

The Global Human Rights Context

Clarence Dias

President of the International Center for Law in Development and consultant to the UNDP

June 15, 2001

The topic that I was given for this talk is “the global human rights context.” I’d like to add a subtitle to this topic to set out the theme of what I will be talking about today. The subtitle is “more of the same is not enough.” More of the same, in terms of the human rights strategies that we have been undertaking, may be desirable but is not enough in and of itself; and the need to search for new approaches and new strategies will underline much of my comments.

I’ll make the comments in seven segments:

First, I will tell you a little bit about me. I spent four years studying a basic degree in economics...and I learned that economists know the price of everything but the value of nothing. I spent the next eleven years collecting 4 law degrees, including two doctoral degrees and that made me realize that I might know all about law, but very little about justice and still less about truth in the pursuit of justice. So I gave up practicing law, which I was doing at the Bombay University, and I turned to a career of teaching law. But, running my classroom in a participatory way long before it was fashionable to use the word participation, one of my students said something that changed my life: he said “those who can, do; those who can’t, teach.” So that was the end of my law-teaching career and I turned to being with the NGO world ever since then.

Now, a word about how I perceive human rights. Despite those 11 years of being taught to be legalistic, I see human rights as being much more than legalistic. Human rights are about being human and staying human. And an integral part of being human and staying human is being woman and staying woman. Not woman having to aspire for equal rights with men by changing who they are. Being a child and enjoying, staying a child during one’s childhood. Human rights are about rejoicing about being human and rejoicing about staying human and being willing to shed blood, sweat, toil and tears in the task of trying to stay human.

My presentation does not claim to be unbiased. I do not believe that a human being can be objective entirely and not be subjective. But I will be frank about my subjectivity. I will not claim to be academic in any intellectual sense, and I will be openly assuming an advocacy position based upon what I feel, what I think, what I know. I will set out a basis for my analysis to explain what I think, what I feel, what I know.

In human rights work, I think the three H’s are very important: honesty, humility and humanity. It is only through genuine honesty that one can be genuinely humble and one can really rediscover one’s humanity. As the Bible puts it, “to thine own self be true.” One of the major challenges that we all have and we never face up to is the formidable task of liberating ourselves from ourselves. We are all set to liberate the world, but we do not realize that a variety of societal factors, in some cases, post-colonial and colonial influences left us, as one author puts us, with damaged, wounded psyches and crippled minds. The task of healing ourselves, the task of discovering in others what we would like to see in ourselves, is really what the task of human rights is all about.

So the first point that I wanted to make about human rights is that from a human rights perspective, we should transcend thinking about “me, you and the other.” Much of the human rights work has been about me/you. And if people don’t fit into the mould of me and you, then the creation of another category of the other to be demonized, to be criticized. And we find this happening in today’s world, who the other is, in a post-cold war where the other is not just a clash of ideology between capitalism and communism. I think that is something that we need to address.

Let me set out straight away my bias that the best way to answer a question is with a question and to invite the process of reflection on why a question is being answered by asking another question. Let me begin with a story of two US Secretaries of State, spanning almost 50 years apart in time. The first one was a man by the name of George Kennen. He cautioned the US presidency at that time (just before the start of the creation of the UN) in an official communication – he called the attention of the US president to the fact that the US was a country in which a minority of the people composing the world’s population enjoyed a disproportionate amount of the world’s resources. He said: “In this situation, it is not surprising that we will become the target of envy and reprisals. In such a situation, we can afford no soft rhetoric of human rights, but we must defend, preserve and protect our self-interests above all others.”

Fortunately, the Roosevelts were there and we have the UN and the Universal Declaration. A few years ago, within the last 10 years, while he was working at the World Bank as a senior economist, Lawrence Summers wrote a memo, which got leaked out. In this memo, he was talking about the growing incidence of fatal cancers among workers in highly industrialized factories in the countries of the industrialized world. These cancers were caused because of exposure in the workplace. He said “Look, these cancers develop in vary late stages in age. My suggestion to the World Bank and others is to export these industries to countries in the developing world where the life expectancy rate is so low that they will not live long enough to die of these cancers.” When this became public - and you can begin to see the globalization style of thinking, of industries roaming the world - Lawrence Summers was forced to resign from the World Bank, and he was rewarded by President Clinton appointing him Secretary of State.

The reason that I am personalizing these two Secretaries of State is not to demonize the US but to put a face on the faceless and to name those who would prefer to be nameless. Because, at the crux of the problems that result from some of the impacts of globalization, is precisely the problem of not being able to say who is to blame, where the acts that have created the harm are coming from. Two thousand people died in their sleep in the town of Bhopal in India when they were exposed to a lethal gas from an eruption of a Union Carbide plant that was producing pesticides in that town. Today, fifteen years later, five hundred thousand people still suffer disabilities from that exposure. It’s difficult to put the face on the faceless Union Carbide. And yet, this is something we must do, because it is people who kill. It is people who exploit. And it is people who enslave. And it is other people who protect and defend those who are in danger of being killed. It is other people who empower against enslavement and exploitation and who seek to liberate.

So it is clear that there are two categories of people: those who are a part of the problem and those who are part of the solution. But the numbers are growing in the direction of an increasing number of people either being part of the problem, or being what they would see themselves as bystanders, but through their silence are complicit in the variety of human rights denials and violations that take place in the world today. So I think we need to think beyond the conventional notion of victims and violators that the human rights approach has taken. And also, we need to address the category of human rights bystanders, who if they continue standing by, will become

either victims, or violators.

