The topic introduced by Malcolm Fraser is so large and far ranging that it is difficult to know where to begin. I propose to give it the respect it is due by using as my starting point the largest word in this large document, the word “universal”.

The search for universalities in humankind is a noble and estimable undertaking. It is all the more worthy when the intent of the exercise is the improvement of the human condition. One of the dangers in undertaking such an exercise is that universal truths about humankind range from the mundane to the profound. And even the most mundane of truths, that we are all fundamentally alike, can be made profound when put in as eloquent terms as Shakespeare achieved in Shylock’s soliloquy in the Merchant of Venice.

When I had the wonderful opportunity of studying anthropology, the work that inspired me most was that undertaken by Claude Levi-Strauss. The major part of anthropology is a study of specificity in the many human societies. Levi-Strauss, on the other hand, searched for universality in ceremony, in kinship and in social structure. He wanted to find how we translated our humanity into conduct regardless of where we lived on the
globe or how advanced our tools might be. For some reason the example that I always cherished was Levi-Strauss’ findings on the universal hierarchy in the preparation of food for ceremonial occasions. In my travels around the world as a diplomat I kept testing Levi-Strauss’ observation. I think he is right. Whether one is an Amazonian Indian or the master chef in the French Senate, the hierarchy in food preparation is the same; rising as the occasion demands from raw, boiled, roasted to smoked.

Another observation I recall is that all cultures have, in one form or another and with varying degrees of significance, recourse to masks. This might be relevant when one comes to consider draft Article 12 of the proposed new Universal Declaration.

The search for universality is also a feature of international relations and international law. Here we need to draw a pretty distinct line between international law before the UN Charter and thereafter. In the Charter era there has been articulated one great body of universal truth - the Universal Declaration of Human Rights. We celebrate this year the 50th Anniversary of its Proclamation.

In the ongoing celebrations, it is important not to lose sight of the fact that the Universal Declaration of Human Rights would have remained an inchoate set of aspirations but for practical implementation machinery established in the two Covenants which together with the UDHR form the International Bill of Human Rights. In this regard it is worth noting that the battle for universal adherence to the two Covenants is far from over.

Of the 200 or so States in the world only 129 are parties to the International Covenant on Economic, Social and Cultural Rights and only 127 are parties to the International Covenant on Civil and Political Rights. The level of participation is particularly disappointing in the Asian region. China’s stated intention to become a party to both is encouraging, as is Indonesia’s Human Rights National Action Plan, which calls for early accession to ICESCR and then accession to ICCPR, hopefully even sooner than envisaged in the Plan.

One of the conclusions we cannot avoid is that the battle for universality of the Charter era’s human rights regime is not yet won. While fighting that good fight, we are also engaged in an exciting venture to give fuller meaning to the concept of indivisibility of human rights. This entails the need to ensure those policies dealing with economic, social and cultural rights and the right to development are given the necessary resources and priority and take into account the full range of human rights. This is a long-term goal and the Centre for Democratic Institutions is one of the bodies working in the field.

I see the work on human responsibilities undertaken by the Inter Action Council in the great tradition of the study of humankind and its search for universal truths for the betterment of society. It is important work and on reading the draft it is obvious that many long hours of debate and contemplation went into each of the 19 Articles.
The elaboration of a link between the individual and the environment in draft Article 7 clearly responds to a growing sentiment among the people of the world to accept some form of individual responsibility for the protection of the environment.

The last sentence of draft Article 12 stating "No one is obliged to tell all the truth to everyone all the time" poses troubling ethical problems that the members of the Inter Action Council no doubt struggled with.

Draft Article 14 is critical of sensational reporting in the mass media. The draft thus attempts to deal with the difficult issue of the limits of freedom of speech.

Draft Article 15 is admirably courageous in its attempt to deal with the difficult issue of the legitimacy of certain actions which may be taken in the name of religion.

Each of these issues is worthy of a seminar in its own right. But what I wish to tackle is not the substance of the draft declaration but rather the threshold question of whether it has a place in international law alongside the Universal Declaration of Human Rights. Whether it is Conventional law or soft law, the threshold question must nevertheless be posed.

