Today the Internet, Tomorrow Cable TV?: Situating Internet as a Human Right

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I. BREAKING NEWS, REAL ISSUES?

In June 2011, the news networks were abuzz with the latest (seemingly) fluff-piece.[1] "Internet as a Human Right" was an easy headline that was sure

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to garner a lot of discussions and debates. When news broke, the reaction to this categorization varied across generations.[2] Many of those in the younger generations barely reacted. The Internet is so ingrained in their lives that many saw it as a natural progression of rights. Nothing was celebrated, nothing was noted. Yet, when those of advanced age got wind of this turn of legal tides, many exclaimed at the seeming absurdity of it all. After the rationale behind it was explained (the protection of the right to information and freedom of expression), some were quick to quip, "Many receive their news and updates through their televisions. So what's next? Cable TV?"

It would be simple enough to skate over the legal and practical implications of such a declaration and simply concentrate on the absurdity of it all. After all, it is not that difficult to sensationalize the idea that a parent restricting his child's use of the Internet could now be a basis for contesting custody. This would be a violation of the child's human rights if the Declaration were to be taken at its broadest strokes.

But this is taken from the viewpoint of a citizen whose government does little to nothing to meddle with cyber affairs. As discussed later in this Article, the Philippines is often applauded for its free (albeit, tabloid-like) press and there does not seem to be any need for its protection online.[3] It is hard for any person who never has to worry about what is posted online to conceptualize the circumstances that would require the intervention of the United Nations (U.N.) in online rights.

Yet, when worldwide news is quickly scanned, instances of access restriction, content censorship, site and e-mail attacks, and online

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1. *See, e.g.*, Timothy James M. Dimacali, UN Report: Internet access a human right, *available at* http://www.gmanetwork.com/news/story/222556/scitech/un-report-internet-access-a-human-right (last accessed Sep.6, 2012) & Lauren O'Neil, UN declares internet freedom a basic human right, *available at* http://www.cbc.ca/news/ yourcommunity/ 2012/ 07/ un-declares-internet-freedom-a-basic-human-right.html (last accessed Sep. 6, 2012).

2. *See, e.g.*, Adam Wagner, *Is internet access a human right?*, GUARDIAN, Jan. 11, 2012, *available at* http://www.guardian.co.uk/law/2012/jan/11/is-internet-access-a-human-right (last accessed Sep. 6, 2012) & Vinton G. Cerf, *Internet Access Is Not A Human Right*, N.Y. TIMES, Jan. 4, 2012, *available at* http://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html?_r=2 (last accessed Sep. 6, 2012).

3. *See, e.g.*, Edith B. Colmo, *ICCO Hails Philippine Press Freedom*, MANILA BULL., Mar. 15, 2012, *available at* http://mb.com.ph/node/354392/icco-hail (last accessed Sep. 6, 2012).

intimidation and subsequent punishment are proliferous.[4] The debate on the implications of the U.N. Report A/HRC/17/27[5] (Report) on the promotion and protection of the right to freedom of opinion and expression must be carefully examined and placed into context. The discussion must touch upon whether the Internet finally reached the status of an "essential element" in life.

This Article attempts to present a clearer picture of the Report and its congruity with the Universal Declaration of Human Rights (UDHR).[6] The Author situates the Report in local and world events to expose the surface of the complicated issues and nefarious practices that are tightly woven into this dialogue. The Author ends with a series of queries that await answers while the concept of the Internet as a human right continues to develop.

II. A REPORT, A RESOLUTION, AND THE DECLARATION

In 2011, Special Rapporteur Frank La Rue[7] made waves. His report on the protection of the right to freedom of opinion and expression seemed to conclude that the Internet was a human right.[8] As information and communication technologies develop, so do the forms of expression. These developments face more attacks than protections with many States not just

4. *See* Dominic Rushe, *Google reports 'alarming' rise in censorship by governments*, GUARDIAN, June 18, 2012, *available at* http://www.guardian.co.uk/technology/2012/jun/18/google-reports-alarming-rise-censorship (last accessed Sep. 6, 2012).

5. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 17th Session of the Human Rights Council, U.N. Doc. A/HRC/17/27 (May 16, 2011) (by Frank La Rue) [hereinafter *La Rue Report*].

6. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

7. Frank La Rue holds a B.A. in Legal and Social Sciences from University of San Carlos, Guatemala and a postgraduate degree in United States (U.S.) foreign policy from Johns Hopkins University. He is a human rights activist for the past 25 years. He is the founder of the Center for Legal Action for Human Rights in Washington D.C. and Guatemala. The same organization became the first Guatemalan non-government organization to bring human rights cases to the Inter-American System. It is also Guatemala's pioneer in promoting economic, social, and cultural rights. La Rue also brought the first genocide case against Guatemalan military dictatorship. In addition, he held various human rights concerned positions in the Guatemalan government. All these initiatives led to his nomination to the 2004 Nobel Peace Prize. *See* Frank La Rue, *available at* http://www.ohchr.org/ Documents/Issues/ Expression/ICCPR/Seminar2008/ LaRue.doc (last accessed Sep. 6, 2012).

8. *See La Rue Report*, *supra* note 5.

failing to adapt to the modern arena of free speech but even leading the efforts at its containment.[9] Therefore, La Rue saw that drastic action is required.

Major media outlets immediately spread the word like wildfire. Time Magazine blared out the headline "[U.N.] Report Declares Internet Access a Human Right."[10] CNN raised the question, "Is Internet access a human right?"[11] Huffington Post announced, "Internet Access Is A Human Right, [U.N.] Report Declares."[12] The Atlantic Wire, using a similar headline, linked the report to the event in the Arab Spring and the Obama Administration's Agenda.[13]

The U.N. Human Rights Council (UNHRC) recognized that the world now has over two billion Internet users with Facebook having its own community of 600 million.[14] It therefore noted that the Internet in particular has eased through to play a central role.[15] Accordingly, La Rue believes that the Internet is "one of the most powerful instruments of the 21st [C]entury for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies."[16]

The Internet as a human right has two dimensions as La Rue explains — "access to online content, without any restrictions except in a few limited cases permitted under international human rights law; and the availability of the necessary infrastructure and information communication technologies,

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9. *Id.*

10. Jenny Wilson, *United Nations Report Declares Internet Access a Human Right*, TIME MAG., June 7, 2011, *available at* http://techland.time.com/2011/06/07/united-nations-report-declares-internet-access-a-human-right/ (last accessed Sep. 6, 2012).

11. Jan Chipchase, Is Internet access a human right?, *available at* http://globalpublicsquare.blogs.cnn.com/2011/07/14/is-internet-access-a-human-right/ (last accessed Sep. 6, 2012).

12. The Huffington Post, Internet Access Is A Human Right, United Nations Report Declares, *available at* http://www.huffingtonpost.com/2011/06/08/internet-access-human-right-united-nations-report_n_872836.html (last accessed Sep. 6, 2012).

13. Adam Clark Estes, *The UN Declares Internet Access a Human Right*, ATLANTIC, June 6, 2011, *available at* http://www.theatlanticwire.com/technology/2011/06/united-nations-wikileaks-internet-human-rights/38526/ (last accessed Sep. 6, 2012).

14. *La Rue Report*, *supra* note 5, at ¶ 2.

15. *Id.* at ¶ 1.