We are talking about human rights and their meaning, we are talking about globalization as part of the global context, we are talking about the privatization of development, we are talking about the need to reassess human rights strategies; and we are talking about the new solidarities and alliances that need to be forged if we can cope with the solidarities and alliances that have been forged in the globalized economic world against whose consequences we often have to struggle.

Quickly, the concept of human rights: human rights are legal rights, guaranteed by international instruments, guaranteed in national constitutions and law, or in regional instruments. But more than just legal rights, they are also human rights. Rights that are inherent in the very nature of the human person. The power of human rights lies in the fact that they are both legal rights and human rights. And it is creating the synergy between the two that can enable the fullest realization; an imbalance between those two will lead to the growing gap in fulfillment of those rights. Human rights exist, as noted one human rights scholar, to keep human life human. Human rights exist, as Upendra Baxi put it, to safeguard that most precious of all human rights, the right to be human, of which the right to be woman, must be seen as an integral part.

Human rights exist to ensure that inhuman wrongs that exist in the world will be addressed, redressed and prevented. So we must not lose sight of why we are concerned with human rights. We are concerned about human rights not just from a narrow legalistic point of view of seeking to enforce legal rights of individuals in courts of law. We are concerned about human rights for the reasons I just mentioned, but also because human rights are central to human well-being. The human person cannot live a life worthy of existence if that person's human rights are being denied and violated. Human rights define and enshrine our very well-being. They defend and ensure our human futures. I'm stressing this because there is a major non-debate around the issue of universality, cultural specificity and the role of values in relation to human rights. It's for you to come to terms with this non-debate. I will say a few words a little later when we speak of universality.

But the simple point is that if you sat down with a piece of paper and tried to see the purpose of human rights, human rights reiterate certain basic values about being human. If you tried to make a list of the kinds of values that human rights exist to try to safeguard, and then you turned to the Universal Declaration and looked at what are the values of the declaration, whoever you are, whatever age group, whatever gender, from whichever part of the world, you will find a remarkable similarity when it comes to identification of the core values. This is important. How those core values may be realized may vary from culture to culture, but human beings are human beings everywhere. And that is where the seeds of universality are to be found: in the very diversity of the human person. I will come back to that in a moment.

What is a human rights approach based on this kind of an understanding? I am stressing this so much because I see human rights as crucial in the struggle against the negative dimensions of the world we live in today. The human rights approach, as a Czech author put it, is the struggle of man over power; is the struggle of memory over forgetting. Human rights is about accountability, it is about responsibility, it is about memory. Another poet put it: "let us go not into that gentle night, but rage, rage against the dying of the light." This is one of the philosophies behind the first 40 years of human rights work: to rage against human rights abuses wherever they took place and to mobilize the international mobilization of shame against those who are abusing human rights. But for me, today, a human rights approach is best captured by a phrase I used to use as a child, which goes like this: I used complain that I had no shoes, until I met a child who had no limbs. A human rights approach in today's society is about determining who has shoes

and who does not. Who in society has limbs and who does not, why and with what consequences? Why is it that some people in society who have no shoes, or metaphorically, nothing to keep their skin from coming into contact with carcinogenic pesticides in the fields that they are working as landless agricultural labourers? What's the consequence of not having shoes?

It's about understanding and taking remedial action. Similarly, it's about understanding why some children have no limbs. Because of landmines and other indiscriminate weapons of mass destruction, or because of thalidomide that our government's drug regulatory authorities have failed to protect us against. So the core of a human rights approach is about analysis and action. That's the perspective that one must take when addressing globalization and how it came about.

I'm not going to attempt to define globalization; you've read in your materials that it is impossible to get a common agreement about its definition. There are different dimensions to globalization all subsumed in one category, sometimes much too glibly. There is the economic dimension, which I will mainly stress upon, there is the technological aspect, and there is the communication revolution, related to the technology. But there is no doubt that the technological dimension is one of the most important aspects from a human rights impact concern point of view. Because technological development didn't come to enable economic globalization - the technological aspects, the Internet, and so on, have tremendous beneficial aspects, but they also have their dark side.

For example, the Internet is being used for child prostitution rings, trafficking in women, drug prostitution, and arms sales. That doesn't mean that the Internet is something that should be prescribed and prohibited. In fact, it's impossible to try to regulate the Internet anymore, most states have learned this. The Internet has made, especially for heads of states, life in a goldfish bowl. In terms of accountability, it's very hard to hide facts wherever they might occur; immediately it is there. But the Internet is only the next line of progression of the technology that I remember my friends in Thailand using so well. It was during the time of the struggle against the military in Thailand. There was a photograph that appeared in the western newspapers of the King summoning the General and the Prime Minister. Both came crawling before the King on their knees. The photograph of the General crawling on his knees was faxed to the human rights groups in Thailand. Posters were made and were widely disseminated on the streets of Bangkok and elsewhere, even when 18 students were being shot.

The power and mobilizing influence of the fax machine can be multiplied in terms of what's possible to do today. The fax machine played a similar role in Nepal's struggle for restoration of democracy. So the technological dimension has its dark and bright sides. In the communication dimension, the world has shrunk, but only for those who are able to take advantage of the shrunken world. You keep reading again and again of people whose parents have spent their life savings trying to get their child smuggled out of the country to a better future, illegally locked up in coaches and buses and dying of starvation and of the conditions of heat and others in those situations. So the world is shrunk, but for whom? Today's mining companies' official slogan is that they can now dare to go where they have never dared to go before. I think the challenge of the human rights movement is to be able to say that we dared to go where we never dared to go before.

