

Keynote Address by Virendra Dayal

Annual Consultations with NGOs

25 June 2008

"Universal Human Rights for All"

Your Majesty,

Thank you for being with us today. Your presence adds great luster to this gathering. It also strengthens the resolve of human rights defenders immensely. The Hashemite Kingdom of Jordan has, historically, set an example to the world of solidarity with refugees, of grace, generosity and fortitude, often under intense pressure. Your Majesty embodies the virtues of your Kingdom. For your leadership and vitality we are most grateful. For its own part, the international community must do all that it can to support and assist Jordan, and lighten the burden that the Kingdom carries on behalf of us all.

Distinguished participants,
Friends,

Thank you for asking me here today. Mine is a case of "family reunion". My delight is the greater for having been invited by the distinguished Coordinator of ICVA, Mr Schenkenberg van Mierop, rather than by UNHCR-no offence meant, of course! That told me that the UNHCR-NGO partnership is alive and well, and that NGOs can be in the driver's seat-at least from time to time.

That is as it should be. The Charter was, after all, written in the name of The Peoples of the United Nations, even though it was the Plenipotentiaries of Governments that signed it. NGOs are the voice of The Peoples. One look at the range, number and exceptional caliber of the NGOs present here leaves no doubt that, in the next three days, that voice will be heard with clarity and fervor.

Friends,

Your theme for these consultations is "Universal Human Rights for All". When you asked me to speak to it, my mind immediately recalled a tongue in-cheek comment of Mahatma Gandhi, made at a time when India was still striving for Independence. "Mr Gandhi" he was asked, "What do you think of Western Civilization?" "I think", he replied, "It would be a very good idea!"

I think it would be a very good idea if human rights were indeed "Universal" and for "All"-in practice. In theory and law they indisputably are universal. But in practice that is manifestly not the case. At times we have come perilously close to destroying them, universally and for all.

Consider the facts. The 20th century saw 100 million human beings killed by their own kind in acts of war and another 110 million killed in politically related violence for reasons of race, ethnicity, language, religion or membership of a particular social or political group. In each year of the past many decades the number of refugees, IDPs and the stateless has been in the 10's of million. We had to coin a new word "genocide"- half Latin and half Greek-to describe the "ultimate crime", and war crimes, crimes against humanity and ethnic cleansing have entered our daily lexicon. And we have entered the 21st century through what Kofi Annan described as "gates of fire" in the aftermath of 9/11.

Professor Cassin, a principal author of the Universal Declaration was right on target. When persistently asked why we needed such a Declaration he replied, in one of the great under-statements of all time, "Because men are not always good!"

We do not seem to be living in "the best of all possible worlds in the best of all possible times." And when we look at the problems of refugees, IDPs and stateless persons, we must sadly conclude that the universality of human rights for all remains illusory.

It is true we sometimes feel helpless when states-many of whom know better-fail in their responsibility to 'respect', 'protect' and 'fulfill' the obligations they entered into when they became party to human rights, refugee and humanitarian law treaties. The newspapers name them each day; there is no need to mention them here.

It is true that non-state actors are increasingly being used as proxies to kill and drive people from their homes. The shame is they often have high patronage. We know who and where they are. The increase in refugees and IDPs tells us.

It is true that this is a time of massive human displacement and mixed migration, often forced, for complex inter-locking reasons: conflict and persecution, extreme deprivation, economic degradation and climate change, to which are now added food scarcity and rising prices.

And it is true that this is a time when the fear of terrorism is creating a fortress mentality in many parts of the world, raising ghosts that we thought we were burying-xenophobia and racism.

National security is essential to a state and the need to ensure it is the primary duty of each government. But, in the process, a less than subtle effort is too often being made to undermine established principles of international human rights, refugee and humanitarian law. This is thoroughly unbecoming.

In part for this reason, and partly for the sheer numbers on the move, asylum - as UNHCR has reminded us - is becoming a lottery, interception and interdiction on land and sea is increasing, detention is becoming arbitrary, and even an economic lobby is being created for its "privatization". That is gross.

And where are universal human rights when it comes to refugees who are now considered "unwanted" and "untouchable"? Their refugee status and protection needs are not in doubt, but they are undesirable because they belong to "politically sensitive ethnic groups", are old or disabled, belong to large families, or are single men who are viewed as a potential threat to "public order", or those who are afflicted by HIV/AIDS. Our kindness is becoming increasingly non-inclusive.

Dear Friends,

For all of these painful challenges to the universality of human rights for all, it would be totally wrong to behave as if we are living in "the worst of all possible worlds in the worst of all possible times".

