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United Nations Human Rights Council

Source: <https://www.globalr2p.org/wp-content/uploads/2019/08/621469675.jpg>

*LET'S TALK:
HUMAN RIGHTS*

Human Rights and the National Interest

By Dato' Dr Shazalina Zainul Abidin

Human rights has always been, and will always be, one of the more interesting subjects in international relations. Out of all the subjects within the international relations repertoire, human rights has, since the beginning of the nation-state, been able to capture the attention of individuals and the community of states. Its attraction lies in the fact that it is a subject that has a direct impact upon individuals of a state; its very foundation lies in the dignity of the human person. This is the theory drawn from natural rights and even Catholic social thought¹, that rights are inalienable by virtue of the individual as a human being. Its gross abuse and flagrant violation arouses feelings of outrage and calls for action, while its adherence and observance is a standard by which states are judged.

The breadth and width of human rights as a subject matter makes its appeal almost universal. More often than not, there will be an angle to the rights being

championed that will tug at the heart-strings or stir indignant outrage on behalf of the person(s) whose rights are being trampled. It is a subject that can have a profound impact upon our sense of what is right and what is wrong, and what is fair and what is unjust.

Human rights transcend however, notions of fairness and just. Not all actions that are fair and just are part of the human rights make-up – it is fair to give some advance warning to a colleague prior to a transfer abroad, or to share your wealth with those less fortunate, but these are not within the realm of rights, much less human rights. In the same vein, refusing to participate in a recycling campaign or favouring one subordinate over another is not a violation of human rights, merely a human wrong². These actions might not be fair nor just, but they do not touch the standards of a human rights violation or abuse.

If human rights is within the individual domain, then national interest must surely be purely a state-concern. Unlike human rights which is defined in the



Source: <https://www.reuters.com/news/picture/art-of-the-pandemic-covid-inspired-stree-idUSRTX8F95R>



body of academic literature and codified within various international human rights documents, national interest neither has a solid parameter nor an international standard. Rather, national interest is strongly driven by a country's present administration or government of the day and justified on the benefits accrued to the state as a whole or in part. In the later part of this article, we will explore how national interest is used to justify a state's actions in suspending or limiting the scope by which human rights may be claimed or exercised.

There has to be a general understanding of what are included as human rights. In the last 50 years the international community has been able to come to terms with at least a basic idea of what the inalienable human rights should be. The problem then arises when it comes against the sovereignty of the state and a state's national interest. As one human rights writer puts it "regardless of the number of times Ugandan representatives to the U.N. rose to explain their government's

scrupulous regard for human rights, [the fact remained that] Idi Amin was violating human rights"³.

Donnelly suggests that it is prudent to constantly undertake a loosely hierarchical ordering of foreign policy goals and values. In the United States for example, this re-ordering and re-prioritising of objectives is undertaken with each and every incoming Administration. Every government has to determine for themselves what their trade-offs will be – there is no hard and fast rule and there will always exist grey areas and obscurity in the setting of the boundaries. But the exercise has to be undertaken in order for there to be a consistency in the way human rights is treated.⁴

Despite the strong case for the non-observation of human rights by governments in cases where the trade-off impinges upon the national interest, most human rights treaties already provide a middle ground – Member States may derogate from certain (not all) human

rights obligations but only under certain strict conditions.⁵ Those rights that may not be derogated from form the core of human rights: right to life, freedom from torture, slavery, and retroactive criminality, and recognition under the law.

While it makes sense to say that human rights and the national interest can be in direct conflict with one another, it is more apt to describe the relationship of the two as a balancing act, a fine line, that not only separates the two but keeps both in play for the benefit of the citizen. This is the social justice theory that Charles Beitz argues, where the two are “grounded in interests of different degrees of urgency and therefore exert different weights”.⁶

Leaving aside the arguments and counter-arguments of human rights and the national interest, we turn our attention to two particular subject matters which would put into stark practicality the sometimes uneasy relationship between the two.