But how did we get to the present situation regarding economic globalization? We can't just blame the WTO, the World Bank and the others. From a developing countries perspective, our leaders let us down. They embarked upon prestigious, very expensive development projects that failed. They got us into enormous debt siphoning away money that was paid to repay the debt in

Swiss accounts, as we have seen again and again. And there is this cycle of debt relief for whom? For the creditors. When the IMF made its record loan to the Indonesian government for 67 billion dollars, most of that money was given to pay off creditors.

Today when the World Bank is going around promoting its poverty eradication strategy, it is introducing something called the PRSP - an acronym for the Poverty Reduction Strategy Paper. And the crucial emphasis is on the word paper because it is nothing more than that. It is a paper that was drawn up because the Directors had said that it cannot allow the release of any further funds to the least developed, heavily indebted countries unless they adopt a poverty reduction strategy approach. So the Bank says if that is what you need, you give us the paper, we'll get you the money. But take a look at the poverty reduction strategy papers for Indonesia, the Philippines, several Asian countries that I am familiar with. You will find that there is no strategy about poverty. There is no mention about how the money is going to be used in relation to poverty, etc. So I think the issue is really one of analysis, understanding and taking action, wherever those might be.

Two other dimensions of economic globalization that are extremely negative from a human rights point of view: as part of the structural adjustment programs of the early days of the IMF and the World Bank, there were two key policies. One was privatization and the other was deregulation. Privatization was needed because in many countries there were bloated state enterprises that were making heavy losses and nevertheless paying huge amounts of salaries to those related to the political bosses of the country. There was no doubt that you needed bureaucratic reform, you needed privatization, but not privatization as a panacea to all possible ills in society. You have the situation now of privatization of health care and education. In countries like Sri Lanka, this is rolling back the progress of 40 years of independence. In Kuala Lumpur, there was a recent meeting of the Office of the High Commissioner with the governments of the Asia Pacific regions, national human rights commissions, NGOs, the World Trade Organization and the World Bank. They were looking at the impact of globalization on the enjoyment of specific human rights. I leave behind with you the report of that meeting as well as a brief note I wrote, which looked particularly on the impact of globalization on health. Those who can least afford to pay are being told that they have equal access to the facilities for health and education; they must earn more to be able to avail themselves but will have quality, privatized health care and education as long as they are willing to work hard enough to pay for it.

Deregulation has had a side effect. Now, most societies were overly regulated, but the answer is not mindless deregulation. Because into that deregulated global void has moved organized crime. You can see the situation in various countries where our governments are being run by politicians who are criminals - criminals who, because they have been convicted of criminal offences and are serving jail sentences, put up their wives as the candidates who then get elected into office. What is the talk of governance, politics and human rights in this context of deregulation?

The human rights framework, the ILO conventions on worker's rights, and the international environmental treaties provide us with the international framework for regulation; we don't need anything more. We really need those frameworks to be applied instead of being displaced by the new law of international trade and investment that has come up in the last few years in the last round of trade negotiations, under the GATT. I was told not to use acronyms and I won't because they won't translate well, but I can't resist using the acronym GATT, which really stands for Greed, Aggression and Theft through Trade! You have this deregulated void that is being filled and displaced by international trade law, leading to crazy results. Canada cannot prohibit the export of its fresh water because a company in California that is importing it to water its lawn is successfully suing Canada for the right to do trade in business under the North American Free

Trade Agreement. Similarly, companies manufacturing death-saving pharmaceutical drugs for the AIDS cocktail treatment are being prevented from selling them by the pharmaceutical companies who hold the patent rights on such treatments. They, too, have realized that they have overstepped their bounds and they have come to an agreement and dropped their suit against South Africa and India.

Let me begin to wind up by moving us from analysis into action. We are told that there has been a paradigm shift from development through aid to development through trade and investment. It is true that aid has shrunk and shrunk. Official levels of development assistance, both bilateral and multilateral, are at their lowest levels ever. But we should not accept so unquestioningly that there has been an abandoning of development through aid. It cannot be substituted through trade and investment. Trade and investment are one thing, development is another. How can a country's national priorities be exactly matching the multinational priorities of the corporations involved in trade and investment? Trade and investment sustained at the levels at which they are being promoted through the multinational media and cable television is spreading a Coca-Cola culture of consumerism. Greed is subsuming need in country after country. The gap between the rich and the poor is growing between countries and within countries.

The statistics on these are very damning. Just before the World Bank was being formed, the ratio between the richest and the poorest countries of the world was 1 to 19. In the year 1999, that ratio was 1 to 1999. And why does the gap matter? It matters for many reasons, but I'll give you one statistic from the UN. The two countries in the world with the highest life expectancy rate are the two countries in the world that have the lowest income inequality gap. I'll leave you to speculate which two countries they are. All of the least-developed countries in the world, which have the lowest life expectancy rate, also have the largest income inequality gap. So one has to take seriously the income inequality exacerbation that the present policies are globally inducing and one has to take it from a human rights perspective.

How can we go about this? Let me just try to reflect on the way we have done human rights work through the years. In the early stages of human rights work, we got deflected by a number of false dichotomies – between civil and political rights on the one hand and economic, social and cultural rights on the other hand; and between the rights of the individual and the rights of communities and collectives. We have overcome the dichotomy; we now understand that all human rights are holistic and interrelated. It's no longer a question of bread versus freedom, but rather who has how much bread in society and how much freedom has that person had to give up in order to continue to enjoy that bread in society? The reverse is equally true: there's lots of freedom for the poor who are starving, but what does that freedom mean for them?