16. *Id.* at ¶ 2.

such as cables, modems, computers, and software, to access the Internet in the first place."[17]

While there are certain instances when harm can be done online such as the spread of child pornography, defamation, or hate speech,[18] La Rue believes that Government intervention even in these instances must be tempered with the privately available solutions.[19] The Internet cuts through the redtape customarily necessary in traditional forms of communication such as television, newspapers, and radio broadcasting.[20] The unique characteristics of the Internet — its "speed, worldwide reach[,] and relative anonymity"[21] — encourage the quick dissemination of information. The response to which and reaction afterward strikes fear in the hearts of many government officials and corporate despots.[22]

This fear triggers many actions veiled under mantles of innocence.[23] La Rue reveals that content is often arbitrarily filtered and sites unnecessarily blocked from user access.[24] There is an on-going practice of blocking sites based on keywords or specific content.[25] China has a sophisticated system in place that blocks websites that use the words "democracy" and "human rights."[26]

La Rue asserts that any legislation intended to restrict either of the two dimensions of the right to Internet must be undertaken by a "body which is independent of any political, commercial, or unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application."[27] It must be predictable and transparent; have a legitimate purpose; and be absolutely necessary and proportionate.[28]

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17. *Id.* at ¶ 3.

18. *Id.* at ¶ 25.

19. *Id.* at ¶ 24.

20. *See* Patrick Villavicencio, Want free city-wide Wi-Fi? Consider moving to Makati, *available at* http://www.interaksyon.com/infotech/want-free-city-wide-wi-fi-consider-moving-to-makati (last accessed Sep. 6, 2012).

21. *La Rue Report*, *supra* note 5, at ¶ 23.

22. *Id.*

23. *Id.*

24. *Id.*at ¶ 26.

25. *Id.*

26. *Id.* at ¶ 29 (citing Reporters Without Borders, Enemies of the Internet (Summary of World Day Against Cyber Censorship) 8-12, *available at* http://en.rsf.org/IMG/pdf/Internet_enemies.pdf (last accessed Sep. 6, 2012)).

27. *La Rue Report*, *supra* note 5, at ¶ 24.

28. *Id.*

Often, lists of the sites blocked are confidential and scrutiny as to its criteria for selection is nearly impossible.[29] With a series of resolutions, they broke ground on digital rights.[30] Offline rights were equated with online rights.[31]

Imagine if the Philippines began to find the use of the term "South China Sea" offensive since it promoted the strength of China's claims over what it perceives as its territory. Given the relatively unregulated actions of States, it could, in theory, prevent all those in the Philippines from accessing any sites that referred to the body of water as such. The wide net of the State is often accompanied by a precise sniper taking down specific perceived threats.

Under the guise of criminal prosecution, many cyber activists are often persecuted for their opinions and popularity.[32] Arbitrary arrests and detention, enforced disappearances, harassment, and intimidation are often resorted to in order to quiet any dissenters.[33] Knowing all this, the Report[34] and the subsequent UNHRC Resolution[35] encourages governments to facilitate access to the Internet. Not only does it request all States that practice website blocking to release a list of sites that it blocks,[36] but it goes so far as to push the decriminalization of defamation.[37] It even lays the groundwork for future technological advances as it makes known that the freedom of expression and other similar freedoms must be protected no matter the means of its exercise.[38]

A. Compelling Liberty, Enforcing Freedom

The freedom of expression is one of the most carefully guarded rights. The courts around the globe have treaded carefully in permitting any sort of

29. *Id.* at ¶ 31.

30. *Id.* at ¶ 26.

31. Human Rights Council Draft Resolution, The promotion, protection, and enjoyment of human rights on the Internet, Twentieth Sess., June 18-July 6, 2012, U.N. Doc.A/HRC/20/L.13 (June 29, 2012) [hereinafter H.R.C. Draft Resolution].

32. *La Rue Report*, *supra* note 5, at ¶ 35 (citing Reporters Without Borders, 2010: Journalists Killed, *available at* http://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2010 (last accessed Sep. 6, 2012)).

33. *La Rue Report*, *supra* note 5, at ¶ 33.

34. *Id.* at ¶ 66.

35. H.R.C. Draft Resolution, *supra* note 31.

36. *La Rue Report*, *supra* note 5, at ¶ 70.

37. *Id.* at ¶ 73.

38. *Id.* at ¶ 1.

restraints. But the U.N. is dependent upon the support of its heavy players for any of its resolutions to truly bear weight.[39] In protecting many of the internationally recognized rights, the U.N. has relied on several time-tested approaches to compel States to honor internationally accepted ideas of liberty and freedom.

One such method is through embargoes or the "interruption of economic relations."[40] These would not bother a violator so much if an economically insignificant State was to decide on its imposition. But when the economic strongholds of the world decide to shun a nation such as South Africa for practices like apartheid, the U.N. will most likely make some headway.[41] Exclusion, suspension, and expulsion from the U.N. would unlikely compel a State who already refuses to abide by the body's rules to suddenly reform. Finally, the U.N., because of its mandate to maintain peace in the world, will avoid the use of military force as much as possible.[42]

Therefore, more often than not, human rights has become a money game played amongst the States — a battle of the Haves and Have Nots. In an attempt to alter the behaviors of many of the less developed nations who are considered violators of international human rights, collective sanctions are employed and accepted as a step above diplomacy but still a far cry from military action.[43] There are many questions as to this method, not as to its effectiveness, but rather as to its consistency with the main thrust of the U.N.[44]

When an international standard has been set, the U.N. must see that this behavior is "encouraged" and does not simply fall on deaf ears. One such standard that has most often been encouraged is the observance of the UDHR. Considering that the sanctions for a State's failure to protect its citizens' rights could be an embargo, the necessity of declaring the Internet as another right that many states with strained resources have to protect, should be carefully considered. It seems strange, however, that to ensure that a State respect their people's rights, they will often employ sanctions that

39. *See, e.g.*, U.N. Charter art. 2.

40. U.N. Charter art. 41.

41. PATTI WALDMEIR, ANATOMY OF A MIRACLE: THE END OF APARTHEID AND THE BIRTH OF THE NEW SOUTH AFRICA 56-57 (1998).

42. U.N. Charter art. 39.

43. Joy K. Fausey, *Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate its Own Human Rights Standards?*, 10 CONN. J. INT'L L. 193, 193 (1994).

44. *Id.* at 193-94.

would likely cut their economy off from vital resources and lead to its destruction.[45]

B. Defiant Experiences and Pliant Participants

The annihilation of a State's resources, however, is often not truly taken into account. It is often like a game of chicken. As the violating State faces off with the U.N. and its Superpower Backers, they often are dealing with local protests and criticism from within.[46]When this happens, the burden will become too heavy to bear and they will acquiesce to the U.N. before any permanent damage is done.[47] But this is not to suggest that no one has suffered in the meantime. Although the economy may not have collapsed at the point a State accepts the standards set by the U.N., it is most likely that an entire populace has experienced great hunger and deprivation.[48]

When Iraq occupied Kuwait in 1990, the U.N. blocked funds from entering Iraq.[49] The U.N. acknowledged the humanitarian crisis that this led to but it still refused to lift the sanctions unless the State began to correct its behavior.[50] While in Serbia, their military violence led to the end of the flow of goods to and from the country.[51] This left the people to face a public health crisis.[52] But these are extreme cases; the Philippines, which also has violated several human rights in the past,[53] has not received such a grave punishment. But with the addition of the access to the Internet and freedom while using it to the U.N.'s checklist, could the Philippines begin to feel the ire of the international community?

