see, for example, the aforementioned report by L. Lazarus, B. Goold, R. Desai and Q. Rasheed, *supra* footnote 8; see also, for example, the critical considerations by P. Eleftheriadis, “On rights and responsibilities”, Paper No. 44/2009, *University of Oxford Legal Research Paper Series*, October 2009, <http://ssrn.com/abstract=1486086>.

15. In Belgium, a commission was established by the Flemish Government to study the contents of an integration course offered to foreign newcomers. This course aimed to introduce these newcomers to Flemish society. The commission, led by a judge of the Constitutional Court and composed of various experts, presented its final report in May 2006 (Commissie “ter invulling van de cursus maatschappelijke oriëntatie”, *Eindverslag*, May 2006). On the basis of values contained in a number of international human rights instruments, the report identifies five core values, namely: liberty, equality, solidarity, respect and citizenship. It is under the last heading that the report talks about individual duties, both towards the state and towards other individuals. It describes citizenship as entailing the commitment of individuals for each other. The commission argues that it is the task of the state to stimulate this kind of commitment (pp. 26-29).

16. As the notions of “duties”, “responsibilities” and “obligations” are used interchangeably in literature, the meaning attributed to each of these notions in the present report merely reflects a working definition. One should be aware that these notions can have different meanings in the available literature. See, for example, F. Ost and S. van Drooghenbroeck, *La responsabilité, face cachée des droits de l’homme*, Brussels, Bruylant, 2005, p. 6, in which “obligation” is attributed a legal connotation, “*devoir*” (duty) is attributed a moral connotation and “*responsabilité*” is attributed an ethical connotation. While the foregoing division is certainly defensible, it will not be followed in this report; instead I will merely make the division between (legal) duties and (moral and/or ethical) responsibilities.

17. “Education in the responsibilities of the individual”, report of the Committee on Culture and Education, [Doc. 8283](#), rapporteur: Mr Valentino Martelli. The report states: “A clear distinction must be made between two kinds of obligations: on the one hand, there are mandatory obligations towards the state (military service, payment of taxes, etc.), and towards others, such as the obligation to refrain from the use of violence; on the other hand, there are moral and ethical obligations (the obligation to show solidarity, etc.). The first may be described as legal obligations, while the second group are ethical requirements that should not be fixed by law.”

14. Mr Martelli also rightfully acknowledged that “[t]here is also an individual dimension to human rights, which consists in the freedom to oppose and challenge the values of society and its institutions”. As he pointed out, “[i]t would thus be a fairly delicate matter to enumerate the individual’s responsibilities towards society”. He further also referred to the danger that “governments would be obliged to take a judicial approach to citizens who did not meet their obligations”. This would be troublesome, as “a state cannot and should not prescribe its citizens’ moral and ethical attitudes”. Finally, Mr Martelli also expressed his concern that the exercise of human rights could be made contingent upon the observance of one’s responsibilities. Fundamental responsibilities would then run the risk of becoming “an instrument enabling every authoritarian regime to relativise human rights, establish social morality as the norm and intervene in all aspects of citizens’ private lives”. As has been mentioned before, it is therefore important that the Assembly, in proposing a number of “fundamental responsibilities”, makes sure that protection of fundamental rights is in no way threatened.

15. As may be inferred from the above statements, making the distinction between moral responsibilities and legal duties means that there is no obligation whatsoever for the member states of the Council of Europe to turn the fundamental responsibilities proposed in the draft resolution into legally enforceable duties. Whether and to what extent national authorities may wish to do so is something that in principle belongs to their discretion, provided of course that their action respects individual human rights.

16. Duties, which are imposed by law, are subject to the proportionality principle. When a burden is placed on an individual, in the name of the general interest or the protection of the rights and interests of others, a fair balance has to be struck between the various interests at stake. A disproportionate burden is in any event inadmissible.¹⁸ The latter principle is also relevant for fundamental responsibilities. Responsibilities can never be so heavy that assuming them would place the individual’s rights, particularly his or her fundamental rights, in jeopardy. Responsibilities should remain reasonable at all times.

17. In this report I shall attempt to identify and describe a number of responsibilities that are considered fundamental in all the member states of the Council of Europe. National authorities can find inspiration in that list. Nothing more, but nothing less either.

18. The distinction between responsibilities and duties, and the focus on responsibilities, entails a further consequence. I think that it can be left to the competent national authorities to deal with the relationship between the individual and the state. My concern will be the relationship between the individual, on the one hand, and his or her fellow citizens and society as a whole, on the other hand.

19. There are various ways to proceed if one wants to identify responsibilities considered as fundamental. One can be inspired by moral, religious, political or other considerations. In this report, however, a human rights based approach is proposed. I believe that this is precisely the contribution that can be made by the Assembly, which is strongly committed to respect for and protection of human rights.

20. The human rights approach applied in this report entails that fundamental responsibilities are identified on the basis of existing provisions in international human rights texts, in particular those that are relevant for the Council of Europe. The European Convention on Human Rights and the revised European Social Charter (ETS No. 163) will be major (but not the only) sources of inspiration.

21. Sometimes, international human rights instruments explicitly refer to the existence of such responsibilities. This is the case, for example, with Article 10, paragraph 2, of the Convention, which provides that the exercise of freedom of expression “carries with it duties and responsibilities”.

22. Most of the time, however, the existence of fundamental responsibilities is implicitly acknowledged by the drafters of such texts. This is the case, for instance, where the text allows for the limitation of human rights for certain legitimate aims. These aims may relate to the relationship between an individual and his or her fellow citizens or society as a whole, and in that case they are highly indicative of the existence of fundamental responsibilities for each member of society.

23. Another indication of the existence of fundamental responsibilities is offered by the fact that states have positive obligations, inherent in an effective respect for human rights, especially insofar as these obligations imply the adoption of measures designed to secure respect for human rights in the sphere of the relations of individuals between themselves.¹⁹ The states may thus have to impose (legally enforceable) duties on individuals.

18. See, for example, European Court of Human Rights, *Lithgow v. the United Kingdom*, judgment of 8 July 1986, paragraph 120.

24. The legal obligations, which I have called “duties”, and the pre-existing moral and ethical obligations, which I have called “responsibilities”, can – and do – often overlap. It is useful to note that the existence of all kinds of individual duties can be indicative of the existence of synthesising fundamental responsibilities. For these implicit acknowledgements of fundamental responsibilities, the case law of the European Court of Human Rights (“the Court”) will be highly relevant.

25. The human rights based approach to fundamental responsibilities is intended to ensure that the individual’s responsibilities are seen as a necessary complement to the individual’s rights. In that way, fundamental responsibilities not only contribute to a more accurate description of the status of the individual within society, but by further strengthening the democratic framework within which rights are invoked, they will also contribute to a better protection of the fundamental rights of other individuals.