In terms of the human rights approaches that we have taken, we started with a reactive human rights approach. I have 5 transparencies to put before you. Traditional human rights approaches either were reactive, focusing on violations, waiting for the violation to occur or reacting to the violation after it occurred. More recently, there has been a realization that you cannot just react to violations - they are never-ending. You need pro-active approaches that aim at preventing violations from occurring.

Next - this is not to say that one is choosing one approach over another. The approaches are complementary, both are needed, but they have not been practiced in a complementary way. There have been many human rights organizations that have only focused on violations and not enough on prevention. A typical "violations" approach has focused on the violators themselves and has tried to impose sanctions. Even here, internationally, the system is inadequate; we still see major human rights abusers going around the world living lives of luxury and retirement after

they have fled their countries with utter impunity, incapable of being punished. We notice a recent trend against impunity and here again, global campaigning and global communications have helped with the Pinochets of the world; have helped with the development of the international criminal court so that a human rights abuser will be an international criminal liable to be tried for his/her crimes wherever he/she may be.

But, the “violations” approach has not sufficiently focused upon the victims. Two examples: the comfort women in Asia remain unredressed, merely because they want an apology from the Japanese government before they will accept Japanese dollars by way of compensation. The Bhopal victims remain unredressed, mainly because a multinational corporation has been able to buy the Chief Justice of one of the most independent Supreme Courts in the common law world, India. But another dimension on which a “violations” approach has been inadequately focusing has been: what do the violations tell us about the nature of our system? The police abusers, the fact that you can’t get a piece of paper for a license to which you are entitled as a matter of right, pushed from one desk to another without paying a bribe. What does it tell us about the systems and what reforms are needed to improve the systems to improve implementation? Similarly, a “violations” approach needs to more effectively harness the potential power of what I referred to earlier as the human rights bystander. How can one mobilize bystanders, raise their awareness and their indignation that what is going on is inhuman and must stop and raise their commitment and concern to work together to stop it?

Let’s turn quickly to the proactive approach, which most NGOs, especially in the developing world, are just beginning to grapple with and yet which is really the future of the human rights world. A human rights approach that is seeking to prevent abuses can have at least three different components: promotion of awareness of human rights through human rights education - but remember that human rights education is an end to the means of realization of all human rights for all. The second part of a proactive approach is protection - here a number of NGOs have helped protect people by using existing protection mechanisms, for example, by going to courts if the court system is working, etc. But the newest dimension is in which development is coming back as a counter to the damaging effects of globalization, development as practiced bilaterally through the CIDAs (Canadian International Development Agency) of the world, multilaterally through the Asian development bank, the World Bank and other regional development banks, in order to promote the right to development as a human right and in order to promote the realization of human rights through development.

This is a whole other area and this is why I focussed on the rejection of this so-called “paradigm shift” from development through aid to development through trade and investment. Development is not only a matter of development between developed countries and developing countries, but it is also nationally, how our budgets are being spent. Social Watch has been doing extremely good work monitoring, in country after country, how national budgets are being allocated and then trying to monitor how they are being spent on the ground.

To end, let me sum up what my approach to addressing these problems would be for the moment. I suggest that what we need is “glocalization” - a combination of globalization and localization. We were taught to think global, act local. And when we did that, we invited the World Bank and the multinationals in. It’s time to think local, act global; to understand the impacts of globalization on us and the people we work with. And to try to work to address these impacts at the family level, at the school level, at the community level, at the national level, at the regional level and at the global level. To do this will involve new alliances, reliance upon new partners. But I think it is still not a complete break with traditional human rights work.

Let me just roster the human rights tasks that need to be infused by this philosophy of “glocalization”: the first task is about telling it like it is. We are seeing the global media manufacturing stories based upon their attention span. Second task: putting a face on the faceless. Naming, blaming and holding accountable. That’s what Seattle, Prague and Washington D.C. were all about – diverse groups with different concerns went together. The third task is (that of) defending key space, without which we wouldn’t be able to work. For example, when the Secretary General of the UN, in his global compact with business, invited multinational business to come in as partner in the work of the UN, NGOs around the world joined together in a coalition for a corporation-free UN. You can find that information on the Internet, who these NGOs were, and they consist of basic community groups all the way to sophisticated international NGOs.

Similarly, when the multilateral agreement on investment was blocked, you can see how grassroots NGOs were able to exercise power. When the landmines treaty was brought into existence and the international criminal court statute was brought into existence, despite US opposition, you can see how the new linkages, how the space was kept and the new linkages were forged.

New linkages will require new concepts, new data and new tools to be able to undertake human rights analysis of this sort. In particular, something that human rights groups have never done needs to be done as a high priority. Not for external export, but for internal diagnosis and action. That is the task not only of monitoring violations of human rights, but also monitoring lack of progress in realization or even retrogression in the enjoyment of human rights, which Peter Leuprecht mentioned in his opening statement. We need to revisit human rights education, so it’s not only about education but about human rights. The “e” in human rights education stands for empowerment as well as education. We need to revisit the concept of *justiciability* -which is that a right is not a right until you can enforce it in a court of law - and replace it with the concept of *justice-ability*, which is the ability to get justice through the justice system by enforcing your rights whether through legal processes, mass demonstrations, protests, mobilizations etc. We need, in sum, to be able to think, to dare, to go where no one has gone before.