Before the eyebrows of foreigners are raised, it is more likely that Philippine patriots will raise their pens and remind the state of the locally-

45. *Id.* at 195 (citing MAKIO MIYAGAWA, DO ECONOMIC SANCTIONS WORK? 6 (1992)).

46. Fausey, *supra* note 43, at 199.

47. *Id.*

48. *Id.*

49. Fausey, *supra* note 43, at 201 (citing S.C. Res. 661, U.N. SCOR, 2933d Meeting, U.N. Doc. S/RES/661 (Aug. 6, 1990)).

50. Fausey, *supra* note 43, at 202.

51. *Id.* at 201 (citing S.C. Res. 757, U.N. SCOR, 3082d Meeting, U.N. Doc. S/RES/757 (May 30, 1992)).

52. Fausey, *supra* note 43, at 202 (citing Mary Black, *Collapsing Health Care in Serbia and Montenegro*, 307 BRIT. MED. J. 1135 (1993)).

53. *See* Jerry E. Esplanada, *Impunity in human rights abuses persists under Aquino gov't — US report*, PHIL. DAILY INQ., May 27, 2012, *available at* http://globalnation.inquirer.net/38139/impunity-in-human-rights-abuses-stays-under-aquino-gov%E2%80%99t%E2%80%94us-report (last accessed Sep. 6, 2012).

rooted compelling legislation. The essence of the Report is encapsulated in several of the Philippines' Constitutional provisions. Section 7, Article III of the 1987 Constitution enshrines the people's right to information and access to public documents.[54] Originally, the right was not couched in such specific terms.[55] The drafters of the Constitution proposed to leave the details and parameters of this access to Congress.[56] But this would then mean that the provision would not be self-executory.[57] This would leave the people open to abuses already suffered during the Marcos era.[58] The Commissioners could not leave that to chance and carefully worded it in such a way that many of the rights La Rue seeks to protect have already been given a fierce guardian.

In line with the rationale behind the Report and the Resolution,[59] Filipinos could claim it protects the right to privacy of communication and correspondence online as well. Section 3, Article III of the 1987 Constitution protects a person's secrets that do not involve State interests.[60] Therefore, a person's e-mails and personal messages criticizing the government are already shielded from the State's spying eyes. And again, the international rationale for elevating the Internet to a human right is alive and well in Section 4, Article III of the same Constitution — allowing the

54. PHIL. CONST. art. III, § 7.This Section provides —

> The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

PHIL. CONST. art III, § 7.

55. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 380 (2009 ed.).

56. *Id.*

57. *Id.*

58. *Id.* at 381.

59. H.R.C. Draft Resolution, *supra* note 31.

60. PHIL. CONST. art. III, § 3. This Section provides:

> (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

PHIL. CONST. art. III, § 3.

people to say what they want, where they want, and turn to the government if they are prevented from doing so (of course, with certain limitations).[61]

Even with the admitted importance of these rights, it must be asked if it is prudent to elevate such a specific mode of communication to an internationally-accepted right. It could be used as a bargaining chip against those States whose needs direct their resources elsewhere. But does the character of human rights as it has formed through the collective wisdom of the world's diplomats truly invoke the need for such a high-level protection of one's right to blog? Could the constitutional landscape of the Philippines ease the local observance of the U.N.'s directives as to the Internet? Is the Philippines ready to be a pliant participant?

III. SQUARE PEG, ROUND HOLE: INTERNET AS A HUMAN RIGHT

Human rights are widely taken for granted in this day and age.[62] A cry against its violation could easily land a story in the headlines in any medium. So ingrained is it in this generation's consciousness that any expansion or subtraction almost feels like tampering with the Ten Commandments. It is easy to forget that there are many alive today who lived part of their lives without any formally-recognized rights and that these rights as they are formulated today are relatively new. It is even harder to believe knowing that, not only is there a UDHR, but there are regional declarations such as the European Convention for the Protection of Human Rights[63] and Fundamental Freedoms and the African Charter on Human and Peoples' Rights.[64]

These international instruments have developed a relatively smooth sphere of human rights and are often reflected in municipal instruments. In the Philippines, human rights are largely acknowledged through the Bill of Rights. So prized are these rights that Section 17 (1), Article XIII of the 1987 Constitution even created the Commission on Human Rights (CHR).[65] In reaction to the trauma from the twilight of the Marcos era

61. PHIL. CONST. art. III, § 4. This Section provides, "No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." PHIL. CONST. art.III, §4.

62. *See generally* Moazzam Begg, *Locating liberty*, GUARDIAN, July 9, 2008, *available at* http://www.guardian.co.uk/commentisfree/2008/jul/09/guantanamo.iraq (last accessed Sep. 6, 2012).

63. Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* Sep. 3, 1953, 213 U.N.T.S. 221.

64. African Charter on Human and Peoples' Rights, *adopted* Oct. 21, 1986, 1520 U.N.T.S. 217.

65. PHIL. CONST. art. XIII, § 17, ¶ 1.

many were still dealing with, only the operationalization of the CHR was left to the legislative; its existence was cemented through its specific mention.[66] What is interesting is that, not only must the CHR investigate all forms of violations of civil and political rights, but it must also provide appropriate legal measure for the protection of Filipinos here and abroad.[67] The CHR must also monitor the Philippines' compliance with international human rights obligations.[68] The Constitution demands no less than vigilance in the evolution of human rights and it appoints the CHR as not just its advocate but its guardian as well. So as the concept evolves and expands, so does the scope of CHR's powers.

The widening of the scope does not even require Congress' action. Although Congress may add other atrocities they feel should be under CHR's purview,[69] when the U.N. frames its Resolution in such a manner that it seems as if it simply carries real life rights over to the cyber world, then there are no new atrocities, just a different mode of its application.

But as early as 2000, the idea of the Internet being a human right was already explored.[70] The ideas were once again examined in 2004 as an increasingly popular tool of empowerment.[71] It was argued that "[g]iven a symmetric claim to information as a universal human right... the Internet is more than just an incrementally useful information technology ...*the Internet should be a human right in and of itself.*"[72] So when the U.N. encouraged universal access to communication and information services in 1997,[73] it sowed the seeds of the Report and the Resolution. It was a long time coming and supposedly driven by the need to evolve in order to abide by the mandate of the U.N. And from the start it seemed to have rough edges, a square peg, trying to fit in the round sphere of human rights concepts.

A. The Concept of Human Rights

When the Internet as a human right is evaluated, the concept of human rights must be set as the background. Since its inception, the U.N. has been tasked with promoting "universal respect for, and observance of[,] human

66. BERNAS, *supra* note 55, at 1274 (citing IV RECORDS OF THE CONSTITUTIONAL COMMISSION 30).

67. PHIL. CONST. art. XIII, § 18, ¶¶ 1 & 3.

68. PHIL. CONST. art. XIII, § 18, ¶ 7.

69. PHIL. CONST. art. XIII, § 19.

70. *See* HUMAN RIGHTS AND THE INTERNET (Steven Hick, et al. eds., 2000).