26. This report does not deal with “responsibilities”, but with “fundamental responsibilities”. I therefore attempt to enumerate responsibilities that are widely accepted. This is another reason why I look for references in existing international human rights texts. In a certain way, fundamental responsibilities can therefore be considered as general principles, the existence of which can be deduced from various particular applications of these principles, including applications in the form of legally enforceable duties. These principles can lead, in turn, to concretisations in legally enforceable duties of a more specific nature.

27. Finally, it should be stressed that fundamental responsibilities, like fundamental rights, are not absolute. This means that there may be circumstances in which an individual should be able to argue that a given fundamental responsibility applies to him or her to a lesser degree than it would normally apply. For instance, one cannot expect from a person who is ill that he or she has an unaltered responsibility to work. This is a question of making sure that responsibilities do not limit rights unduly, in a given case (see paragraph 10 above). In a declaration of principles, such as the one contained in the draft resolution, it is not necessary, and it is indeed even impossible, to give an overview of all the elements that may justify a limitation of the principles. It is sufficient to state clearly that principles are just principles, and that there may be exceptions to the principles. Often, it will be exactly the need for respect for human rights that will lead to the qualification of the scope of one’s responsibility.

4. Existing texts and initiatives

4.1. Responsibilities in human rights instruments

28. As was already mentioned above, it would be wrong to assume that contemporary human rights instruments do not pay any attention to duties and responsibilities. A short overview is given here of some of those references in the most important international and regional human rights instruments.²⁰

29. Any analysis of duties and responsibilities in international human rights documents must start from the 1948 Universal Declaration of Human Rights, Article 29, paragraph 1, of which states that “(e)verybody has duties to the community in which alone the free and full development of his personality is possible”. This provision can be considered to be one of the most fundamental provisions of the declaration and it was considered a key element by the declaration’s drafters.²¹ It affirms that individuals have general duties, as well as specific duties which might arise in the exercise of specific rights. The preparatory works show the intense debates that preceded the final decision on the wording of Article 29, but most of all they show the almost evident nature of the inclusion of its paragraph 1 into the declaration. In an elaborate study conducted by Erica-Irene A. Daes, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, the issue of the individual’s duties to the community under Article 29 of the Universal Declaration of Human Rights was explored in detail.²²

19. See, with respect to positive obligations inherent in an effective respect for private or family life, European Court of Human Rights, *X and Y v. the Netherlands*, judgment of 26 March 1985, paragraph 23.

20. More detailed overviews can be found, *inter alia*, in International Council on Human Rights Policy, *supra* footnote 8; D. Hodgson, *supra* footnote 4.

21. International Council on Human Rights Policy, *supra* footnote 8. For more background on the drafting process, see also A. Verdoodt, *Naissance et signification de la Déclaration Universelle des Droits de l’Homme, Etudes morales, sociales et juridiques*, Louvain, Nauwelaerts, 1964, pp. 262-271; R. Cassin, “De la place aux devoirs de l’individu dans la Déclaration Universelle des Droits de l’Homme”, in *Mélanges offerts à Polys Modinos: problèmes des droits de l’homme et de l’unification européenne*, Paris, Pedone, 1968, pp. 479-488.

22. E.-I. A. Daes, “The individual’s duties to the community and the limitations on human rights and freedoms under Article 29 of the Universal Declaration of Human Rights: a contribution to the freedom of the individual under law”, United Nations document E/CN.4/Sub.2/432/Rev.2, New York, United Nations, 1983.

30. The European Convention on Human Rights contains one explicit reference to responsibilities, namely in Article 10, which deals with freedom of expression. As indicated above, Article 10, paragraph 2, refers to “duties and responsibilities”. The former European Commission of Human Rights²³ and the European Court of Human Rights²⁴ have repeatedly dealt with such “duties and responsibilities” of individuals. Article 17, which denies the possibility to invoke human rights to the “enemies” of democracy,²⁵ can also be regarded as the expression of a general responsibility of individuals.

31. Both the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights have an identical reference to duties in their preamble, where it is stated that “[r]ealising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant”.

32. Responsibilities are also mentioned in the preamble of the Charter of Fundamental Rights of the European Union, which was incorporated in the Treaty on European Union. The Charter states that the enjoyment of the rights included in it “entails responsibilities and duties with regard to other persons, to the human community and to future generations”.

33. In many of the human rights instruments applicable outside of Europe, we find direct and indirect references to duties and responsibilities. References can be found, *inter alia*, in the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, the African Charter on Human and Peoples’ Rights, the Declaration of the Basic Duties of ASEAN Peoples and Governments, the Draft Pacific Charter of Human Rights, the Arab Charter on Human Rights, the International Convention on the Rights of the Child, and in various sets of principles such as the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Basic Principles on the Role of Lawyers and the United Nations Guidelines on the Role of Prosecutors.

4.2. Specific initiatives at the global level

34. A number of significant initiatives have been undertaken in the last few decades aimed at identifying individual duties and responsibilities. In this section an overview will be provided of some of the most notable initiatives at the global level.²⁶

35. As mentioned above, proponents of a greater emphasis on duties and responsibilities can be found among those who aim to establish a global ethic. In this respect, an important initiative was taken by the Parliament of the World’s Religions, an association grouping the major religions.²⁷ In 1993, 6 500 people from every possible religion convened in the Council for a Parliament of the World’s Religions in Chicago. The council gave its assent to a “Declaration Toward a Global Ethic”,²⁸ a document which was mainly prepared by Hans Küng, a catholic theologian. The global ethic envisaged in the declaration is “neither a global ideology, nor a single unified global religion transcending all existing religions, nor a mixture of all religions”.²⁹ Rather, it “seeks to work out what is already common to the religions of the world now despite all their differences over human conduct, moral values and basic moral convictions”.³⁰ The declaration is based on the main premise that no new global order can be conceived without a global ethic, and that this ethic must be based on the principle that every human being must be treated humanely, which, in turn, leads to the “Golden Rule”: “What you do not wish done to yourself, do not do to others.” These principles lead to four “irrevocable directives” on which all religions can agree, namely “commitment to a culture of non-violence and respect for life”, “commitment to a culture of solidarity and a just economic order”, “commitment to a culture of tolerance and a life of truthfulness” and “commitment to a culture of equal rights and partnership between men and women”.³¹

23. See, for example, *Handyside v. the United Kingdom*, report of 30 September 1975, paragraph 141.

24. See, for example, in the case of a civil servant, *Vogt v. Germany*, judgment of 26 September 1995, paragraph 53; in the case of the press, *Selistö v. Finland*, judgment of 16 February 2005, paragraph 54; in the case of members of the military, *Engel and Others v. the Netherlands*, judgment of 8 June 1976, paragraph 100.

25. See, for example, *Ždanoka v. Latvia*, judgment (Grand Chamber) of 16 March 2006, paragraphs 98-101.

26. This overview will only deal with a selection of highly relevant initiatives; many more appeals and initiatives have been brought forward by various political and non-governmental actors.