Let me close with an anecdote about two lifelong friends, a chicken and a pig, who were going on their usual morning walk together. The pig turned to the chicken and asked “What do you think we should have for breakfast today?” Quick as a flash, the chicken answered “Bacon and Eggs!” The pig says “Hey, wait a minute! You only want to participate, yet from me you expect total commitment.” We will reach a stage of human rights realization in our work only when total commitment does not become synonymous with self-extinction.

Thank you.

Moderator

Thanks very much for those inspiring remarks. It’s now your turn to ask questions. I encourage those who haven’t yet had the chance to ask questions to approach the microphones.

Participant

Thank you, Mr. Dias. I was wondering if you could comment on the Free Trade Summit of the Americas, held recently in Quebec City? Also, could you touch on what are the alternatives of globalization?

Participant

I am from West Africa. I enjoyed your talk today, because it brought out both the positive and negative sides of globalization. In the third world, it is mostly the negative side of globalization that we face. My question is about the international criminal tribunal that you spoke of. Is this the same tribunal as the one established in Tokyo in 1993? If so, how is such a tribunal objective and independent? Because it is still the G7 countries who will be making the decisions at the tribunal.

Participant

Thank you for your presentation. I have one comment. In 1994 in Haiti, we brought Jean-Paul Aristide back to power, after the military coup of 1991. Upon his return, Aristide used the concept of democratization and sometimes modernization to speak of the structural adjustment plan, which was part of his government plan. The application of the concept of democratization or modernization led to a marked shift as public enterprises became part of the private sector. Over half of civil servants lost their jobs and today we are experiencing a drastic increase in unemployment, poverty, organized crime and flagrant foreign exploitation and domination. What kind of “democratization” is this?

Participant

Mr. Dias, I heard yesterday that the way to promote human rights is to implement human rights policies in the World Bank and the IMF so that they can pressure undemocratic countries to become democratic and improve their human rights record through loan strategy. But in fact, the human rights policies will be defeated if the economic interests are more important. For example, in the case of Indonesia, the World Bank helped Indonesia with a huge loan even though they know that 30% of the money has been corrupted. The worst is that the money has been used for military action in East Timor and Papua. So how can we count on these organizations to protect human rights when at the same time they abuse human rights?

Participant

I would like to thank the speaker for his presentation. First, with regard to new democratic emphasis and good governance and human rights - the extra emphasis that is placed on these three concepts at the moment: these three can be linked to accountability of our national states. As our countries struggle to become more democratic, and as our governments struggle to become good governors, they act from demands that are imposed by the World Bank. Those demands do not necessarily serve the local communities to which the government is accountable, but rather, they serve the World Bank. The World Bank is unfortunately not accountable to the communities those states serve. So I was wondering, in this era of globalization, are democracies for the people, or democracies for larger, powerful institutions? Who do states serve? Are they accountable to the people, or do they serve the World Bank? Would you call them puppets?

The second question relates to the concept of universality. While I understand that the abstract terms may be good for every human being in the world, I want to move one step above that. I want to move from abstract terms to practical realities. It's all written in our constitutions, in the UDHR, it's everywhere. But why don't we see it? The whole concept of universality has to be linked to actual actions, not abstract terms on paper. Those people who propagate those terms must also act those terms. Those terms can never be universal as long as they are not practiced in

a universal way.

My last question is with regard to conflict resolution matters in the era of globalization. We have the new international court of justice. Sometimes, I also feel that these structures tend to serve the more powerful. For example, the Rwanda tribunal is executing cases, taking criminals that committed the crimes in Rwanda. But what about the people who sold the arms?

Moderator

I will give Mr. Dias the chance to respond to your questions.

Clarence Dias

Your questions fall into a set of clusters. The question of universality has come up again. The question of advantages and disadvantages of globalization came up: how can you maximize the positive and minimize the negative aspects? That has been a recurring theme here.

First, on the issue of universality: it's important to understand what universality means. Universality means that all human beings are entitled to human rights by virtue of being human beings. Universal human rights have not been achieved simply by virtue of having a universal declaration of human rights. It was not achieved by affirmation by governments. The challenge of universality is to work towards universality of realization. To recognize that in any society at any given point in time, human rights are not fully realized universally and to work towards the realization of rights for those who do not yet have them. We hear the word empowerment very often, but we don't hear the word disempowerment very often. We hear the words universality of human rights, but universality can only become a reality for the "have-nots" if some of the rights of the "haves" are similarly curtailed.

But how those rights are curtailed will itself be subjected to human rights standards. So you don't arbitrarily confiscate property. You don't throw people in jail. You give them the due process of law. And if law is not working in your country, it's important to be able to defend and restore the key spaces without which we cannot work. We have the key phrase in human rights of the "rule of law." The rule of law does not mean the law of the ruler. Rule of law is defined in human rights terms that no person is above the law. All persons are entitled to equal protection of the laws. And for every wrong there is a remedy. These are the three components of the rule of law, spelled out in the international bill of human rights.

Similarly, you have this phenomenon of democracy *conditionalities*. Democracy conditionalities, as well as the economic conditionalities of privatization and deregulation. I see them all in the similar category. The rhetoric is one thing, but what they are seeking to achieve is something else. Democracy conditionalities are not really to secure democracy in the countries in which they are being imposed, but rather it is for somebody externally to choose who will govern in that country. An American president said of President Marcos when he was at the height of his rule that "he may be a bastard, but he's our bastard." That's how the world of superpower politics works. But this doesn't mean that we should abandon concepts just because they are being misused. The other "d" in democracy is decentralization. The other "p" in privatization is participation.