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Believe it or not, Malaysia is not the only country to grapple with the problem of refugees

The Issue of Refugees

Believe it or not, Malaysia is not the only country to grapple with the problem of refugees. Not being a signatory to the 1951 UN Convention on the Status of Refugees has not precluded Malaysia from adhering – within its limits – to some of the more established norms within that convention. Malaysia’s geostrategic location in the heart of southeast Asia is not only an attraction to tourists, investors and commercial enterprises; it is also a magnet for swathes of individuals who either leave their country in search of better economic prospects or flee to escape persecution and abuse of human rights by their own government.

By virtue of this last, Malaysia has a blanket rule of not accepting illegal immigrants, whether they are economic migrants, refugees or asylum seekers. It is this blanket rule that has often been questioned by activists and portrayed by the media as unfeeling and arbitrary, giving rise to claims that Malaysia does not respect human rights nor does it part to help alleviate human suffering of neighbouring citizens.



REFUGEES IN MALAYSIA

Source: <https://www.reuters.com/news/picture/art-of-the-pandemic-covid-inspired-stree-idUSRTX8F95R>

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States are sometimes caught between a rock and a hard place – and perform multiple balancing acts in order to ensure not only the rights of its citizens but also the well-being and survivability of the nation.

A 2019 paper by a Malaysian think-tank found that Malaysian authorities cooperate with the UNHCR “to some extent and accept the presence of refugees. The level of tolerance and extent of integration varies depending on the circumstances”⁷. The paper went on to cite the example of the differential treatment of the Chams, the Filipinos, and the Acehnese, further testifying that Malaysia’s blanket rule is not absolute and can be reviewed when the situation warrants it and on a case-by-case basis taking into account mitigating factors and the impact of allowing this exception, onto the country as a whole.

Australia, another country which has migrants knocking on its doors, put it succinctly when it argued that while there is a right of individuals to flee their countries and seek refuge elsewhere, there is no a priori right to enter and remain in a country in which the individuals have no citizenship⁸.

In a nutshell, the issue of refugees is one in which in reality a balancing act is carried out in policy, both domestic and foreign, between the rights of the refugees, Malaysia’s obligation as a member of the international community, and the national interest of the country. In terms of ethical policy, it has been pointed out that “(e)quality consists of treating different things differently, not equally”⁹.

The Global Health Pandemic

COVID-19 and the lockdown that was necessitated in an effort to break the chain of transmission suspended many of the liberties, freedom and privileges that we had come to expect as law-abiding citizens of a country. The curtailment of movement, the strict exhortation against public gathering, the mandatory requirement of a mask, the closure of commercial activities considered non-essential, the need for vaccines and their booster shots, and the closure of borders were all done in the national interests of ensuring that citizens were not placed in harm’s way. At no other time in history has there ever been such a concerted and comprehensive effort in suspending rights and privileges and emphasizing instead on duties and obligations towards our fellow man.

Even Human Rights Watch, which has always been vocal against derogation of human rights regardless of justification, has found that the actions of governments in the recent global health pandemic was warranted since governments are also under an obligation to take steps necessary to prevent “threats to public health” and that the restrictions on some of these rights can be justified on legal and/or scientific basis and limited in duration¹⁰.

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One thing is clear, though: championing human rights has traditionally been a moral calling and those who fight for its observance, promotion and protection answer a higher moral calling.

Conclusion

States are sometimes caught between a rock and a hard place – and perform multiple balancing acts in order to ensure not only the rights of its citizens but also the well-being and survivability of the nation. Human rights itself cannot be absolutist in nature – built into each and every convention and international instrument is a derogation clause, to be used only in emergencies. What those emergencies would be is never spelt out, and in the way of all international relations documents, has to be left to the state to determine and then justify.

A state with perfect human rights adherence is the gold standard towards all states will undoubtedly strive. One thing is clear, though: championing human rights has traditionally been a moral calling and those who fight for its observance, promotion and protection answer a higher moral calling. In the zest for prestige and international standing, we should take stock of what is in our national interest, where our human rights duties lie, and what middle ground can be achieved to neither trade off one against the other. This is the ultimate duty of the state.

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Malaysia and Human Rights: An Interview With the Undersecretary of Human Rights and Humanitarian Division (HRHD), Ministry of Foreign Affairs, Malaysia



Murni Abdul Hamid
Undersecretary of HRHD,
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Malaysia believes in the need for a whole-of-society approach in promoting human rights domestically, regionally and globally to achieve a more peaceful, more inclusive, and more prosperous society.