27. www.parliamentofreligions.org.

28. Parliament of the World’s Religions, “Declaration Toward a Global Ethic”, Chicago (USA), 4 September 1993, www.parliamentofreligions.org/_includes/FCKcontent/File/TowardsAGlobalEthic.pdf.

29. H. Küng, “Part One: The Declaration of the Parliament of the World’s Religions; Introduction”, in H. Küng and H. Schmidt (eds), *A Global Ethic and Global Responsibilities: Two Declarations*, London, SCM Press Ltd., 1998, p. 41.

30. *Ibid.*, pp. 41-42.

36. A second major initiative in the search for a global ethic was taken by the InterAction Council,³² an organisation of former heads of state and government. On the occasion of the 50th anniversary of the Universal Declaration of Human Rights, the InterAction Council presented a “draft Universal Declaration of Human Responsibilities”, based on the work of a high-level expert group chaired by Helmut Schmidt, in which Hans Küng again played a major role.³³ The report³⁴ containing the conclusions and recommendations of the working group contains explicit references to the basic principles underlying the Declaration Toward a Global Ethic (namely “Every human being must be treated humanely” and the “Golden Rule”), as well as the Parliament of the World Religions’ four irrevocable directives. The “Universal Declaration of Human Responsibilities” was intended to “have the character of an ethical appeal, not the binding character of international law”.³⁵ Nevertheless, it was hoped that, eventually, the Declaration of Human Responsibilities, just like the Universal Declaration of Human Rights, would result in a text adopted by the General Assembly of the United Nations.³⁶ The goal of the declaration was to “complement the Human Rights Declaration and strengthen it and help lead to a better world”.³⁷ The draft thus intended “to bring freedom and responsibility into balance and to promote a move from the freedom of indifference to the freedom of involvement”.³⁸ The draft Universal Declaration of Human Responsibilities contains 19 articles, in which a number of specific responsibilities are spelled out, under the following headings: “Fundamental principles for humanity” (articles 1-4), “Non-violence and respect for life” (Articles 5-7), “Justice and solidarity” (Articles 8-11), “Truthfulness and tolerance” (Articles 12-15) and “Mutual respect and partnership” (Articles 16-18). Importantly, the last article (Article 19) states that nothing in the declaration can be interpreted as warranting the destruction of any of the responsibilities, rights and freedoms contained in it or in the Universal Declaration of Human Rights.³⁹ The draft declaration never made it into a text adopted by the General Assembly of the United Nations. It remains, however, an important reference document.

37. Around the same time, in 1998, the Valencia Declaration of Human Duties and Responsibilities⁴⁰ was drafted on the occasion of the 50th anniversary of the Universal Declaration of Human Rights by a high-level group set up by the Valencia Third Millennium Foundation and chaired by Richard J. Goldstone (South-African judge and former Chief Prosecutor at the United Nations tribunals for the former Yugoslavia and Rwanda). The declaration recognises in its preamble “the universal significance, global reach and indivisibility of the rights enunciated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments”, and goes on to hold that “the effective enjoyment and implementation of human rights and fundamental freedoms is inextricably linked to the assumption of the duties and responsibilities in those rights” and that “individuals share an obligation to respect, promote and implement human rights and fundamental freedoms”.⁴¹ The declaration then lists in detail in 12 chapters a great variety of duties in the field of life and human security; human security and an equitable international order; meaningful participation in public affairs; freedom of opinion, expression, assembly, association and religion; personal and physical integrity; equality; protection of minorities and indigenous peoples; rights of the child and the elderly; work, quality of life and standard of living; and education, arts and culture.

38. In 1999, the United Nations General Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also referred to as the Declaration on Human Rights Defenders.

31. Parliament of the World’s Religions, “Declaration Toward a Global Ethic”, op. cit.

32. www.interactioncouncil.org.

33. InterAction Council, A Universal Declaration of Human Responsibilities, 1 September 1997. For a more detailed overview, see J. Frühbauer, “From the Declaration of the Religions to the Declaration of the Statesmen: Stages in the Composition of the Declaration of Human Responsibilities”, in H. Küng and H. Schmidt (eds.), *supra* footnote 29, pp. 84-103.

34. Report on the Conclusions and Recommendations by a High-Level Expert Group on “In Search of Global Ethical Standards”, chaired by Helmut Schmidt, 22-24 March 1996, Vienna, Austria.

35. H. Schmidt, “Part Two: A Universal Declaration of Human Responsibilities by the InterAction Council; Introduction”, in H. Küng and H. Schmidt (eds), *supra* footnote 29, p. 79.

36. *Ibid.*

37. Introductory comment to the InterAction Council’s Universal Declaration of Human Responsibilities, *supra* footnote 33.

38. *Ibid.*

39. Article 19 of the Universal Declaration of Human Responsibilities, *supra* footnote 33.

40. Declaration of Human Duties and Responsibilities, adopted by a high-level group chaired by Richard J. Goldstone under the auspices of the city of Valencia and UNESCO, initiated and organised by the Valencia Third Millennium Foundation, <http://globalization.icaap.org/content/v2.2/declare.html> (unofficial source) (hereafter: Valencia Declaration of Human Duties and Responsibilities).

41. Preamble of the Valencia Declaration of Human Duties and Responsibilities.

As such, while it is not legally binding, the declaration provides a strong basis for the actions undertaken by human rights defenders around the world. Article 18 of this declaration clearly finds its roots in Article 29 of the Universal Declaration of Human Rights (see paragraph 29 above), but goes further by specifying a number of specific duties.⁴²

39. At the dawn of the millennium, Miguel Alfonso Martínez, Special Rapporteur of the United Nations Sub-Commission on the Promotion and Protection of Human Rights, who had been tasked to undertake “a study on the issue of human rights and responsibilities”, presented a report including a pre-draft Declaration on Human Social Responsibilities.⁴³ This report and the pre-draft were the object of fierce opposition by the Western states. That reaction was prompted in particular by Martínez’s inclusion of certain state duties, namely duties of the developed countries of the “North” owed to states in the “South”.⁴⁴ Further discussion of the draft was eventually blocked in the Economic and Social Council.