Basic human rights: how do we work to reform community level structures of governance? At the moment, there is a big movement in all countries towards constitutional reform, in which the whole question of local governance is being reexamined from the point of view of either co-

opting it to have further control, or from the point of view of being a genuine opportunity to participate. How the struggle will play out will depend upon the role of human rights education in understanding what the struggle is about and in refusing to accept structures of co-optation as structures of decentralization and participation.

Regarding the negative and positive aspects of globalization, I want to say one thing. Let us do a reality check: in terms of our own experiences, let us put down our observations. If we can find something that is positive, let's try to reproduce that at a different level. Free trade, unless it is fair trade, is not going to provide the answer to the world's problems. And fair trade, by definition, cannot be free, because it has to be regulated so that certain elements that are misusing freedom to gain an unfair advantage will be corrected. So it goes back to what was said earlier, that we have to break through the rhetoric of futility that is being preached as the panacea of globalization. "There is no alternative," "Like it or not, it has already happened;" yes, but from what has already happened we can see how it has already happened and try to correct some of the things that have already happened, focus on the victims, focus on the violators - and that brings me to the issue of international criminality.

The international criminal court is an organization that was created in spite of the United States twisting the arms of smaller governments, threatening to cut off aid if they signed the Treaty of Rome 2 years ago. Nevertheless, more than 130 countries have signed the treaty. The next step is for countries to ratify it. The United States is still outside the international criminal court structure. It has neither signed nor will it ever ratify the treaty. Their representative said "We want an international criminal court in which we have assurances that no citizen of the United States can ever be brought before it." This is the legal negotiator in the Rome Treaty process in Rome, on record. Other countries answered, "If that's the case, we want an international criminal court in which none of our nationals can be brought before it. And what do we have left?" What is left becomes an international crime: instead of creating an international criminal court, we are creating a sham.

Now, the international criminal court process is one which, the NGO community does not sufficiently appreciate, is an area for struggle. Right now, what is going on is the process of defining what are international crimes. This is being done in a series of intergovernmental meetings of those who have signed the treaties. Some NGOs are participating, but not enough. It's very important because, among the categories that are being defined as international crimes, are crimes against humanity and important crimes against women, including systematic use of rape as a weapon of war. What is the consequence if something is defined as an international crime? An international crime is subject to universal jurisdiction. We don't have to wait for an international criminal court to try someone who has committed an international crime. An international criminal can be tried anywhere in the world. This is why Spain was attempting to try General Pinochet and other countries are going to continue to try people, dictators who have killed their own people around the world. So this is an important human rights struggle in which human rights NGOs are not sufficiently participating.

Accountability of nation states, yes - but you have to understand that nation states operating in intergovernmental organizations, when they join unholy alliances and blocks on particular issues for particular voting purposes - you have to understand the important international organizations in which international states are not really the members calling the tune. The international organizations of trade and finance are international only in name. Some 130 countries have joined the World Trade Organization. But who makes the decisions? The key elements to accountability are transparency and participation. Why are the WTO decisions made behind closed doors? Why do we not even know who has entered that door and who has not, let alone

how they have voted behind doors. Why are those symbolic doors not all over the world, and not just at their headquarters?

It's not just the issue of the variety of regional trading agreements that are being entered into. They are all illegitimate in the sense that they seek to advance the trade of those who are members of them on terms that the more powerful members of them have signed onto. The WTO, in this meeting in Kuala Lumpur, was assailed by Asian governments saying:

“You listen to the interests and you make policies reflective of what the powerful, developed countries are telling you. We outnumber them twenty to one, but you don't listen to us when we talk about trade restrictions on textiles, agriculture, and the whole issue of pharmaceuticals and intellectual property rights.”

So, I think the question here is that we need to frame issues as human rights issues that are not currently considered as human rights issues. If you talk about positive aspects of globalization, whom are these positive aspects benefiting? Why has labour become exploited all over the world? We have a global sweatshop, a global pollution dumpsite, we have migrant workers exploited as we've never seen before in ever larger numbers. We have this phenomenon of companies going, exploiting workers in the country and then leaving the country without paying them their wages and then hiding behind their corporate identity. So I think these issues are the issues around which the human rights agenda of the future needs to be framed. The strategies need to be ones that bring together economists who can analyze the fake nature of certain World Bank and WTO policies and others who can help take action, including through the mobilization of alternative media.

Moderator

One more round of questions:

Participant

I would like to thank Mr. Dias for his speech, which was refreshing in its “objective subjectivity.” I will make a comment and ask a question. Mr. Dias said that we, in the third world, should not simply blame the IMF and the World Bank for our current situation, but rather that is our own governments who have let us down. I think this comment is valid if all third world governments had been legitimate - in this case, we would have said that these governments had made free and democratic decisions, but unfortunately, had let us down. Thankfully, Mr. Dias nuanced this comment throughout his speech and during the question and answer period to show that there is an “international alliance of oppressive forces acting, operating and thus permitting governments to be (illegitimate) governments”.

My question now, in your statement of alternative solutions, you have a rather prospective approach. My question is to know, can we simply turn the page? Must we simply think of the future and forget all that went before? Should we not also sweep the house, bring all of the human rights violators to justice, restore all of the stolen or violated goods? Would this not be a good solution in order to build a good foundation for the future? Can we simply turn the page so as to re-establish rights?

Participant

Thank you Professor, for your very enlightening presentation. We have been discussing

globalization since yesterday, and when we were discussing, we noticed that we were presenting mostly the negative effects of globalization. I would like to point out some positive aspects, for example in information technology. We have been able to use this technology to advance the cause of human rights. For example, when we toppled our President Estrada (from the Philippines), one very effective tool was when we used texting messages through mobile phones to mobilize people. In less than 5 days, we had a new president. So this is one very positive aspect of the information revolution. In particular - I work with Migrant workers - just this year, we started getting in touch with our people in the Middle East, particularly in Saudi Arabia where there is a lot of abuse. This is done through the Internet and we get to deliver more prompt action to the case of distressed workers.