71. *See* Michael L. Best, *Can the Internet be a Human Right?*, 4 HUM. RTS. & HUM. WELFARE 23 (2004).

72. Best, *supra* note 71, at 24.

73. *Id.*

rights."[74] While many national constitutions already embodied similar concepts, these were very limited in character. The U.N. decided to up the ante and emphasize the "general obligation of all the Members of the [U.N.] to provide and encourage respect for human rights, and in providing that machinery should be set up for this purpose."[75] The understanding that the recognition of fundamental freedoms would create a common ground for discussions amongst nations propelled the U.N. mission.[76]

When the UDHR was crafted, the many ideological difficulties pushed the U.N. to expand the drafting group to include representatives from the United States (U.S.) and the Philippines.[77] The first drafts were an amalgamation of international drafts and national constitutions.[78] There was a debate whether it would be necessary to categorize the draft as a Declaration or manifesto in order to simply place moral weight upon the Members without any legal compulsion.[79] Some argued that it be presented as a convention but their arguments were assuaged by the assurance that as a Declaration, it would be following conventions on specific rights.[80] This approach framed the UDHR as it was then set that the contents should be wide and general in expression. The UDHR was always intended to just be the first step.[81] This is why more specific conventions were simultaneously prepared and the laws that were decidedly included were those that were vague enough to be palatable by many.

The representative of Pakistan described it much like a book on etiquette — "a code of civilized behavior[,] which would apply not only in international relations but also in domestic affairs."[82]

The representative of the Philippines in particular claimed that the UDHR would not simply be a moral challenge, but an instrument for the development of man's rights and personality.[83] This entailed the assurance

74. UNITED NATIONS, 1948-1949 UNITED NATIONS YEARBOOK 524 (1950) [hereinafter UNITED NATIONS YEARBOOK].

75. *Id.*

76. *Id.* (citing U.N. Charter arts. 55 & 76, ¶ c).

77. *Id* at 525.

78. *Id.*

79. *Id.*

80. UNITED NATIONS YEARBOOK, *supra* note 74, at 526.

81. *Id.*

82. *Id.* at 527.

83. *Id.*

that none of the three branches of government could ever encroach upon his fundamental rights.[84]

Yet, at its earliest stages, there were already concerns as to the burden this would place upon the States. The representative from South Africa believed that the UDHR exceeded what were generally accepted rights.[85] For example, it was beyond his delegation's cognition to understand how restricting the places in which a person could reside affected human dignity.[86] Also, the economic rights mentioned in the UDHR were beyond what most States could hope to promise.[87] The representative from Saudi Arabia also pointed out that the UDHR was framed around Western values and views and could not be considered as truly universal in nature.[88]

Certain delegations believed that the economic, social, and national circumstances prevailing in every State should be examined before guaranteeing certain rights.[89]

Article 19 of the UDHR states that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive[,] and impart information and ideas through any media regardless of frontiers."[90] Article 19 of the International Covenant on Civil and Political Rights (ICCPR) mirrors the same concept.[91]

The addition to the UDHR is exceedingly strange when you consider that equally timely issues such as apartheid and fascism were key considerations, yet the drafter elegantly spun verses that manage to enable it to remain relevant over decades. Considering that much effort was placed in drafting a set of rights that could truly remain "universal," placing the Internet amidst these carefully crafted demands is tough to swallow.

B. The Intention Behind the Rights

The UDHR was always intended as a simple "statement of basic principles of inalienable human rights setting up a common standard of achievement

84. *Id.* at 528.

85. *Id.*

86. UNITED NATIONS YEARBOOK, *supra* note 74, at 528.

87. *Id.*

88. *Id.*

89. *Id.* at 528–29.

90. Universal Declaration of Human Rights, *supra* note 6, art. 19.

91. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

for all people and all nations."[92] It was never intended to be the basis for any legal obligations.[93] It began as an educational ploy but transformed into the Sword of Damocles, dangling above the heads of every ruler lest they step out of line.

The debates on the drafts were witness to the earliest ideas of the blurring of the divisive lines. An example of which was the raising up of human rights issues from the domestic sphere to the international one.[94] The drafters never intended violations of the UDHR to lead to consequences upon government-to-government relations.[95]

It was, however, pointed out that when the principles of the UDHR are trampled upon, the terms of the U.N. Charter are also violated.[96] And so today, when a report of the violation of these rights is submitted, the U.N. engages in what are accepted as collective sanctions.[97] It is these sanctions that increase the troublesome thoughts provoked by the Report and the Resolution. This then plants a seed of mistrust and fear that awakens a desire to remain rooted to the *status quo*. But like the institution from which they spring, these standards have evolved. It seems that what was intended to be universal was not the phrasing of the rights, but the dedication to achievement and improvement. When greater opportunities for development emerge in the world, standards adjust. Instead of allowing only some to settle into these new standards and take advantage of these opportunities, the U.N. attempts to open them up to the world.

Given the concept of human rights and the original intent of its drafters, the wide sphere seems to have enough room to allow the square peg that is the Internet to awkwardly fit through.

IV. REACTIONS AND PRACTICES

As mentioned earlier, the reactions and practices around the globe have varied since the announcement. Many have expressed their concern for the narrow view the Report espouses.[98] The development of communication technology has rapidly increased in the past decades. Advancements thought to be works of science fiction are more frequently announced as reality. Yet, here is a Report and a Resolution singling out what may one day become an obsolete means of communication as an essential tool and a human right.

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92. 1948-1949 U.N.Y.B. 527, U.N. Sales No. 1950. I. II.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 528.

97. Fausey, *supra* note 43, at 193.

98. *See, e.g.*, Wagner, *supra* note 2 & Cerf, *supra* note 2.

It must therefore be asked — what exactly is going on around the world that requires such special and immediate attention from the U.N.? How can the U.N. risk the imposition of collective sanctions on struggling nations who cannot even afford to provide the necessary basics for their inability to create the infrastructure for the Internet?

A. Local Online Experiences

The Philippines is widely recognized for its free, albeit tabloid-like, press.[99] The Internet is like the Wild Wild South where the loudest voices and most forceful opinions can reign supreme (sans the private armies). No one is spared when a campaign catches the ire of the Photoshop-savvy netizens.[100] Political and private scandals need only to wait for the sun to rise in the other timezones before it reaches Filipinos across the globe.

Several "poison blogs" have emerged over the years.[101] Depending on target, threats of defamation suits and extreme action have been flung around.[102] When prominent officials are targeted, damage control is usually at the forefront of many efforts. Be it praise or criticism for the reigning president, articles are left free to sprout.[103] No matter how nefarious certain government officials are painted, nary has there been a report on any State effort at controlling the Internet. Rather, the government has even embraced social media platforms and the proliferation of Internet service

99. *See, e.g.*, Colmo, *supra* note 3.

100. *See, e.g.*, Rappler.com, Bayo's 'What's your mix' campaign earns ire of netizens, *available at* http://www.rappler.com/life-and-style/109-fashion/6559-viral-what-s-your-mix-campaign-earns-ire-of-netizens (last accessed Sep. 6, 2012) & Rappler.com, Belo ad gets heat in social media, *available at* http://www.rappler.com/life-and-style/7891-belo-ad-gets-heat-in-social-media (last accessed Sep. 6, 2012).