How does the human rights agenda fits into Malaysia's Foreign Policy Framework: Focus in Continuity?

The Ministry has come up with 'Malaysia's Foreign Policy Framework: Focus in Continuity' under the current government, based on extensive consultations with various stakeholders, including parliamentarians, the Consultative Council on Foreign Policy, SUHAKAM, academia, entrepreneurs, corporate representatives, professionals, as well as civil society organisations.

A human rights agenda has been incorporated into the Framework, reflecting the Government's commitment to prioritise human rights in its foreign policy. Basically, we believe human rights have an important role to play in promoting nation-building, ensuring security, as well as prosperity, particularly against the background of global challenges such as post-COVID-19 recovery, intensification of major power competition, the global climate emergency, partial reversals in globalisation and multilateralism, increased security threats, and reversal of democratic and human rights gains.

Malaysia believes in the need for a whole-of-society approach in promoting human rights domestically, regionally and globally to achieve a more peaceful, more inclusive, and more prosperous society. We will continue to strongly advocate for accountability and justice for perpetrators of crimes against humanity, genocide, war crimes and crimes of aggression, and highlight groups that suffer from mistreatment, discrimination, suppression and injustices, such as the Palestinians and the Rohingyas. We also seek to ensure

inclusivity in foreign policy, which includes gender equality and youth empowerment.

In your view, was the result of the HRC election a sign of the international community's endorsement of Malaysia's human rights record and practice?

At the recent HRC election in October, Malaysia received a total of 183 votes, i.e. the sixth highest number of votes among the 18 candidate countries. We are very honoured by the strong support shown by the international community for Malaysia. I think it can be construed as a testament of the international community's recognition and confidence in the country's human rights direction and agenda, both domestically and globally.

It is indeed an encouraging start and a strong mandate to start Malaysia's membership at the HRC for the next three years, from 1 January 2022 to 31 December 2024. However, it is also a reminder to us on the high expectations by the international community for Malaysia to make good of its pledges and commitments.

What are Malaysia's immediate priorities in the first few months as a Council member?

As a Council member, Malaysia intends to prioritise the rights of vulnerable groups particularly children, women, the indigenous people, and the elderly. Malaysia plans to push for the empowerment of youths to have a bigger role at all levels of decision-making.

Malaysia will also uphold access to safe, clean, healthy, and sustainable environment as a human right that needs to be protected and promoted.

At the international level, Malaysia will continue to advocate strongly against human rights violations, such as the systemic oppression of the Palestinian people and the Rohingya in Myanmar,

and work together with the international community to rebuild Afghanistan.

What are Malaysia's pledges as a Council member and how does Malaysia plan to achieve them throughout its three-year tenure at the HRC?

First of all, Malaysia pledges to take a whole-of-society approach in the promotion and protection of human rights in the country, including in the monitoring and implementation of our Universal Periodic Review (UPR) consultations. We also pledge to increase our cooperation with the Office of the High Commissioner for Human Rights (OHCHR) and engage constructively with the HRC and its mechanism.

As a HRC member, we seek to promote and protect the rights of the most vulnerable groups, particularly, children, women, the elderly, the disabled, and the indigenous people. We also wish to focus on business and human rights, as well as on the impacts of climate change on the enjoyment of human rights. Basically, Malaysia's pledges and commitments for the HRC are in line with the 12th Malaysia Plan (2021-2025) and Sustainable Development Goals.

On the question of how we plan to achieve our pledges: We intend to espouse a moderate and balance perspective to nurture a spirit of cooperation. Malaysia firmly believes in the long-term value of engaging on human rights issues based on a constructive rather than a confrontational approach.

As a multi-ethnic, multi-cultural and democratic society, we believe Malaysia will be able to share the values of inclusivity, acceptance and understanding as captured under the Keluarga Malaysia concept. So we plan to bring to the table the spirit of constructive and practical engagement, cooperation, inclusivity, impartiality, transparency, mutual respect, and non-politicisation of human rights issues.