Perspective helps. We should remember where we are coming from. Sixty years ago today, there was no Universal Declaration. There were none of the 95 human rights instruments which we now take for granted - Covenants, Conventions, Declarations and Principles. We now have 8 treaty bodies with a ninth on the way. We have Special Procedures, Special Rapporteurs and Special Representatives. There is a new Human Rights Council, the members of which are subject to Universal Periodic Review.

All this is progress. Never before in history has such a remarkable body of normative law and mechanisms been created with such intensity, in so short a time, to protect and promote human rights. It is a crowning achievement of the United Nations, together with UN peacekeeping.

On the institutional front, too, we have come a long way.

I remember the days when UNHCR protested its "humanitarian and non political role" too much. It scarcely dealt with other components of the UN system - the division of Human Rights included - for fear of being politically contaminated.

UNHCR's NGO partners too often shared many of its worst apprehensions and steered clear of anything having the dreaded connotation of being "political".

More than a two-way street divided the ICRC from the UN in the Palais des Nations. Much was made of their genetic differences and their supposedly incompatible DNAs.

Scholars have observed that when the Charter was being drafted, delegates did not wish to have their attention diverted by the "law of war". They were devising a system of collective security to maintain peace and end war - a "jus contra bellum".

Likewise, when the Universal Declaration was being drafted, delegates altogether bypassed the issue of human rights in situations of armed conflict. The compliment was returned when the four Geneva Conventions of 1949 were drafted: delegates discussed human rights only tangentially.

This initial disconnect between the humanitarian and the political, between the custodians of human rights law and the custodians of international humanitarian law was clearly not what the situation required.

And reality proved to be a stern teacher.

It became apparent by the late 60s that there was need for "convergence". So by the time the two great Covenants of 1966 came into force in March 1976, and the two 1977 Protocols to the Geneva Conventions were adopted, our language, ideas and actions were, of experience and necessity, beginning to meet. We also began to work more systematically together, though it was only in October 1990 that the ICRC formally sought and was granted Observer Status at the UN.

I have inflicted this history on you because, I think, it is important to remember and learn from it.

It is folly to try to go it alone.

That is why I cannot sufficiently praise the sagacity of the 40 leaders of humanitarian organizations who met in Geneva in 2006 to explore ways of "enhancing the effectiveness of humanitarian cooperation", an effort that culminated in the formation of the Global Humanitarian Platform (GHP) and the endorsement of its Principles of Partnership in July 2007. These are giant steps forward for mankind.

There have been many other innovative and encouraging developments in recent years which, I believe, will take us closer to the elusive goal of Universal Human Rights for All.

As everyone, including UNHCR, seems to have a 10-Point Programme for everything these days, let me now list 10 issues that, to my mind, are important and that relate to your thematic sessions.

First: the vexed issue of human rights and terrorism.

Many of us feared after 9/11 that international human rights, refugee and humanitarian law would be thrown to the winds, and many disturbing efforts have been made to undermine such law. But the human rights community-essentially those who are now members of the Global Humanitarian Platform, and the treaty bodies - have fought back magnificently to take the issue straight to the citadels of political decision-making, the Security Council and General Assembly of the United Nations.

As a result, in all of the recent resolutions of the General Assembly, for instance, states have been asked to "ensure that any measure to combat terrorism complies with their obligations", in particular under "international human rights, refugee and humanitarian law". The obligation of states to respect non-derogable rights has been reaffirmed. Further, states have been specifically urged "to fully respect non-refoulement obligations under international refugee and human rights law"

The lesson I have learnt from this experience is this: when the humanitarian coalition (the GHP) acts together and is prepared to take its fight into the political arena, it can prevail. If it can do this on the dreaded subject of terrorism it can do so on other issues of consequence, which we should identify. NGOs can and should encourage such political activism to give spine to the humanitarian cause. This means that the humanitarian coalition must become adept in knowing which political levers to press and when. Timing is all. The involvement of the Emergency Relief Coordinator is essential.

Second: human rights mechanisms.

I have been delighted to read of UNHCR's close cooperation with the High Commissioner for Human Rights and treaty bodies in recent years. In my view, the relationship between UNHCR, its NGO partners and the human rights mechanisms should be a two-way street. While the General Comments of treaty bodies are a most valuable advocacy tool for UNHCR/NGOs, so can the increasingly authoritative conclusions of the Executive Committee be of value to the treaty bodies.