101. *See, e.g.*, Alex Y. Vergara, *There's a new poison blog in town — should we care?*, PHIL. DAILY INQ., Aug. 24, 2012, *available at* http://lifestyle.inquirer.net/63090/theres-a-new-poison-blog-in-town-should-we-care (last accessed Sep. 6, 2012).

102. *See, e.g.*, Melvin G. Calimag, *Philippines Court Hears 'Facebook Libel' Case*, BLOOMBERG BUSINESS WEEK, Sep. 25, 2009, *available at* http://www.businessweek.com/globalbiz/content/sep2009/gb20090925_532132.htm (last accessed Sep.16, 2012) & Kristine Servando, How to avoid libel suits on Facebook, *available at* http://www.abs-cbnnews.com/ lifestyle/01/05/10/how-avoid-libel-suits-facebook (last accessed Sep. 6, 2012).

103. *See, e.g.*, Dharel Placido, Netizens react to PNoy's remarks on 3 cabinet men, *available at* http://www.abs-cbnnews.com/lifestyle/06/24/11/netizens-react-pnoys-remarks-3-cabinet-men (last accessed Sep.6, 2012) & *Netizens' reactions to Aquino's Sona*, SUN STAR, July 23, 2012, *available at* http://specials.sunstar.com.ph/noynoyaquino/2012/07/23/netizens-reactions-to-aquinos-sona/ (last accessed Sep.6, 2012).

providers(ISPs).[104] The State has not, to the public's knowledge, attempted to control the information highway called the Internet. Filipinos who can afford it find one way or another to remain connected to the world. The telecommunication industry has even made this possible for the masses through its promotional offerings such as unlimited Internet for a day or free connectivity to certain networks.[105]

Even prisoners in the Maximum Security area of the national prison in Muntinlupa City are permitted scheduled moments online through a computer laboratory set up with iMacs and Skype.[106] In July 2012, Makati Mayor Jejomar Erwin S. Binay unveiled the City's plan to wirelessly connect all the 33 *barangays*[107] of Makati to the Internet.[108] The City unveiled three technology-related projects with the intention of improving public service.[109] As of July 2012, the City Hall opened its wi-fi offerings to residents and companies in business with the local government.[110] Though

104. The Judiciary has revamped its e-library and continuously uploads its latest decisions online. *See* The Supreme Court E-library, *available at* http://www.elibrary.judiciary.gov.ph (last accessed Sep. 6, 2012). The Executive brought the State's Official Gazette (the official repository of laws, speeches, and other documents) online. *See* Official Gazette of the Republic of the Philippines, *available at* http://www.gov.ph/official-gazette/ (last accessed Sep.6, 2012). The Legislature consistently updates its website content to give the public better access to pending and approved bills. *See* LEGISontheWeb, *available at* http://www.congress.gov.ph/legis/ (last accessed Sep. 6, 2012). President Benigno Simeon C. Aquino III even directed PAGASA to make use of Twitter and Facebook when disseminating information on the weather.*See* Helen M. Flores, *Rain or Shine? Ask Pagasa,* PHIL. STAR, June 24, 2012, *available at* http://www.philstar.com/Article.aspx?articleId=820241&publicationSubCategoryId=90 (last accessed Sep. 6, 2012).

105. *See, e.g.*, Inquirer.net, *Globe boosts smartphone use in PH with cheaper browsing plans*, PHIL. DAILY INQ., July 23, 2012, *available at* http://technology.inquirer.net/ 14519/ globe-boosts -smartphone-use-in-ph-with-cheaper-browsing-plans (last accessed Sep.6, 2012).

106. The Author paid a visit to the New Bilibid and found such services actively in place.

107. A *barangay* is the smallest government unit in Philippine society. The term is derived from the word "*balangay*," which refers to the sailboats that brought Malay settlers to the Philippines. *See* WILLIAM HENRY SCOTT, BARANGAY: SIXTEENTH-CENTURY PHILIPPINE CULTURE AND SOCIETY 5 (1994).

108. Villavicencio, *supra* note 20.

109. *Id.*

110. *Id.*

the cost is admittedly great, the City plans to initially test the project in two barangays.[111]

The effort required that a fiber loop infrastructure be laid down around the City as a backbone for the network.[112] Although the City already plays host to about 40,000 businesses, the City has seen a stagnation in the past few years.[113] Mayor Binay determined that increasing that number would require a more efficient system of governance.[114] Essentially, City-wide Internet is hoped to ease the process of issuing business permits.[115] Eventually, the City hopes to even distribute prepaid cards to all the students of Makati to aid in their studies.[116] An official Twitter account and City website were also launched to improve information dissemination and could foreseeably improve transparency in the activities to the City.[117] The Mayor "recognize[s] that embracing modern technology is the fastest way to achieve inclusive progress and equitable growth in this age of globalization."[118]

The effort of Makati City and the project planned in Davao City[119] could be taken as a natural development in light of the recognized importance of the Internet. The local governments in the Philippines have begun to unknowingly implement the principles espoused in the Report. Although never citing the addition of the Internet to the Declaration as a driving force behind the increased efforts at increasing Internet connectivity, the end result is the same.

But other than these glimpses of the freedom of expression and access to information, there has not been a centralized effort at increasing connectivity even to the far-flung areas of the State. The Philippines is also in a unique position given its geographical make-up. The bodies of water in between the thousands of islands that are the Philippines present even greater challenges to creating the foundations for an Internet-accessible nation. This is not to

111. *Id.*

112. *Id.*

113. *Id.*

114. Villavicencio, *supra* note 20.

115. *Id.*

116. *Id.*

117. Information and Community Relations Department, Makati Launches Free Wi-Fi Zone at City Hall, Twitter Account for 24-Hour Traffic Updates on July 12, *available at* http:// www.makati.gov.ph/portal/news/view.jsp?id=2908 (last accessed Sep. 6, 2012).

118. *Id.*

119. Julia Jasmine Madrazo-Sta.Romana, Davao gov't, IBM push for 'smart city,' *available at* http://www.gmanetwork.com/news/story/263643/scitech/technology/davao-gov-t-ibm-push-for-smart-city (last accessed Sep. 6, 2012).

mention the numerous mountains and hillsides that often deter medical aid from reaching many people.

The only example at a national, albeit unconscious, effort at securing the Internet as a human right is the Data Privacy Act of 2012.[120] This Act runs along the same lines as the Resolution in its recognition of the "vital role of information and communications technology" but does not specifically limit itself to the Internet.[121] Given the way the Act is framed, it could go either way actually — the State could suddenly take an active interest in safeguarding its citizen's rights to privacy or it could be just the tool to regulate what was once the very much liberated blogosphere. This Act endows an administrative body with the power to monitor Internet activity under the guise of ensuring compliance with the Act.[122]

Then there is the Anti-Child Pornography Act of 2009,[123] while noble and morally upright, could be construed as an impediment to the freedom of expression — if the doctrine from *Reno v. American Civil Liberties Union*[124] is any indication of the prevalent worldview. This is because even the speech transmitted by a person above 18 years of age, if "presented, depicted[,] or portrayed as a child[,]" could be censored.[125] This in addition to the drawings or computer-generated images appearing to be a child, which are intended to be filtered out.[126] Through this law, the State uses ISPs as their digital policemen who must patrol their dominion in search for violators of

120. An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for This Purpose a National Privacy Commission, and for Other Purposes [Data Privacy Act of 2012], Republic Act No. 10173 (2012).