4.3. Specific initiatives within the Council of Europe

40. On 30 March 1999, the Assembly adopted [Recommendation 1401 \(1999\)](#) on education in the responsibilities of the individual.⁴⁵ In this recommendation, the Assembly states that fundamental rights entail responsibilities, and that there is a need “to take steps to promote both education in the responsibilities of the individual and awareness on the part of citizens of their responsibilities, within the context of human rights education, so as not to neglect the social aspect of these rights”.⁴⁶ It further holds that it is “convinced that awareness of citizens’ responsibilities should be raised through education, and that it is not the role of a democratic state to dictate rules for every aspect of human behaviour, since moral and ethical attitudes must remain an area in which the individual has freedom of choice, but always respecting the rights of others”.⁴⁷ It also lists “fundamental values” as expressed in the European Convention on Human Rights, the Universal Declaration of Human Rights, the revised European Social Charter and the Framework Convention for the Protection of National Minorities (ETS No. 157). It states, more particularly, that everyone should: (a) “fully respect the dignity, value and freedom of other people, without distinction of race, religion, sex, nationality, ethnic origin, social status, political opinion, language or age; everyone must act towards others in a spirit of fellowship and tolerance”; (b) “act peacefully without recourse to physical violence or mental pressure”; (c) “respect the opinions, privacy and personal and family life of other people”; (d) “show solidarity and stand up for the rights of others”; (e) “in practising his or her own religion, respect other religions, without fomenting hatred or advocating fanaticism, but rather promoting general mutual tolerance”; (f) “respect the environment and use energy resources with moderation, giving thought to the well-being of future generations”. This enumeration of responsibilities that should be the object of education is an important source of inspiration for our list of fundamental responsibilities.

41. On 7 May 1999, the Committee of Ministers, on the occasion of the 50th anniversary of the Council of Europe, adopted the Declaration and Programme on Education for Democratic Citizenship, based on the Rights and Responsibilities of Citizens, in which the need was stressed to devote attention to the relationship between rights and responsibilities, and responsible citizenship in a democratic society.

42. In May 2000, the Council of Europe’s Congress of Local and Regional Authorities adopted a resolution approving the “Guidelines for a policy on citizens’ responsible participation in municipal and regional life”.⁴⁸ These guidelines call for the fulfilment of a number of individual duties and responsibilities, including responsibility for one’s own life, responsibility towards others, responsibilities within relationships and within the family and towards society.

42. Article 18 of the declaration: “1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible. 2. Individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes. 3. Individuals, groups, institutions and non-governmental organisations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realised.”

43. “Promotion and Protection of Human Rights: Human Rights and Responsibilities. Final Report of the Special Rapporteur, Miguel Alfonso Martínez, on the Study requested by the Commission on Human Rights in its Resolution 2000/63, and submitted pursuant to Economic and Social Council decision 2002/277, 17 March 2003”, United Nations Document E/CN.4/2003/105.

44. See Article 8 of the pre-draft Declaration on Human Social Responsibilities.

45. [Recommendation 1401 \(1999\)](#) on education in the responsibilities of the individual.

46. *Ibid.*, paragraph 4.

47. *Ibid.*, paragraph 8.

5. Enumeration of fundamental responsibilities

43. In the next section, a number of responsibilities will be proposed. First, three general responsibilities will be discussed, followed by a (non-exhaustive) list of specific responsibilities. I will end with a final clause of a horizontal nature.

5.1. General responsibilities

5.1.1. Responsibility to treat all people in a humane way

- *Every person, regardless of gender, ethnic origin, social status, political opinion, language, age, nationality, or religion, has a responsibility to treat all people in a humane way*⁴⁹

44. The responsibility to treat all people in a humane way can be considered the most basic obligation for any human being. The requirement that every human being be treated in a humane way can be founded in the fundamental value underlying the European Convention on Human Rights, namely the principle of human dignity. This responsibility is the basic and paramount premise for the effective protection of human rights. The “Golden Rule” may serve as a guiding principle in this regard: “What you do not wish to be done to yourself, do not do to others.”⁵⁰

5.1.2. Responsibility to be tolerant

- *Every person has a responsibility to be tolerant towards others*

45. The need for individual tolerance lies at the heart of the democratic society. As the Assembly has stated, “everyone must act towards others in a spirit of fellowship and tolerance”.⁵¹ Without tolerance between the individuals who together make up the democratic society, no peace or democracy is possible. As the European Court of Human Rights has held, “[o]ne of the principal characteristics of democracy is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when those problems are irksome”.⁵² The Court has repeatedly held that tolerance, broad-mindedness and pluralism are the fundamental values of a democratic society.⁵³ This tolerance is most of all required vis-à-vis opinions and expressions that are shocking or disturbing, unless they incite to violence or reject democratic principles.⁵⁴ Fundamentally, tolerant behaviour is the glue that keeps a democratic society together; it therefore lies as the basis of most, if not all, other rights and responsibilities.

5.1.3. Responsibility to exercise human rights with respect for others

- *Every person has a responsibility to exercise his or her human rights with respect for others*

46. The responsibility to exercise human rights with respect for others can be found, directly and indirectly, in nearly all international human rights instruments. It implies that the individual will sometimes have to show restraint in the exercise of a right, because of the rights of others or certain legitimate interests of society. This individual responsibility is a direct consequence of the human rights logic, as (most) fundamental rights are not absolute, but need to be balanced with the general interest (see paragraph 27 above). It clearly finds a basis in Article 29, paragraph 1, of the Universal Declaration of Human Rights, mentioned above (paragraph 29). Read together with Article 2⁵⁵ and Article 30⁵⁶ of the Universal Declaration of Human Rights, it is clear

48. Congress of Local and Regional Authorities, Resolution 91 (2000) on responsible citizenship and participation in public life, adopted on 24 May 2000, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=837017>.

49. The wording of this principle, as it is suggested here, is borrowed from Article 1 of the InterAction Council’s draft Universal Declaration of Human Responsibilities (*supra* footnote 33). See also the Martínez pre-draft Declaration on Human Social Responsibilities (*supra* footnote 43), Article 14 of which speaks of the duty of every person “to behave in a fraternal manner toward others, so as to contribute to the achievement of the effective recognition of the equality of the inalienable rights and the intrinsic dignity of every member of the human family”.

50. Article 4 of the InterAction Council’s draft Universal Declaration of Human Responsibilities, *supra* footnote 33; see also section II of the Parliament of the World’s Religions’ “Declaration Toward a Global Ethic”, *supra* footnote 28.

51. Recommendation 1401 (1999) on education in the responsibilities of the individual, *supra* footnote 45, paragraph 9.vi.a.

52. *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, judgment of 2 October 2001, paragraph 88.

53. *Handyside v. the United Kingdom*, judgment of 7 December 1976, paragraph 49.

54. See, for example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, judgment of 2 October 2001, paragraph 97.

that while every individual should have the freedom to freely develop his or her personality, there also has to be a duty incumbent on that individual “to enable everyone else to do the same”.⁵⁷ While some human rights instruments, like the European Convention on Human Rights,⁵⁸ list this responsibility in a separate article,⁵⁹ the limitation clauses that often accompany specific rights can also be considered to support the existence of this responsibility, as these clauses allow for the limitation (or qualification) of human rights in accordance with the legitimate needs of the democratic society.⁶⁰

5.2. Specific responsibilities

5.2.1. Responsibility to respect and protect life

- *Every person has a responsibility to respect and protect the life of others. This does not exclude the right of justified self-defence of individuals or communities. Every person has a responsibility to take reasonable steps to help others whose lives are threatened, or who are in extreme distress or need.*⁶¹

47. The right to life “enshrines one of the basic values of the democratic societies making up the Council of Europe”.⁶² It necessarily entails the responsibility for each individual to respect and, where necessary, protect the life of another human being. The wording of Article 2 of the Convention itself obliges all member states to protect the right to life by law; a responsibility to respect and protect another person’s life can therefore already be found as a legally enforceable duty in the legislation of all member states. This responsibility can be considered to encapsulate the absolute minimum behaviour required from every individual in a democratic society. It is naturally limited by a right to self-defence, and by the exigencies of armed conflict.