Source: <https://www.worldatlas.com/articles/ethnic-groups-of-malaysia.html>



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We believe that despite differences in views and positions, there are more that unite rather than divide the international community when it comes to human rights advancement. We also believe there is no one-size-fits-all solution to the problems plaguing the world. Thus, we will work closely and constructively with everybody - Council members, observer States, UN entities and civil society, to

be the facilitator for conciliation, enabler for cooperation and builder of consensus, in deliberating human rights issues at the Council.

What is the significance of being a HRC member and how does it affect the lives of ordinary people back home?

By having a seat at the Human Rights Council, it will amplify our voice and give us a vote at the UN body that deliberates on various human rights issues all over the world. Thus, we can ensure that our interest will be protected.

Being a HRC member offers a valuable opportunity for Malaysia to contribute in earnest to the global human rights agenda, which has become especially even more crucial and challenging due to the COVID-19 pandemic. Malaysia believes that the role of the HRC is now more vital than ever, especially as the world rebuilds and

recovers from the COVID-19 pandemic, to ensure that human rights is kept at the center. To this end, Malaysia will remain actively engaged with the Council and its related processes to find common ground, build back stronger in peaceful coexistence and ensure that no one is left behind, in line with the Government's priority back home.

We recognise that foreign policy begins at home. Thus, Malaysia believes that the causes and values it promotes must have a domestic basis, and that a demand for progress on the international stage must be matched by movement on the home front. We recognise that being a HRC member will inevitably invite additional scrutiny by the international community, who will be more critical of our actions back home. We should take this as an opportunity and a challenge for us to be more mindful of our actions relating to protecting human rights in the country. Through our HRC membership and cooperation with OHCHR, we can increase exposure, knowledge, capacity-building, and awareness on international standards of human rights to our leaders, Members

of Parliament, government agencies, and grassroots so that they can better understand and appreciate international human rights norms, and expectations. This is reflective of the Government's commitment to continue to make progress on human rights in the country, to further improve the quality of life of its people.

Feminist foreign policy' has been outlined as one of Malaysia's priority areas. Do you think the term 'feminist' might have a negative connotation? What do you aim to achieve through 'feminist foreign policy' and how do you intend to make it relevant in the domestic agenda of women empowerment?

Feminism might have a negative connotation based on historical perceptions on feminist movements in the 1970s, as well as stereotypical and misleading ideas that it is combative and antagonistic towards men, that it seeks to overturn social values, or that it pre-supposes superiority of women over men. In actuality, feminism merely demands a level playing field between the genders.



Source: https://www.unicef.org/malaysia/sites/unicef.org/malaysia/files/styles/hero_desktop/public/IMG_1165.jpg?itok=ZqZu_7Wd



Source: <https://politicalyouthnetwork.org/wp-content/uploads/2019/01/Womens-rights-are-human-rights.jpg>

The term “feminist foreign policy” itself is rather new. It was introduced by Sweden in 2014 based on the conviction that sustainable peace, security and development can never be achieved if half of the world’s population is excluded. The policy is in response to the discrimination and systematic subordination faced by countless women and girls all over the world in their daily life. Thus, a feminist foreign policy is an agenda for change through diplomatic means, aimed at strengthening the rights, representation and resources of all women and girls. Later on, other countries such as Canada, France, and Mexico also adopted feminist foreign policy to promote gender equality and women empowerment in their external relations.

Since our independence, Malaysia has long been at the forefront when it comes to gender equality and women empowerment. However, our focus has largely been domestic, covering sectors such as the economy, health, education, childcare, and violence against women. Furthermore, when it comes to participation of women

in politics and decision-making, we still have a long way to go.

Malaysia is supportive of “feminist foreign policy” as we strive to promote women empowerment and gender equality at all levels of society, not just domestically but also globally. For instance, Malaysia has been sending women peacekeepers to participate in UN peacekeeping missions; providing trainings and capacity buildings to women from less developing countries through our Malaysian Technical Cooperation Programme (MTCP); pushing for women’s participation in international organisations, nation-building (such as Afghanistan), and peace-building processes; and incorporating gender mainstreaming as well as gender responsive budgeting at the Ministry. We seek to further intensify such efforts towards gender equality and women empowerment by engaging closely with the UN, its member states, and CSOs. By doing so, we are also strengthening our commitment to women empowerment agenda back home so that we practise what we preach.