121. *Id.* § 3, ¶ f. This Paragraph provides —

> Information and Communications System refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar device by or which data is recorded, transmitted or stored and any procedure related to the recording, transmission or storage of electronic data, electronic message, or electronic document.

Id.

122. *Id.* § 7.

123. An Act Defining the Crime of Child Pornography, Prescribing Penalties Therefor and for Other Purposes [Anti-Child Pornography Act of 2009], Republic Act No. 9775 (2009).

124. Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).

125. Anti-Child Pornography Act of 2009, § 3, ¶ a.

126. *Id.*

this law.[127] The blocking of access to what they classify as child pornography would then be implemented by the National Telecommunications Commission (NTC).[128] Hence, though majority of the Act is a solid effort at riding the world of reprehensible child exploiters, the wording of the law still leaves room for abuse of what has now been revealed as Internet human rights. But in balancing these interests, could Internet freedoms outweigh the fight against exploitation now that the U.N. has pronounced its significance?

B. World Wide Wisdom

The Internet and its role in freedom of expression have found a place in the world's agenda. When U.S. Secretary of State Hilary R. Clinton visited Vietnam on 10 July 2012, she was encouraged to condemn the restrictions on Internet freedom.[129] Since 2004, the Government has been placing firewalls in what are seen as "critical" websites.[130] The purview of speech crimes has now expanded to include those committed on the Internet.[131] The Global Network Initiative, a coalition that includes Human Rights Watch, has examined Vietnam's draft, Decree on Management, Provision, and Use of Internet Services and Information on the Network (Decree).[132] Its provisions are overbroad and in their opinion are "inconsistent with international human rights standards."[133] Even the U.S. Embassy in Hanoi voiced its concerns over the violations of human rights involved in the vague obligations imposed upon service providers to enforce the Decree.[134]

No longer are international standards for prisoner's rights[135] alone — with the advent of the Era of the Digital Life even one's cyber existence sees the onslaught of invaders and protectors. For most people these statements and measures seem to be an overreaction to the popularity of the Internet. When the word "blogger"[136] enters a conversation, celebrity gossip and

127. *Id.* § 9.

128. *Id.*

129. Human Rights Watch, Vietnam: Clinton Should Spotlight Internet Freedom, *available at* http://www.hrw.org/news/2012/07/09/vietnam-clinton-shouldspotlight-internet-freedom (last accessed Sep. 6, 2012).

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *See also* Maria Luisa Isabel L. Rosales, Note, *Cruel Detentions: Subhuman Prison Conditions — A Form of Cruel and Unusual Punishment*, 54 ATENEO L.J. 568 (2009).

136. The word "blogger" pertains to an editor of a weblog or blog, which is usually a repository of its editor's thoughts. Blogs may contain various reflections and

fashion critiques are the easiest associations. Defending Perez Hilton's right to Internet access comes off as a frivolous cause. But most do not realize the persecution other bloggers have experienced. The fact that many activists and journalists have turned to blogging to freely communicate the harrowing experiences and realities their countrymen face is nothing but murmuring of conspiracy theories to many.

In Vietnam, Dieu Cay,[137] Phan Thanh Hai,[138] and Ta Phong Tan[139] have been detained for over a year because of their use of Internet to express their views. In Libya, Moammar Gadhafi monitored online calls and uploaded videos.[140] Syria attempted to mobilize an "electronic army" to

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insights, from mundane to profound. *See also* Rebecca Blood, Weblogs: A History and Perspective, *available at* http:// www.rebeccablood.net/ essays/ web log_history.html (last accessed Sep. 6, 2012).

137. Dieu Cay is a Vietnamese blogger who was imprisoned in 2008 on the trumped-up charge of property tax evasion. On the day of his supposed release, police officers refused to release him on the ground that there is a pending investigation for violation of Article 88 of the Vietnamese Penal Code, which prohibits the carrying out of propaganda against their Government. However, it is said that the reason for his imprisonment was his online musings on human rights and corruption in Vietnam and in China.*See* Human Rights Watch, Vietnam: Free Peaceful Bloggers and Government Critics, *available at* http://www.hrw.org/ news/2010/10/ 22/ vietnam-free-peaceful-bloggers-and-government-critics (last accessed Sep. 6, 2012) & *The Courage of Dieu Cay and Natalia Radzina*, N.Y. TIMES, Apr. 19, 2012, *available at* http://www.nytimes.com/ 2012/ 04/ 20/ opinion/the-courage-of-journalists-dieu-cay-and-natalya-radzina.html?_r=1 (last accessed Sep. 6, 2012).

138. Phan Thanh Hai is a Vietnamese writer who blogs under the pen name "Anhbasg." When he joined the protest in Ho Chi Minh City against the Beijing Olympics in December 2007, he was placed under surveillance and was thereafter detained. He finished law, but Ho Chi Minh City Bar Association denied his application to practice because of his blog, which contains criticism of the Vietnamese government. He was likewise arrested for alleged violation of Article 88 of the Vietnamese Penal Code. *See* Human Rights Watch, Vietnamese Writers Honored for Commitment to Rights, *available at* http://www.hrw.org/node/101665 (last accessed Sep. 6, 2012).

139. Ta Phong Tan is a former police officer and a former communist party member, whose membership thereto was revoked when several of her articles were published in mainstream newspapers and on the Vietnamese BBC website. She authored hundreds of articles on human right violations, government corruption, and power abuse. This resulted in her detention and harassment. *Id.*

140. Greg Lamm, Google's Vinton Cerf: Access to internet not a human right, *available at* http://www.bizjournals.com/seattle/blog/techflash/2012/01/access-to-internet-not-a-human-right.html?page=2 (last accessed Sep. 6, 2012).

silence the voices of its citizens.[141] The Syrian Internet networks became unreachable in June 2011.[142] Considering that all the networks depend on Syrian Telecom Establishment and that it is owned by the State,[143] Internet outages were seen as an effort to quell the brewing discontent. This theory was bolstered by the fact that Egypt and Libya had resorted to similar tactics when the political unrest reached a boiling point.[144]

China and Iran were supposedly cultivating American technologies to exploit the Internet as a weapon of mass surveillance.[145] These technologies enable the government to "track, monitor, block, filter, trace, remove, attack, hack, and remotely take over Internet activity, content[,] and users."[146] Strange enough, many of the countries, like China and India, who were expected to oppose the UDHR, actually supported it in the end.[147] China claimed that the approach of the U.S. is problematic and contradictory.[148] They categorized the U.S. efforts as "an excuse to impose diplomatic pressure and seek hegemony."[149]

But this should not mislead people to believe that citizens from underdeveloped countries are the only ones resorting to social media and the Internet to express their view. In 2011, many in the U.S. turned to the Internet to launch their protests like the Occupy Wall Street movements.[150]

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141. Eileen Chamberlain Donahoe, Internet Freedom Fellows Program Emphasizes Defense of Fundamental Freedoms Online, *available at* http://blogs.state.gov/index.php/site/entry/internet_freedom_fellows (last accessed Sep. 6, 2012).

142. James Cowie, Syrian Internet Shutdown, *available at* http://www.renesys.com/blog/2011/06/syrian-internet-shutdown.shtml (last accessed Sep. 6, 2012).