5.2.2. Responsibility not to condone, support or participate in the commission of torture or inhuman or degrading treatment

- *Every person has a responsibility not to condone, support or participate in any manner in the commission of acts of torture or inhuman or degrading treatment or punishment.*⁶³

48. This responsibility safeguards and evokes, at the most basic level, the fundamental principle of human dignity. The right to be free from torture and inhuman and degrading treatment and punishment enjoys an absolute protection under the European Convention on Human Rights.⁶⁴ Just as it held with regard to the right to life, the European Court of Human Rights held that the right to be free from torture and inhuman and degrading treatment “enshrines one of the basic values of the democratic societies making up the Council of Europe”.⁶⁵ States also have a positive obligation to make sure that all individuals within their jurisdiction are protected against torture and inhuman and degrading treatment or punishment, even by other individuals.⁶⁶ By consequence, this responsibility, too, already enjoys a strong protection in domestic legislation as an enforceable duty. Whereas the responsibility to respect and protect another person’s life can be somewhat limited in exceptional circumstances – such as, for example, self-defence or armed conflict – the responsibility not to condone, support or participate in any manner in the commission of acts of torture or inhuman and degrading treatment or punishment is an absolute responsibility, which can never be limited.

55. Article 2 of the Universal Declaration of Human Rights states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind, ...”.

56. Article 30 of the Universal Declaration of Human Rights states: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein”.

57. E.-I. A. Daes, *supra* footnote 22, p. 41.

58. See Article 17 of the Convention.

59. Provisions similar to Article 30 of the Universal Declaration of Human Rights can be found in the International Covenant on Civil and Political Rights (Article 5, paragraph 1) and the International Covenant on Economic, Social and Cultural Rights (Article 5, paragraph 1).

60. See, for example, Articles 8 to 11 of the Convention

61. The wording of this principle is based on Article 5 of the InterAction Council’s draft Universal Declaration of Human Responsibilities, *op. cit.*, and Article 3 of the Valencia Declaration of Human Duties and Responsibilities, *op. cit.*

62. European Court of Human Rights, *McCann v. the United Kingdom*, judgment of 27 September 1995, paragraph 147.

63. The wording is based on Article 24(2) of the Valencia Declaration of Human Duties and Responsibilities, *op. cit.*

64. The absolute character of this prohibition is stressed by the European Court of Human Rights. See, for example, *Saadi v. Italy*, judgment (Grand Chamber) of 28 February 2008, paragraph 127.

65. *McCann v. the United Kingdom*, judgment of 27 September 1995, paragraph 147.

66. See, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, paragraph 22.

5.2.3. Responsibility not to condone, support or in any manner participate in practices of exploitation of others

- *Every person has a responsibility not to condone, support or in any manner participate in practices of exploitation of others.*

49. This principle builds on freedom from slavery, servitude and forced or compulsory labour, guaranteed by Article 4 of the Convention. This freedom could be called, in its modern form, freedom from exploitation. It encompasses a protection against domestic slavery⁶⁷ and against trafficking of human beings.⁶⁸ States have a positive obligation to protect individuals against acts of exploitation.⁶⁹ One can derive from the existence of this state obligation an individual responsibility not to engage in acts of exploitation.

5.2.4. Responsibility to respect other persons' liberty

- *Every person has a responsibility to respect the right to personal liberty of others.*⁷⁰

50. The responsibility to respect another person's liberty is of fundamental importance. It is the logical counterpart of the right to liberty, which can be found in Article 5 of the Convention. The European Court of Human Rights has held that this right is "in the first rank of the fundamental rights that protect the physical security of an individual" and that "as such its importance is paramount".⁷¹ The Court has also repeatedly stressed the importance of the right to liberty in a democratic society.⁷² Any deprivation of liberty must therefore have a clear basis in the law⁷³ and be subject to independent judicial scrutiny.⁷⁴ The effective fulfilment of the right to liberty naturally implies that not only the state, but also private individuals must refrain from arbitrarily depriving any other person from his or her liberty. The state has a positive obligation to ensure that private individuals respect each other's right to liberty in their mutual relationships;⁷⁵ a legally enforceable duty to respect another person's liberty therefore already exists in the Council of Europe member states. Only in exceptional situations which meet the conditions set forward by the Convention – one could think, for example, of a "citizen's arrest" – can the individual's responsibility to respect another person's liberty be limited.

5.2.5. Responsibility to respect other people's private life

- *Every person has a responsibility to respect another person's private life.*

51. In a world which evolves around data and (digital) private information, and in which this data and information can be disseminated virtually at the speed of light, the recognition of an individual responsibility to respect the private life of others is indispensable. Just like the corresponding right to private life, which is protected under Article 8 of the Convention, this responsibility can be held to have a wide scope. The notion "private life", for example, has been held to include one's personal identity, moral or physical integrity, private space, the collection and use of one's information, social life and personal relationships.⁷⁶ States are under a positive obligation to guarantee the rights enshrined in Article 8 of the Convention also against interferences by other private individuals.⁷⁷ It is therefore only logical that all individuals have a responsibility not to violate another individual's fundamental right to privacy.

67. *Siliadin v. France*, judgment of 26 July 2005, paragraphs 111-112, referring to Assembly [Recommendation 1523 \(2001\)](#) on domestic slavery, and [Recommendation 1663 \(2004\)](#) on domestic slavery: servitude, au pairs and "mail-order brides".

68. *Rantsev v. Cyprus and Russia*, judgment of 7 January 2010, paragraph 282.

69. *Siliadin v. France*, judgment of 26 July 2005, paragraphs 89 and 112.

70. The wording of this principle is based on Article 22 of the Valencia Declaration of Human Duties and Responsibilities, op. cit.

71. *McKay v. the United Kingdom*, judgment (Grand Chamber) of 3 October 2006, paragraph 30.

72. See, for example, *Winterwerp v. the Netherlands*, judgment of 24 October 1979, paragraph 37; *Storck v. Germany*, judgment of 16 June 2005, paragraph 102.

73. Article 5 of the Convention; *McKay v. the United Kingdom*, judgment (Grand Chamber) of 3 October 2006, paragraph 30.

74. *Kurt v. Turkey*, judgment of 25 May 1998, paragraph 123.