Malaysia and Its International Human Rights Presence

By Fareed Zahin Zawawi

Introduction

Malaysia is a multi-ethnic, multi-religious, multi-lingual, and multi-cultural country. Domestically, Malaysia faces its own hurdles in upholding the human rights aspects within its borders similar to other countries. During the 73rd United Nations General Assembly (UNGA), the then Prime Minister Tun Dr Mahathir Mohamad announced the new Malaysian foreign policy direction which included Malaysian government's pledge to ratify all the remaining core United Nations (UN) instruments related to the protection of human rights.

The ratifying process will be a holistic process in the sense that the points of view from all domestic stakeholders will be taken into consideration in formulating policy. Malaysia seeks to position itself as an active party in putting forward ideas that will enhance the laws, regulations, structures and systems with regard to the protection of human rights in the world.

Malaysia's path to achieving consensus related to issues on human rights has not been an easy one. Despite facing difficulties, the government has placed human rights among its key agenda and will continue to uphold human rights without trading-off the fundamental principles of the Federal Constitution.



Source: <https://www.unhcr.org/asylum-and-migration.html>

Malaysia's Stance on Palestine, Rohingya and Afghanistan

On the international front, Malaysia has always been very vocal on the issue of continuous illegal occupation of Palestinian land by Israel. Malaysia considers the act as an undisguised violation of human rights as well as humanitarian laws. Regardless of the ruling government, Malaysia has consistently been a strong proponent of the Palestinian cause and had never shied away from signalling strong and endless support towards the Palestinian at any international platform. Most recently, Malaysia had endorsed a Human Rights Council Resolution during the 30th Special Session of the Human Rights Council and backs the calls for the establishment of a Commission of Inquiry (COI) over Israel's continuous occupation over Palestine. Malaysia is of the view that the restoration of the rights of the Palestinians is of top priority with the reinstatement of the pre-1967 borders and East Jerusalem as the capital city of Palestine.

Despite being a non-signatory of the Convention on the States of Refugees, Malaysia has portrayed its concern on human rights violations towards the Rohingyas in Myanmar. The number of Rohingyas currently residing within Malaysian borders is estimated to be over 125,000, making up to 57% of the total refugee population in the country. Malaysia has indeed done its fair share of deals regarding the Rohingya issue despite not having an asylum system regulating the status and rights of refugees. During the 16th East Asia Summit (EAS), Prime Minister Dato' Seri Ismail Sabri Yaakob, called upon the Convention's signatories to proportionately share the responsibility to uphold and remain committed to their respective international legal obligations by accepting more Rohingya refugees for

resettlement. Malaysia is of the opinion that the undivided international support especially amongst the signatories will result in positive impact for the Rohingyas as the ethnic group remains the subject of various discrimination and violence.

It has been months now since the United States (US) pulled out all of its troops from Afghanistan, which saw the Taliban taking over the country's administration after 20 years. Once again, Malaysia was swift to pick up on the dire international concern on human rights in Afghanistan. The Malaysian government had established contact with the Taliban leaders to emphasise Malaysia's concern on the basic human rights granted to the Afghans are of an acceptable standard and particularly stressing on the rights of women and democratic practices. The effort to ensure that the Taliban-led government accord the necessary and adequate human rights to the people of Afghanistan goes beyond only the Malaysian government. The Malaysian non-governmental organisation (NGO), Global Peace Mission Malaysia, had also engaged with the Taliban and echoed the same notion.

Malaysia and the Human Rights Council

As a progressive nation, Malaysia is steadily heading towards instilling the good value of human rights amongst its societies. Awareness on human rights amongst Malaysians have continued to grow over the years and hence, the government has pledged to ratify the remaining core of UN instruments related to the protection of human rights. Malaysia is no stranger to the United Nations Human Rights Council (UNHRC), which replaced the Commission on Human Rights (CHR) in 2006. Malaysia was an active member of the CHR and served four terms prior to the Commission's cessation.