My question is about one of the elements of globalization, trade liberalization. In the case of the Philippines, we have opened up the market to goods from abroad. Our markets are flooded with apples and oranges; in the old days, we would not have the chance to eat these fruits because they were expensive. But now, with the flooding of the markets, people started to buy the apples and oranges and not local fruits such as mangos because they have become more expensive. So on the individual level, the consumers, who have very little money, they would go for the apples and oranges. They have this feeling that they have been deprived, and that this is their chance. On the macro level, this is very bad for the domestic economy. I am posing this question, how can we deal with the individual and the macro level?

I am here as an African from the third world. I first have a question to ask, and then a comment to make. In the context of globalization, how can we, human rights workers, continue to defend human rights with so few means, given our dependence on often-dubious, foreign financing and in the face of the lethargy of our governments regarding crucial problems facing our population – such as poverty, illiteracy, unemployment, immigration, violations, violence, and so on?

You speak of a coalition, of solidarity; it's a good thing, we would all like to reach that point on our continent. But the handicap is that not all the world possesses information technologies. There are some organizations in Africa that don't even own a computer. The second handicap is that of French versus English, which makes us feel as though we are not yet free and which widens the gap between us, while our interests are similar and our cause the same.

My comment now, in relation to women and globalization: everyone knows, through the mass media and publications, that in Muslim countries, the mantra of integrationists threatens more and more the rights of women, reducing them to slaves, I would dare say.

Participant

I would also like to most sincerely thank you for your presentation. And I am glad that most of what you spoke about I agree with, except one small thing that I would like you to shed more light on. That is, you made a statement about a woman being a woman and a child being a child. I am concerned about that because this could be subject to various interpretations. Do you not think that it could form a basis for abuse of women's rights, that subjective sort of interpretation?

Participant

Thank you very much, Mr. Dias. There is one specific comment I want to make. From all that I have learned about globalization so far since I have arrived here, I am left with little hope as an activist and a citizen of a third world country. And it seems that this is a starting train that is going ahead, like colonization and capitalism. Can you please rekindle some hope in me as I

leave Canada to go back to my country?

Participant

I'd like to continue the discussion about debt, and especially international debt, and how we pursue this issue as a human rights issue. As you know, at the Cologne meeting, they promised to cancel 100 million dollars, and then in Okinawa, they saw that only 10% of that debt was cancelled. So really what the creditor nations had was 90 million dollars in their pockets. Then they are making these fine distinctions: who gives them this right to this HIPC 1 and HIPC 2 ("highly-indebted poor countries"). How do they come to these statistics, how do they make these decisions? My concern is, in India where only 30% of the population benefits from the fruits of globalization, what happens to the other 70%, the 360 million people who are below the poverty line? We do not have this right for full development, so the absence of poverty can be included as a human right. So the question is, here we have a contrast where the US, as you said, put a face on the faceless, is the largest debtor in the world. What mechanisms do we have to do something to the US, which kills millions of people in the Operation Desert Storm, or the sanctions in Iraq where millions of women and children and others have suffered? What mechanisms do we have to do something about this?

Participant

Thank you for your presentation, Dr. Dias. In your speech, you mentioned that we should move away from the concept of *justiciability* and replace it with justice-ability. To what extent does that differ from the traditional approach to human rights protection, which focused on the judiciary commissions, ombudsmen and non-legal forum such as the media to protect human rights? My question is really trying to get you to explain further this concept of justice-ability, because my concern is that when you speak about due process in human rights, that it only penetrates as far as procedural justice is concerned. To what extent can we use human rights and advance human rights in a substantive manner that will allow us to alleviate poverty and inequality in the world today?

Participant

My question is very brief. You spoke of the North-South dichotomy and I have no problem with that. But isn't it true that Northern states have also been hijacked by big business since the late 1980's and that in Europe and America right now, there are citizen actions to recapture the state from big business - so that in reality, we could be just fighting one war, not war between Southern states and Northern states?

Secondly, as far as I know, the US has not paid its debts to the UK after it became an independent state and Britain has also not paid its debts to the US after the Second World War, so we have some good precedents for not paying debts. I don't know why you make the IMF and the World Bank seem so inevitable, as if we have to co-operate with them in order to remove the shackles. The sun was never meant to set on the British Empire, and Belgium's Congo thought they would rule Zaire for the next 100 years. If we could get out of political shackles, what's so difficult about getting out of some IMF/World Bank shackles?

Participant

I am an economist who is asking you a question as a human rights specialist. It seems that particularly in the last 10 years we have seen the expansion and enshrinement of the rights of

property on a global scale. It is the rights of investors that have been expanded, reinforced, *conditionalized*, backed up by *conditionalities* on loans, by the terms of the WTO, etc. My question is, what has happened to the sovereign rights of governments to regulate, to rule, to govern if you wish? To what degree has there been a deliberate effort to paint or present third world governments as inherently corrupt and useless and incapable of governing? What has happened to the right to development, as understood as a social project of developing countries as it was practiced in the past? And finally, in what way can the rights of property be put at the same level as the other human rights in the declaration of the right to life, health and education, and so on?