143. *Id.*

144. *Id.*

145. Commission on Security & Cooperation in Europe, Chairman Smith Calls Internet a "Weapon of Mass Surveillance" in the Hands of Repressive Governments, *available at* http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=1069&Region_id=0&Issue_id=0&ContentType=P&ContentRecordType=P&CFID=61210046&CFTOKEN=38336929 (last accessed Sep. 6, 2012).

146. *Id.*

147. Arun Prabhudesai, UN Resolution confirms Internet Access as Human Right, *available at* http://trak.in/tags/business/ 2012/07/06/internet-access-humanright-unhrc/ (last accessed Sep. 6, 2012).

148. *Human Rights Record of United States in 2011*, CHINA DAILY, May 26, 2012, *available at* http://www.chinadaily.com.cn/cndy/2012-05/26/content_15392452.htm (last accessed Sep. 6, 2012).

149. *Id.*

150. Ben Berkowitz, To Occupy Wall Street, occupy the [I]nternet first, *available at* http://www.reuters.com/article/2011/10/04/us-wallstreet-protests-media-idUSTRE79377W20111004 (last accessed Sep. 6, 2012).

Even with this surge of online activism, the Vice President of Google opposed the Report.[151] In his view, "technology is an enabler of rights, not a right itself."[152]

The legislature of the U.S. has even introduced the Global Online Freedom Act of 2012[153] to prevent American companies from participating in these oppressive online activities. Yet the Patriot Act[154] and the Homeland Security Act[155] both contain provisions to monitor and block the Internet so long as the content is considered harmful to national security. The past decade has seen how the ambiguous claims of threats to national security have led to racial discrimination and the strain on human rights.[156] Therefore, though President Barack H. Obama and Secretary Hilary R. Clinton promote online rights as equivalents to offline human rights, their own nation seems to be primed for the same actions they have labelled as abhorrent.[157]

In case of a national emergency, the Protecting Cyberspace as a National Asset Act of 2010[158] clothes the federal government with "absolute power" to shut off all access to the Internet.

Strange enough, India holds U.S. Law as its model to frame its own privacy laws. This supports the general perception of American condescension when promoting Internet freedom in other countries. In one anecdote, a Google lawyer was reported to have accused a New Delhi magistrate court judge that he did not "know or have a full appreciation of the freedom of expression that people had in the U.S."[159]

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151. Lamm, *supra* note 140.

152. *Id.*

153. Global Online Freedom Act of 2012, H.R. 3605, 112th Cong. (2012) (U.S.).

154. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No.107-156, 115 Stat. 272 (2001) (U.S.).

155. Homeland Security Act of 2002 (HSA), Pub. L. No. 107-296, 116 Stat. 2135 (2002) (U.S.).

156. *See Human Rights Record of United States in 2011*, *supra* note 148.

157. *Id.*

158. Protecting Cyberspace as a National Asset Act of 2010, S. 3480, 111th Cong., (2010) (U.S.).

159. Warren Communications News, Inc., *International*, WASH. INTERNET DAILY, May 29, 2012 (LEXIS).

The United Kingdom, Canada, Australia, and the U.S. have all found ways to regulate the Internet through their various legislations.[160] Although most result from pressure to uphold intellectual property laws, they also contain the ability to restrict all other forms of expression online.[161] The U.S. courts recognized that such a world could be hidden behind these sheep's clothing when it found that a law aimed at controlling Internet pornography, the U.S. Communication Decency Act of 1996, was declared violative of the freedom of speech.[162] The Supreme Court found that in an effort to shield children from pornography, the Act also prevented adults from accessing speech that they had a right to access.[163]

In France, their online copyright infringement law[164] was declared partially unconstitutional.[165] The law permitted the monitoring of Internet use to screen for the sharing of illegal content. If the user failed to cease his or her actions after two e-mail delivered warnings, then Internet access could be suspended from two months to one year.[166] The user would not even be able to enter into another contract with any other service provider during this period.[167] The *Counseil Constitutionnel* found that the State, through its administrative bodies, could not determine who may have access to the Internet.[168] In doing so, it viewed Internet access as essential to freedom of expression,[169] but it did not declare Internet access as a right in itself. With

160. Ronald J. Deibert, *Black Code Redux: Censorship, Surveillance, and the Militarization of Cyberspace*, *in* DIGITAL MEDIA AND DEMOCRACY: TACTICS IN HARD TIMES137-38 & 150-51 (Megan Boler ed., 2008).

161. *Id.*

162. *Reno*, 521 U.S. at 844.

163. *Id.* at 874.

164. HADOPI stands for, "*Haute Autorité pour la Diffusion des Oeuvres et la Protection des Droitssur Internet*" or "High Authority for the Diffusion of Works and the Protection of Copyright on the Internet." HADOPI is the acronym of the French government agency created to administer the law.Loi2009-669 du 12juin2009favorisant la diffusion et la protection de la créationsur [I]nternet [Law 2009-669 of June 12, 2009 To Promote the Diffusion and Protection of Creation on the Internet], 135 JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 13, 2009, at 9666 (Fr.).

165. Nicola Lucchi, *Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression*, 19 CARDOZO J. INT'L & COMP. L. 645, 648 (2011) (citing Counseil constitutionnel [CC], Decision No. 2009-580 DC, June 22, 2009, J. O. 9675).

166. Loi 2009-669, art.5,¶ 3.

167. *Id.*

168. Lucchi, *supra* note 165, at 663 (citing Decision 2009-580 DC, ¶ 16).

169. Lucchi, *supra* note 165, at 669 (citing Decision 2009-580 DC, ¶ 12).

regard however, to the right to privacy online, the European Commission recognizes that the "protection of personal data is a fundamental right."[170] The *Counseil Constitutionnel* also found that since Article 11 of the 1789 Declaration of the Rights of Man and of the Citizen[171] states that,"[t]he free communication of ideas and opinions is one of the most precious of the rights of man[,][e]very citizen may, accordingly, speak, write, and print with freedom as shall be defined by law[,]"[172] then, though the Internet is not a right in itself, limiting access to it would be limiting access to a vast amount of information. Such an isolation from the World Wide Web would have a direct implication upon a citizen's exercise of constitutional rights and freedoms.[173] Additionally problematic was the "emergence of a new form of [I]nternet network surveillance monitored by a semi-police authority."[174]

Essentially, across the world, there still exist gaps in the theoretical framework of online rights. And the world leaders are slowly coming together in an attempt to strengthen their positions and lay down the tracks towards their own ideals of a free digital world. Some countries seem to need the intervention of the U.N. more than others but one thing is true for now — the Internet has managed to perch itself comfortably in the lives of people in a way no other medium has ever even hoped to. Whether this affords it the protection as a human right is still unresolved in the Author's mind.

V. CONCLUSION

The gaps in the ever evolving human rights ontology and epistemology may lead to greater basic online freedoms or it could result in more regulated exercises. This is yet to be determined. It is simple enough to claim that the Resolution is impractical and the Report is bordering on hysterical. But when the matter is further delved into and the realities of many netizens are

170. Lucchi, *supra* note 165, at 666 (citing European Union (EU) Commission, European Commission Sets Out Strategy to Strengthen EU Protection Rules, *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1462 (last accessed Sep. 6, 2012)).