75. *Storck v. Germany*, judgment of 16 June 2005, paragraph 102.

76. See, for example, *S. and Marper v. the United Kingdom*, judgment (Grand Chamber) of 4 December 2008, paragraph 66.

77. See, for example, *X and Y v. the Netherlands*, judgment of 26 March 1985, paragraph 23.

5.2.6. Responsibility to respect the reputation and honour of others

- *Every person has a responsibility to respect the reputation and honour of others.*

52. The responsibility to respect the reputation and honour of others finds a solid basis in the European Convention on Human Rights. Article 10 of the Convention, which deals with freedom of expression, makes explicit mention in its paragraph 2 of “the protection of the reputation or rights of others” as one of the legitimate aims for which an individual’s freedom of expression may be limited. Moreover, the right not to be subjected to unlawful attacks on one’s honour and reputation is explicitly mentioned in Article 17 of the International Covenant on Civil and Political Rights. The European Court of Human Rights considers that it is an element of the right to respect for private life, guaranteed by Article 8 of the Convention.⁷⁸ It has indirectly recognised an individual responsibility to respect the reputation and honour of others on various occasions. In these cases, the Court often had to make a balance between the freedom of expression of journalists, on the one hand, and the reputation and honour of individuals, on the other. In this day and age, when information can be spread at enormous speed through various media (for example, the Internet), significant damage to one’s reputation and honour can already be done before the victim or the authorities have time to react.⁷⁹ The importance of an individual responsibility with regard to another person’s reputation and honour can therefore not be overstated. While case law has focused mainly on the duties of journalists,⁸⁰ it is clear that such a responsibility would be incumbent on any person participating in the public debate.⁸¹

5.2.7. Responsibility to respect and ensure equal treatment and non-discrimination

- *Every person has a responsibility to take appropriate action to respect and ensure the right to equal treatment and non-discrimination.*⁸²

53. The responsibility to respect and ensure equal treatment and non-discrimination is indispensable in order to safeguard the equality of all individuals; it is therefore a fundamental responsibility in a democratic society. The Council of Europe plays a pivotal role in combating discrimination, through its European Commission against Racism and Intolerance⁸³ and its activities in the field of promoting the equality of men and women.⁸⁴ A basis for the responsibility to respect and ensure equal treatment and non-discrimination can be found in Article 14 of the Convention, which deals with discrimination in respect of rights set forth in the Convention, and in Protocol No. 12 to the Convention, which deals with discrimination in respect of any right set forth by law. Although these provisions do not deal with the purely private relations between individuals (as this would violate other rights of these individuals, such as the right to private life), it can be argued that an individual responsibility to respect and ensure equal treatment and non-discrimination is essential in order to ultimately give full effect to the protection of human rights for everybody. A responsibility to respect and ensure equal treatment and non-discrimination can also be grounded in the revised European Social Charter, Article 20 of which guarantees the right of all workers “to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex” and in European Union rules, such as Council Directives 2000/43/EC (the “Racial Equality Directive”), 2000/78/EC (the “Employment Equality Directive”) and 2004/113/EC (the “Gender Directive”), and in various other human rights instruments such as, for example, the 1966 International Covenant on Civil and Political Rights, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

78. *Pfeifer v. Austria*, judgment of 15 November 2007, paragraph 35.

79. See *Mosley v. the United Kingdom*, judgment of 10 May 2011. The Court noted that there had been “a flagrant and unjustified invasion of the applicant’s private life” (paragraph 104), but held that Article 8 did not require states to provide for a legally binding pre-notification requirement (paragraph 132). The absence of such an obligation illustrates the importance of the responsibility of the media to refrain from publishing articles that can do irreparable harm, without any justification based on a public interest (see paragraph 114), to an individual’s reputation and honour.

80. See in this regard also Article 14 of the InterAction Council’s draft Declaration of Human Responsibilities, op. cit., which states that “(s)ensational reporting that degrades the human person or dignity must at all times be avoided”. An example of a case in which the Court had to make the balance between an individual’s freedom of expression and another individual’s private life is *Shabanov and Tren v. Russia*, judgment of 14 December 2006.

81. *Steel and Morris v. the United Kingdom*, judgment of 15 February 2005, paragraph 90.

82. The wording of this principle is borrowed from Article 26 of the Valencia Declaration of Human Duties and Responsibilities, op. cit; see also Articles 27-30 of the Valencia Declaration of Human Duties and Responsibilities, op. cit.

83. www.coe.int/t/dghl/monitoring/ecri.

84. www.coe.int/t/dghl/standardsetting/equality.

5.2.8. Responsibility to acquire an education

- *Every person has a responsibility to acquire an education and to develop his or her talents through diligent endeavour.*⁸⁵

54. The underlying idea of the responsibility to acquire an education is that an individual should develop his or her capacities in such a way as to be able to make a meaningful contribution to society. The acquisition of a basic formal education has generally been regarded as a right, but it is also often referred to as a legally enforceable duty in many instruments and legal systems, due to its compulsory nature. A responsibility to acquire at least a basic education therefore finds a solid basis in, for example, the revised European Social Charter, which protects the right of children to compulsory education.⁸⁶ Examples of other provisions which deal with the acquisition of an (elementary) education both as a right and as a (legally enforceable) duty include Article 26, paragraph 1, of the Universal Declaration of Human Rights and Article 13, paragraphs 1 and 2, of the International Covenant on Economic, Social and Cultural Rights. A restricted and minimal version of this responsibility would entail the responsibility to acquire a basic education, while a more extensive interpretation could entail a responsibility to develop one's skills to the best of one's capabilities.⁸⁷

5.2.9. Responsibility to work

- *Every person has a responsibility to work.*

55. Together with the responsibility to acquire an education, the responsibility to work can be regarded as part of a more encompassing obligation to make a meaningful contribution to society. Just like the responsibility to acquire an education, the engagement to work is both a right and a responsibility.⁸⁸ The responsibility to work is naturally limited by the physical and intellectual capacities of a person.⁸⁹ Provisions in international human rights instruments, such as Article 23, paragraph 1, of the Universal Declaration of Human Rights and Article 6, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, regard work as a right. It is important to note that the responsibility to work has been clearly delimited in human rights case law. With the exception of certain situations, such as, for example, compulsory military service and certain other civic obligations (see principle XI), a legal obligation forcing people to work (with or without a penalty in case they do not comply) would violate international human rights law.⁹⁰

5.2.10. Responsibility to perform civic obligations

- *Every person has a responsibility to perform civic obligations.*

56. The responsibility to perform civic obligations must be regarded as paramount for the functioning and cohesion of any democratic society. A number of obligations can be required from an individual for the benefit of society, and the fulfilment of these obligations naturally will not be considered to be any kind of forced labour. These obligations are called "civic obligations", and they comprise a wide range of diverse activities which are all, however, indispensable for the organisation and functioning of the society. A basis for this responsibility can be found in Article 4, paragraph 3.d, of the Convention, which states that "any work or service which forms part of normal civic obligations" is not included in the term "forced and compulsory labour" (prohibited by the Convention). The European Court of Human Rights has held that, for example, compulsory jury service⁹¹ and compulsory fire service⁹² can be considered normal civic obligations. The former European Commission of Human Rights similarly held that an obligation upon an employer to withhold taxes from the wages of an employee⁹³ is not in violation of the European Convention on Human Rights.