Source: <https://www.theguardian.com/world/2021/oct/08/clean-environment-is-a-human-right-un-council-agrees>

With regard to the UNHRC, Malaysia, as part of the Asia Pacific Group (APG) has been elected twice to the council between the year 2006-2009 and 2010-2013. In the recent 76th Session of the UNGA, Malaysia had managed to secure 183 votes to secure its place in the HRC for the term 2022-2024. During the 2010-2013 tenure, the HRC had taken intrepid steps on numerous human rights concerns around the globe which include Libya, Palestine and Syria. As a multilateral council, the HRC had played an agile role in promoting and protecting human rights. From Malaysia's perspective, the HRC's role is now more pertinent than ever as the international community seeks to rebuild and recover from the impact of the pandemic. HRC will corroborate that the human rights aspects are adhered and respected to as the world heads towards the endemic phase. The pandemic had pushed many countries to act along the line of 'desperate times call for desperate measures'. With desperate measures in economic recovery, it gives a greater reason for the HRC to monitor

and ensure that human rights are not violated as a result of desperation.

Malaysia's third term in the HRC is set to begin on 1 January 2022. The move to announce Malaysia's candidature for the 2022-2024 term was made by Minister Dato' Sri Saifuddin Abdullah during the High-Level Segment of the 46th Regular Session of the HRC back in February 2021. Malaysia is privileged to have the full backing of the Association of Southeast Asian Nations (ASEAN) and the APG of the UN for its candidature. The priority for Malaysia is to work constructively with all stakeholders, namely the UN and all its organs and mechanisms along with civil society, academia as well as the private sectors in order to seek and promote a constructive approach to all human rights issues. Additionally, Malaysia will seek to capitalise on the HRC membership to strongly support against the human rights infringement, such as the oppression by Israel on the people of Palestine, the Rohingya in Myanmar and will seek

to collaborate with the international community in order to rebuild Afghanistan.

Building on the notion of a progressive nation towards human rights awareness, Malaysia have made pledges and commitments for the HRC to endeavour a whole of society approach in the promotion and protection of human rights in the assessment, monitoring and implementation of the Universal Periodic Review (UPR) recommendations. On top of that, Malaysia pledges to work with the Office of the High Commissioner for Human Rights and other UN agencies on the promotion of human rights in Malaysia and globally. Malaysia also seeks to continuously engage with the HRC and its mechanisms while embracing a moderate and balanced perspective to nurture spirit of cooperation. In line with Malaysia's domestic intention, Malaysia seeks to prioritise the rights of vulnerable groups, specifically women, children and the indigenous people as well as the elderly.

Malaysia highly acknowledges the youth as the future and is planning to empower youth by means of positioning the youths to play a bigger role at all tiers of decision-making. Another prominent pledge worth noting is that Malaysia will boost its effort to promote a clean, safe, healthy and sustainable environment and will continuously engage with the UN Member States and relevant stakeholders towards realisation of the 2030 Agenda.

Conclusion

As a progressive nation, Malaysia remains committed and steadfast in ensuring that human rights are accorded, adhered, and respected to, both domestically and internationally. Indeed, the plan to ratify the remaining main human rights instruments will pose a challenge as Malaysia is a multi-ethnic, multi-religious, multi-lingual, and multi-cultural country. Malaysia's successful election to the

2022-2024 HRC is a great recognition for the country, and it signifies the trust of the international community towards Malaysia's ability in advocating human rights agenda.

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“Focus in Continuity: A Framework for Malaysia’s Foreign Policy in a Post-Pandemic New Normal”

was launched on 7 December 2021 by YAB Dato’ Sri Ismail Sabri, Prime Minister of Malaysia. The Framework serves as an extension to the previous Foreign Policy Framework of the New Malaysia and complements the Ministry of Foreign Affairs’ Strategic Plan 2021-2025, the Twelfth Malaysia Plan (2021-2025), and the Shared Prosperity Vision 2030.

The Framework sets out the priority areas of Malaysia’s foreign policy amidst the COVID-19 pandemic and aids the conduct of Malaysia’s foreign policy. The priority areas include:

- Revitalise Malaysia’s Links to the Global Economy
- Health Diplomacy
- Digital Economy
- Cybersecurity
- Cultural Diplomacy
- Peaceful Coexistence
- Upholding Multilateralism
- Sustainable Development Goals (SDGs)

Let’s Talk Newsletter is a series of publications based on the priority areas and complements IDFR’s talk show series with the same title – Let’s Talk.



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