171. Declaration des Droits de l' Hommeet du Citoyen de 1789 [Declaration of the Rights of Man and the Citizen], art. 11 (1789) (Fr.).

172. Lucchi, *supra* note 165, at 669 (citing Declaration des Droits de l'Homme and du Citoyen de1789 [Declaration of the Rights of Man and the Citizen], art.11 (1789), *available at* http://www.textes.justice.gouv.fr/textes-fondamentaux-10086/ droits-de-lhomme-et-libertes-fondamentales-10087/ declaration-des-droits-de-lhomme-et-du-citoyen-de-1789-10116.html (last accessed Sep. 6, 2012)).

173. Lucchi, *supra* note 165, at 670 (citing Laure Marino, *Le Droid d'Accès à Internet, Nouveau Droit Fundamental*, 30 RECUEIL DALLOZ 2045, 2045 (2009)).

174. Lucchi, *supra* note 165, at 659.

confronted, the idea of treating access to Internet as a right becomes more plausible.

The concept of human rights seems to allow the protection of a particular element which is considered to be essential. The U.N. never went so far as to list particular technologies such as the printing press, the telephone, or cable TV as essential to the freedom of expression. But as pointed out by La Rue, the nature of the Internet as well as the dynamics of human interaction and communication in this day and age calls for a different approach.

There are many worrisome signs as to how the tides may turn in the application and execution of this new concept. Many consumers are witness to a face-off between property rights and the freedom of expression. As there are pressures to regulate the Internet to protect the economic interests of industrialists, the collateral damage could either be overly exaggerated or insufficiently appreciated.

When the realities faced by countries like the Philippines are taken into consideration and the legal implications of further developments along the lines of the Report and Resolution are weighed, supporters and dissenters alike will have to tread very carefully. The world has so many more pressing issues and support for such a pronouncement should not be taken lightly. This is not to say that it should be relegated to the backburners. Rather, the actions thus far must be allowed to run its course without the world rushing to come to any sort of definitive conclusion.

A. Legal Entanglements

At first glance, it becomes apparent that upgrading access to Internet from a privilege to a human right opens States to greater liability in the international community. Although many of the reprehensible acts in Syria and Vietnam justify U.N. sanctions, the history of the world cannot but leave a person a little paranoid about giving hegemonic states any more ammunition.

Promoting less regulation and more liberation in the Internet also presents another argument against the legal strangulation of online file-sharing and the protection of intellectual property rights.[175] The Resolution may not legally bind States, but it could very well be used in court

175. "Graduated response" or "three strikes" is a protocol in various States that requires Internet Service Providers to disconnect a user if they receive three prior warnings that their activities violate Intellectual Property Laws and yet persist. *See also* Nate Anderson, IFPI: "Three strikes" efforts hit worldwide home run, *available at* http://arstechnica.com/tech-policy/2008/08/ifpi-three-strikes-efforts-hit-worldwide-home-run/ (last accessed Sep. 6, 2012).

decisions.[176] In weighing disputes on the violation of human rights, this document could easily be relied upon to support any legal directions.[177]

Additionally, the call for the decriminalization of defamation could be construed as an intrusion upon many States' liberty to regulate its citizens' behavior for the benefit of the entire community. But if the Report and Resolution continues its ascent and flies high as an accepted right, then rather than tailoring laws to suit particular cultures, attitudes, and needs; this could lead to the beginnings of cookie-cutter penal systems adherent to the U.N. but inefficient for the nation. The Anti-Child Pornography of 2009 and the Data Privacy Act of 2012 could be cited as instances of the State's encroachment upon Internet freedoms. Laws that were crafted to battle the evils specific to the Philippines could be forced out to stay in line with the U.N.'s agenda.

Many other questions spring to mind when the concept is taken into the everyday world of the humans whose rights the Resolution seeks to protect. Given the protection offered in Article III of the 1987 Constitution and the right provided in the Resolution, could a citizen then bring the State's inability to provide the infrastructure for Internet in the far-flung recesses of Mindanao to court? Could he or she sue the local government under tort law for violating his or her human rights?

In the arguments for and against the Internet as a human right, the universality of the Resolution could snake its way into the dialogue. Can the U.N. validly claim that the Internet is absolutely essential for every human being to remain informed? Or is this another example of a hegemonic group imposing its values on the majority of the world, then, punishing them when they fail to conform?

The U.N.'s detailed approach to promoting free speech and access to information is too restricting than comfortable. If the international community is viewed as the invisible fourth branch of government balancing the powers of a state, the Resolution would be criticized for overstepping. Instead of keeping governments in check to better serve the people, it would be blindly imposing a standard that might not fit a particular State's needs.

B. Cyberworld Obstacles, Real World Dilemmas

Then, when you take into consideration the widely advertised world hunger statistics,[178] is it truly reasonable to demand that all States (including those

176. TechnoLlama, UN Human Right Council promotes Internet rights, *available at* http://www.technollama.co.uk/un-human-rights-council-promotes-internet-rights (last accessed Sep. 6, 2012).

177. *Id.*

that may not afford it) divert funds to increase every person's browsing capabilities instead of funding food and health programs? But is it prudent to wait for world peace and the end of poverty before efforts are undertaken to address the intrusions upon people's freedom of expression online? The balance of corporeal matters and essential freedoms is always a sensitive one.

When the property rights and economic health are thrown into the mix, the need for less ambiguous resolutions and legislations becomes more evident. After all, private corporations are not untouched by the policies proposed in the Report.[179] They are requested to only cooperate with governments requesting information after judicial intervention.[180] The violation of intellectual property laws are not considered as valid basis for cutting off a user's Internet access.[181]

It is interesting to note that anonymity is highly valued in the Report. States are requested that real-name registration systems should not be adopted as much as possible.[182] Would the Philippines' Data Privacy Act of 2012 substantially comply with the U.N.'s preference for anonymity?

As if to answer the concerns over budgets and resources, developed nations were reminded of the Millennium Development Goals[183] and their role to share their technological know-how to developing nations in order to ensure the feasibility of universal Internet access.[184] Internet skills and literacy are even pushed for integration into school curricula. For technology-focused societies, the peddling of the Internet like it is penicillin seems strategic. But could it be that in declaring the Internet as a human right of and in itself, the U.N. has abandoned its true mandate and gone too far in meddling with States' affairs?

No doubt, the answers to all these questions will become evident as State practice and the subsequent U.N. critiques delineate the true extent of the Resolution. All that anyone can do today is exercise his or her freedoms in the Internet as her or she knows it today. So in the meantime, everyone

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178. World Hunger Education Service, 2012 World Hunger and Poverty Facts and Statistics, *available at* http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm (last accessed Sep. 6, 2012).

179. *La Rue Report*, *supra* note 5, at ¶ 76.

180. *Id.*

181. *Id.* at ¶ 78.

182. *Id.* at ¶ 84.

183. U.N. Development Programme, Millenium Development Goals, *available at* http://www.undp.org/content/undp/en/home/mdgoverview/ (last accessed Sep. 6, 2012).

184. MDG Monitor, Tracking the Millennium Development Goals, *available at* http://www.mdgmonitor.org/goal8.cfm (last accessed Sep. 6, 2012).

should tweet about their gripes against the government, pin a picture of a corrupt cop, and blog about their superior ideas for policy reform — who knows how much longer they can do it all without much thought or care.