85. The wording of this principle is partly borrowed from Article 10 of the InterAction Council's draft Universal Declaration of Human Responsibilities, op. cit.

86. Article 7, paragraphs 1 and 3, of the revised European Social Charter.

87. See, for example, Article 25 of the pre-draft Declaration on Human Social Responsibilities, op. cit.

88. For the right to work, see, *inter alia*, Article 1 of the revised European Social Charter.

89. See in this regard also Article 24 of the pre-draft Declaration on Human Social Responsibilities, op. cit.

90. International Labour Organization Conventions Nos. 29 and 105. See E.-I. A. Daes, *supra* footnote 22, p. 62. See also Report III (part 4 B), "General Survey of the Reports relating to the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)", International Labour Conference, 65th Session, 1979 (Geneva), paragraph 45.

91. *Zarb Adami v. Malta*, judgment of 20 June 2006.

92. *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994.

93. *Four Companies v. Austria*, decision of 27 September 1976.

5.2.11. Responsibility to participate in the democratic process

- *Every person has a responsibility to participate in the democratic process.*

57. In order for a democratic society to exist, let alone to thrive, the active participation of its members is essential. This participation can take various forms. One possible means of participation for an individual can be, for example, to cast a vote. The issue of voting can be regarded as both a right and a responsibility. Article 3 of Protocol No. 1 to the European Convention on Human Rights states that member states must organise elections “which will ensure the free expression of the opinion of the people in the choice of the legislature”. The Court has held that “[d]emocracy constitutes a fundamental element of the ‘European public order’”. It also noted that the Convention's preamble “establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured ... by an effective political democracy”.⁹⁴ It added that “democracy is the only political model contemplated by the Convention and, accordingly, the only one compatible with it”.⁹⁵ The aim of an electoral procedure in such a democracy is to identify “the will of the people through universal suffrage”.⁹⁶ While it can be a legally enforceable duty to go to the polling stations (as it is, for example, in Belgium),⁹⁷ the establishment of such a duty is not required by Protocol No. 1. In view of the fundamental nature of democracy in the society envisaged by the Council of Europe, a responsibility – not a duty – to vote, or at least to participate in some way or another in the democratic process, can be discerned. This is reinforced by the emphasis the Court has placed on the universal nature of the suffrage, and the importance of the fact that no groups of people should be arbitrarily left out.⁹⁸ The need for the widest possible participation in elections aimed at sustaining the democratic nature of society therefore requires an individual responsibility to participate in this democratic process.

5.2.12. Responsibility to show solidarity

- *Every person has a responsibility to show solidarity towards other members of the community.*

58. Every individual has a fundamental responsibility to show solidarity towards other members of the community. This responsibility can take different forms, depending on the specific system of solidarity organised in the relevant community. For instance, solidarity can entail a responsibility to pay taxes and to contribute to a national system of social welfare. The responsibility to contribute to the social security system matches the right to social security guaranteed by Article 22 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Economic, Social and Cultural Rights, Article 34 of the European Union Charter of Fundamental Rights and ILO Convention No. 102. The revised European Social Charter in particular guarantees “the right to social security” (Article 12) and “the right to benefit from social welfare services” (Article 14). It is clear that these rights cannot exist without a corresponding responsibility for individuals.⁹⁹ As regards the responsibility to pay taxes, Article 1 of Protocol No. 1 to the European Convention on Human Rights explicitly allows states to raise taxes. Generally speaking, the responsibility of solidarity can also be based on Article 1 of the Universal Declaration of Human Rights.

5.2.13. Responsibility towards children

- *Every person has a responsibility to take appropriate action to respect, ensure and protect the rights of the child. Parents have a special responsibility towards their children.*¹⁰⁰

59. Children are the future of our planet. They are also, by nature, in a vulnerable position and therefore need to be guaranteed protection. All individuals have a responsibility to promote and enforce the rights and the well-being of children. Parents (or legal guardians), however, can be held to have a special responsibility towards the children in their care. The child's best interests must always be the first and primary consideration.¹⁰¹ The Court has, for example, accepted the possibility of interferences with the rights of

94. *Ždanoka v. Latvia*, judgment (Grand Chamber) of 16 March 2006, paragraph 98.

95. *Ibid.*

96. *Hirst v. the United Kingdom*, judgment (Grand Chamber) of 6 October 2005, paragraph 62.

97. See, for example, H. Dumont and F. Tulkens, *supra* footnote 16, pp. 197-207.

98. *Ibid.*, paragraph 59.

99. See, for example, E. Eichenhofer, “What a right – The right to social security”, in J. Van Langendonck (ed.), *The Right to Social Security*, Antwerp, Intersentia (Social Europe Series, 12), 2007, p. 162.

100. The first part of the wording of this principle is partly borrowed from Article 33 of the Valencia Declaration of Human Duties and Responsibilities, *op. cit.*

parents in order to protect the health and morals of children,¹⁰² and, more generally, the children's rights and freedoms.¹⁰³ Article 5 of Protocol No. 7 to the European Convention on Human Rights makes reference to the equality of rights and responsibilities between spouses in their relations with children, but it also mentions that states can interfere when the "interests of the children" so require. A reference to the privileged relationship between children and parents can be found in Article 18 of the InterAction Council's draft Universal Declaration of Human Responsibilities. A parental duty to maintain and educate minor children can be found in a number of international human rights instruments. A somewhat vague reference – vague, as it only refers to "the family" and not to individuals – can be found in the International Covenant on Civil and Political Rights (Article 24, paragraph 1) and the International Covenant on Economic, Social and Cultural Rights (Article 10, paragraph 1). Article 7 of the revised European Social Charter protects the right of "children and young persons" to "a special protection against the physical and moral hazards to which they are exposed", while the Charter's Article 17 states that "[c]hildren and young persons have the right to appropriate social, legal and economic protection". Naturally, the Convention on the Rights of the Child contains many more detailed provisions regarding the responsibility towards children.¹⁰⁴ In its [Recommendation 1501 \(2001\)](#) on parents' and teachers' responsibilities in children's education, the Assembly also stressed that parents are the "first educators" of a child, and as such "have the right and duty to lay the intellectual and emotional bases for their children's lives, and to help develop their system of values and attitudes" (paragraph 3).