May I suggest, if this has not already been done, that NGOs make even more systematic the manner in which they give their views to the human rights bodies. Why not adopt a variation of the "cluster approach"? Why not have "lead" NGOs for different countries (Universal Periodic Review purposes included) and varying aspects of refugee, IDP and stateless persons' rights?

Third: partnerships at country-level

I feel that the UNHCR protection function remains fraught with difficulty and sensitivity when it comes to dealing with governments. Part of the quandary is that while it is usually diplomats who are party to Executive Committee decisions, on the ground it is Home Ministry and Immigration officials who call the shots, and they are obsessed with security and illegal migration.

To me it seems essential that UNHCR and NGOs develop stronger and wider local contacts and allies. I am thinking in particular of the legal fraternity, both bar and bench and, most of all, of National Institutions for Human Rights. The former are increasingly receptive to advocacy based on international law, and the latter have the great virtue of being national and therefore capable of expressing themselves with a clarity and ferocity that no external interlocutor can match without being declared persona non grata! Partnerships of this kind can be particularly helpful in states that are not party to the 1951 Convention and the 1967 Protocol. They can also advance the consideration and adoption of national legislation that is fully compatible with international law. National Institutions are ready to help. Their Santa Cruz Declaration of October 2006 requests them to "include refugees and asylum seekers among the groups requiring special attention" and it asks such institutions to take "an active role" in implementing the "International Protection Agenda promoted by UNHCR".

Fourth: strengthen local NGOs.

It is most important to strengthen the capacity of local NGOs. Their knowledge, dedication and skills at the ground level are incomparable. They are fundamental to the success and sustainability of efforts at the country level, whether in relation to refugees or IDPs. I feel that a more concerted and organized effort must be made to strengthen their hands. They are an invaluable resource.

Fifth: the High Commissioner's Dialogue on Protection Challenges.

This is an innovation of extraordinary openness and value. It gives maximum opportunity to NGOs to be participant in the earliest-stages of policy formulation on the most sensitive issues. It is an opportunity that must be seized. I see that the Dialogue of December of 2007 has already identified distinct protection gaps

in implementation when it comes to cases of "mixed migration", a gap that NGOs must help to fill. I am glad you will be discussing your role more fully in the thematic session.

Sixth: the "Cluster Approach".

I must confess, I was befuddled during my first reading of the "Inter-Agency Standing Committee's Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response". I had to ask myself "Now who is going to do what to whom?" I also had to compile a glossary to make my way through the thicket of new acronyms. Nevertheless, it appears that the cluster approach has already received two cheers from everyone concerned. It needs to be preserved with since it respects the talents of individual players and creates a team, with specific responsibilities and accountability. I get the sense that the involvement of NGOs needs to be thought through more fully. Experience and evaluation will provide the answers.

Seventh: the "Shrinking Humanitarian Space".

I like the elegance of the thought, but is it somewhat self-indulgent? I am not convinced that our times are worse than any other. Where was the "humanitarian space" during the genocide in Europe during the 1930s- 40s and where was it during the genocide in Cambodia and Rwanda? For all of the grievous losses we have taken - including friends we loved and admired and not least because of their sacrifices - we have in fact expanded the humanitarian space in these past years. When Nobel Laureate Kofi Annan propounded the doctrine of "dual sovereignty"- that of the state and that of the individual- he expanded that space. When the Millennium Summit endorsed the Responsibility to Protect there was a radical, even if still conceptual, alteration in humanitarian space and opportunity. Now, that space and opportunity must be wisely and legitimately used by the humanitarian coalition.

Eighth: Human Rights Defenders.

The toll has been too grave in recent years, both of them and of UN Peacekeepers. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect the Universally Recognized Human Rights and Freedoms needs to be taken far more seriously by states. The UN system and NGOs - the GHP - must press for this at every opportunity.

Ninth: Stateless Persons.

They have not received the attention they deserve. They are the silent minority and their right to nationality must be given salience. I am glad that the UNHCR

Executive Committee has adopted Conclusion 106 of 2006 on this subject. There is no reason why UNHCR and NGOs should not take up this issue with greater resolve.

Tenth and last: two thoughts of Dag Hammarskjold.

These have been my guidance and consolation for many years and may, perhaps, be of use to you.

The first: Hammarskjold said: "The international civil servant should be politically celibate, but not virginal." I would commend this advice to the NGO community: Be politically aware!

The second went to this effect: "The UN was not created to take earth to heaven, but to save it from going to hell!"

So do not fret if you cannot create paradise. It is enough to protect and save life.

Thank you.