In the pre-Charter era, the answer would have been relatively simple. The individual was considered not to be a subject of international law. Simply put, the international community comprised sovereign States and their creations in the form of inter-governmental organisations. One striking exception to which I might return was the pirate. The pirate was well and truly noticed by an international community functioning within a Grotian paradigm. Rules of universal jurisdiction were elaborated to deal with the threat posed by piracy. Here then was an individual dealt with under the same law that dealt with relations between States.

In the post-Charter era, there has been a blossoming of the role of the individual in international law. We now see the individual as the ultimate beneficiary of international law. A body of law has developed granting the individual a panoply of rights. Sadly, these rights are too often breached by States. Further, the individual has been given a number of procedural tools intended to allow her to be heard at the international level. As we know, these tools remain quite under-developed and are not evenly distributed among the people of the world. They remain within the gift of States to grant or withhold to their own nationals.

Human rights are inherent, they are inalienable but their implementation depends on the actions of States. It is to States that the basic international human rights treaties are addressed. It is the decision of States whether they become party to all or indeed any one of the Human Rights treaties. It is at States that the mechanism for reporting and oversight are directed. And it is to States that the recommendations of the various treaty bodies are addressed. An individual living in a State that has rejected all the human rights treaties continues to have inalienable and inherent rights but, short of application of the controversial notion of humanitarian intervention, they may well be unenforceable.
So does international law ever concern itself with the actions of individuals, as the draft declaration of the Inter Action Council would require? The answer is, of course, in the positive. The International Court of Justice studied very closely the acts of individual Iranians in the 1980 case concerning *United States diplomatic and consular staff in Teheran*1. But the Court did not pronounce on the issue of the responsibility of the individual Iranians, its findings were against the State. Iran was considered responsible for a tort of omission for its lack of protection of foreign diplomatic staff and also considered directly responsible for the continued detention of the hostages.

To find a more direct process of individual responsibility we have to go back to the pirate. The threat to the international community at the time was such that international law directed its Olympian gaze at this international outlaw and made him personally responsible under international law for his actions.

After the holocaust, the international community once again considered itself threatened. The existing laws of war had not adequately prepared for the unthinkable excesses of the holocaust. Again, international law insisted on the personal responsibility of those who had committed crimes against humanity.

The horrors accompanying the disintegration of Yugoslavia and the genocide of Rwanda again forced the international community to act and establish machinery to deal with crimes against humanity. This year the international community took a monumental step in the development of international criminal law by the conclusion of the text of a treaty establishing an International Criminal Court.

These are the precedents for the international community dealing with individual responsibility. It is a field in which international law has been constrained to take hesitant and halting steps. One of the reasons for the hesitation has been the problem of enforcement. The Nuremberg and Tokyo war crimes trials were possible because the defendants were in custody. The Yugoslav and Rwanda processes have led to prosecutions but it could not be said that the leading alleged criminal figures have come before the bench.

International law must always practice the art of the possible because formulating inherently unrealisable aspirations can only lead to loss of respect for international law.

And so we come to the heart of the question; has the time come for the international community to attempt to deal with a comprehensive set of individual responsibilities? This would have international law not addressing States as to their rights and duties but addressing every individual on the planet on virtually all aspects of their day-to-day lives. The issue was clearly in the minds of the drafters of the UDHR because in Article 29 they noted that “everyone has duties to the community.” But they did not go on to elaborate those duties. Would they do so if the UDHR were being drafted today?

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1 ICJ Reports 1980
In my view, it is not a particularly productive path. Developments in international criminal law are not a strong precedent for the proposal put forward by the Inter Action Council. Just as the pirate threatened the navigation lifeline of Grotius’ world, crimes against humanity threaten the very essence of what it is to be human in the modern world. The international community can simply not ignore these criminal actions by individuals. In these cases, the many enforcement problems may be recognised but we simply have no choice but to enforce the laws as best we can.

Does the Draft universal declaration on human responsibility pose the same necessity. The case is certainlyarguable but I consider, unconvincingly. The subject matter strikes me as simply too broad. Some of the issues covered in the draft such as the relationship between spouses and between parents and children, individual fulfilment and self-esteem, ethical standards, these simply do not lend themselves to resolution in an international instrument. Indeed they are extremely difficult subjects of legislation in national jurisdictions. They are more properly the domain of the arbiters and teachers of everyday morality – the home, the church and the local school. I believe it is in these places that the draft declaration of human responsibilities deserves careful attention rather than in so political a forum as the United Nations General Assembly.