5.2.14. Responsibility towards the elderly and disabled

- *Every person has a responsibility to take appropriate action to respect and ensure the rights and the well-being of the elderly and the disabled.*¹⁰⁵

60. In today's fast-evolving world, elderly and disabled people are all too often left behind and forgotten. While methods of communication have never been so abundant, many elderly and disabled people often find themselves in lonely isolation. Moreover, as physical capabilities diminish with age, or through unfortunate events such as accidents, elderly and disabled people can become increasingly dependent on others, notably (in the case of elderly people) younger generations. While responsibility for the elderly is not generally a responsibility which is explicitly recognised, the Assembly has in the past already devoted explicit attention to the position of elderly persons in Europe.¹⁰⁶ It follows from the very foundation of human rights, namely the principle of human dignity, that special care should be devoted to those who, on their own, might not or no longer be able to secure for themselves the circumstances in which to live a life in dignity. Article 23 of the revised European Social Charter explicitly states that "[e]very elderly person has the right to social protection". It would appear that adult children have a special responsibility vis-à-vis their parents. As regards persons with a disability, an individual responsibility also finds a basis in Article 15 of the revised European Social Charter, which states that "[d]isabled persons have the right to independence, social integration and participation in the life of the community". Inspiration can also be found in the United Nations Convention on the Rights of Persons with Disabilities (2006), which calls on states to guarantee that persons with a disability have the same enjoyment of fundamental rights and freedoms. For example, states are called upon to make sure that "reasonable accommodations" are provided to guarantee the equality of persons with a disability. It is logical that individuals, too, when exercising their individual rights towards persons with a disability, have a responsibility to make a reasonable effort to "accommodate" the disabled person. An individual responsibility towards the elderly and disabled is also paramount to effectuating the aims set forth in the Council of Europe's Disability Action Plan 2006-2015.¹⁰⁷

101. See in this regard the repeated reference to this notion in the 1989 Convention on the Rights of the Child.

102. *Margareta and Roger Andersson v. Sweden*, judgment of 25 February 1992.

103. *Olsson v. Sweden*, judgment of 24 March 1988.

104. See Articles 3, paragraph 2, 5, 14, paragraph 2, 18, paragraph 1, and 27, paragraph 2, of the Convention on the Rights of the Child. References can also be found in Article 26 of the pre-draft Declaration on Human Social Responsibilities, op. cit.

105. The wording of this principle is inspired by Article 34 of the Valencia Declaration of Human Duties and Responsibilities, op. cit.

106. See [Recommendation 1796 \(2007\)](#) on the situation of elderly persons in Europe.

107. See Committee of Ministers' Recommendation Rec(2006)5 on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, adopted on 5 April 2006, and its appendix.

5.2.15. Responsibility for the environment

- *Every person has a responsibility to respect and protect the air, water and soil of the earth for the sake of present and future generations.*¹⁰⁸

61. In the course of the past decades, it has become increasingly clear that environmental balances are highly delicate, and that the impact of human activity upon the environment can have long-term destructive consequences. It is therefore of the utmost importance, for the present and the future generations, that every individual assumes responsibility for the protection and conservation of the environmental riches. While this responsibility is often phrased as a collective one, it would be illogical not to confer it upon each individual separately. Many examples in human rights case law, including that of the European Court of Human Rights,¹⁰⁹ have already indicated how destructive the impact of man-made environmental problems can be for the protection of human rights. The Council of Europe has also taken an active interest in the issue: in November 1998, the Convention on the Protection of Environment through Criminal Law (ETS No. 172) was opened for signature. The convention obliges states to adopt measures to deal with a wide range of environmental crimes. This convention has not yet entered into force. However, the work by the Council of Europe shows that there is a broad agreement on the existence of an individual responsibility for the environment.

5.2.16. Responsibility to respect community and private property

- *Every person has a responsibility of respect towards property belonging to another person or to the community.*

62. This responsibility is partly a logical counterpart of the right to protection of individual property which can be found in Article 1 of Protocol No. 1 to the Convention. However, it is clear that the responsibility should extend further than just to show respect for the property of other individuals. Whenever community property and infrastructure is damaged, this has a direct impact on the legitimate interests of society. The individual responsibility to respect property must therefore also include a responsibility to respect “society’s property”, in its broadest meaning.

5.3. Final clause

- *The aforementioned responsibilities can never be construed as impairing, restricting or derogating from the rights and freedoms contained in the European Convention on Human Rights and its protocols, the revised European Social Charter and other international and regional human rights instruments.*

63. Responsibilities must always be reasonable, and cannot bring an individual’s fundamental rights into jeopardy. They must, in the first place, serve as guidance to the individual in the exercise of his or her fundamental rights. When responsibilities are transposed into legally enforceable duties, the burden which is placed on the individual must strike a fair balance between the various interests at stake. A disproportionate burden is always inadmissible. It is up to the member states to determine the exact scope of such duties, as long as in so doing they respect the constraints provided by the European Convention on Human Rights, the revised European Social Charter and other relevant international and domestic human rights instruments.¹¹⁰

108. The text of this principle is inspired by Article 7 of the InterAction Council’s draft Universal Declaration of Human Responsibilities, op. cit. It can, however, also be founded on other texts, such as Article 9 of the Valencia Declaration of Human Duties and Responsibilities, op. cit; on UNESCO’s Declaration on the Responsibilities of the Present Generations Towards the Future Generations of 1997, adopted on 12 November 1997 by the General Conference of UNESCO at its 29th Session, www.unesco.org/cpp/uk/declarations/generations.pdf; the Convention for the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of UNESCO on 16 November 1972, <http://whc.unesco.org/archive/convention-en.pdf>; the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, adopted in Rio de Janeiro on 5 June 1992, www.cbd.int/doc/legal/cbd-en.pdf; the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development on 14 June 1992, www.un.org/documents/ga/conf151/aconf15126-1annex1.htm; the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/a.conf.157.23.en. See also Article 15 of the pre-draft Declaration on Human Social Responsibilities, op. cit.

109. See, *inter alia*, *Hatton v. the United Kingdom*, judgment (Grand Chamber) of 8 July 2003, and *Öneriyildiz v. Turkey*, judgment (Grand Chamber) of 30 November 2004.

110. See, for example, Article 53 of the Convention.

6. Conclusions

64. Without acknowledging the existence of individual responsibilities, no democratic society, can survive, let alone thrive. However, the protection and promotion of human rights must be central to any approach regarding fundamental responsibilities. It is exactly such an approach based on human rights that can fully contribute to a more accurate description of the status of the individual within society, and truly strengthen the democratic framework within which fundamental rights are invoked. A human rights based approach to fundamental responsibilities is therefore indispensable to the effective protection and promotion of human rights and democracy within the member states.

65. The proposed draft resolution, which identifies a number of fundamental responsibilities which are already widely accepted, therefore marks an important contribution towards a better protection and promotion of democratic values and fundamental rights within the Council of Europe member states.