Mr. Dias

I was making no apologies for the (World Bank and International Monetary Fund). I just think that they can be toppled more effectively if their role and those with whom they are co-operating on the ground can be exposed as well. Whether they are co-operating with corrupt governments or corrupt corporations, getting the whole conspiracy (...). Second, I think the Fund is in the process of dismembering itself and so will the Bank.

Somebody asked for hope. The hope is that this model of global capitalism will implode, it will destroy itself from within. But I am not very hopeful about that, because who will be destroyed when that happens? A lot of big names, but a lot of innocent people as well. The answer is not to wait for the solution of imploding, but to struggle. I think the bank is struggling for its own survival; it's working with less money than ever before, it cannot control the regional banks, and therefore, it is coming out now with social clauses, social policies, claiming to be something different. But the fact is that bilateral assistance will play a much greater role than multilateral assistance. And the question is whether that opportunity can be seized through this kind of relationship, people-to-people, that I think Canadian people have in many cases with a number of countries in which Canadian CIDA is working. So you push the agency to do what you think should be done and what people think should be done in the countries, but you also raise your voice when they are doing something in reverse.

Justiciability: I am not talking about reducing the role of the courts. In fact, it is important to work at the national level to get more and more of the human rights justiciable, in theory at least. But you may not get your justice through a court of law alone. That's where one was saying if justiciability merely means your right to a day in court, then that's what I'm criticizing as being inadequate. You need, as a result of your day in court, to have access to other remedial institutions the court orders, executive or legislature to undertake the remedy that they are responsible for. So it's not an either/or. You do want legal remedies through courts, but you also want other parts of the justice system that will be more participatory and less elitist than most judiciaries tend to be.

In terms of North and South, I think of those terms in a totally different way. I define those terms in relation to the reality of the human condition. Because there are pockets of obscene affluence in the poorest countries of the South, and there are pockets of extreme poverty in the richest countries of the North. So I do see it as one struggle, between those who have too much and are unaccountable and those who have too little and are powerless and enslaved, wherever they might be. That's where the interesting linkages are coming between countries in the developed and the developing world. I don't see it as the North as only developed, and the South as only developing, world, but the link between the condition of the human person comparatively within the country and between countries.

In terms of the various possible solutions, there are many. I think certainly, debt abrogation is one of the solutions, wiping the slate clean. But they are not either/or. Cleaning out our own house as part of a deal for debt renegotiation, as part of a deal for more development assistance, etc. You need to be able to confront the fact that the donors have ultimately the right to give or not to give. And you've got to convince the donors one way or another.

Regarding the positive aspects of globalization, I think the examples given were very good. On trade liberalization, you realized that the fruit is poisoned. It might be cheaper, but it is poisoned. Economists and others have to work on the concept of fair trade versus free trade, how you need fairness in trade liberalization; and that fairness includes a different kind of social safety net for people who have to be put out of business and have to be retrained for another business, as a result of the fact that the way in which subsistence fisherfolk used to fish in the seven thousand islands of the Philippines is no longer a reality today.

In terms of how we can defend ourselves as human rights defenders, I'm glad that was brought up because on the fiftieth anniversary of the Universal Declaration, a very important negotiation process was resolved by consensus with unanimity: the UN General Assembly adopted in its regular session what's called the UN Human Rights Defenders Declaration. It has the most comprehensive sets of rights of human rights defenders, duties of governments, etc. It remains puzzling why the human rights NGOs, who fought so hard during the twenty-five years to negotiate this document, are making so little use of it. We have seen that the UDHR set a Guinness world record as the document that has been translated into the most languages. I haven't seen a single translation of the UN Human Rights Defenders Declaration as of yet. Why are we failing to empower ourselves with the tools that are at our disposal?

About a woman being a woman and a child being a child, it's precisely to avoid subjective interpretations. Woman as a human being has all the human rights in the five core human rights instruments. But as a woman, there is also a special human right instrument that deals with her. The rights in this document are not subjective, but are objectively obtained through negotiations. Similarly, a child has all the rights contained in the core human rights instruments, plus the rights contained in the Convention on the Rights of the Child.

Finally, on the question of international debt, the HIPC and the whole question of the US lack of accountability, it is precisely because the US is the world's largest creditor that it cannot be brought to books - because the whole world will go bankrupt if you tried to collect the debt from the US. And the US is very skillful in practicing this blackmail by default on debt as it is doing within the United Nations. By not paying its dues to the United Nations, it is holding the UN to ransom. But the situation is not that bleak. Bush and Kissinger do not dare travel abroad today without getting serious assurances and only from certain governments who are capable of giving those assurances. More and more Americans who made the decisions, not those who criticized or opposed the decisions, but those who made the decisions are going to be afraid to travel outside the US. And then they can have virtual reality travel over the Internet, but it won't satisfy the kinds of travel benefits that they used to enjoy before.

Finally, a point I skipped earlier about the international court of justice and conflict resolution: conflict prevention and conflict resolution are very important, but too important to be left to the international system alone, or even the regional intergovernmental system alone. You're beginning to see the positive role that, in bilateral and other situations, Norway (for example) has played in trying very hard to bring intractable people in a conflict together without having self-interest dominate. I think from a human rights perspective, we need to take conflict prevention, conflict avoidance, conflict delimitation and conflict resolution a lot more seriously.

Let me close by saying that human rights work has become more difficult, because the defense of human rights in the world today has become more difficult. But I am sure that if we were to sit down with people who worked to free the slaves they would have told us that the task of freeing the slaves was an impossible task. But hope springs eternal in the human breast. I leave you with that thought, because it can only be from within you that you will find the hope that can really sustain you.