



DIPLOMACY TRAINING PROGRAM

AFFILIATED WITH THE FACULTY OF LAW AT THE UNIVERSITY OF NEW SOUTH WALES
A training program for peoples of the Asia-Pacific region

AN INTRODUCTION BY JUSTICE MICHAEL KIRBY

I was proud to have the opportunity to participate in the closing session of the capacity building programme for community advocates on human rights advocacy and business.

This is the report of that programme organised by the Diplomacy Training Programme and the Australian Human Rights Centre within the University of New South Wales.

Before I became old and respectable, I too was a community advocate. I learned the skills at the University of Sydney when I was elected to the Society of Law Students and then the Students' Representative Council and Senate of the University. Whilst still studying, I joined the Council for Civil Liberties. Back in those days, we were involved in defending the Vietnam protesters, conscientious objectors, women's liberationists and Aboriginal Australians and their friends seeking to change laws, practices and policies.

These experiences helped to shape my values. Inevitably, one's values influence choices in personal and professional lives. So it has been with me. So it is with all of us.

The particular focus of the present programme was relating human rights advocacy to business. This is a relatively new issue. However, in work that I have been doing for the World Health Organisation and UNAIDS, I am aware of the importance of business for human rights in action. In the field of HIV/AIDS, the issue arises in connection with access to the new anti-retroviral therapies that make such a difference to human life, health and happiness. Patent laws, contract arrangements and international agreements affect acutely the rights of people in many lands to have access to basic healthcare.

Business need not be an enemy of human rights. And the bottom line is that, without international pharmaceutical corporations, many of the vital drugs would not have been developed, tested, marketed and distributed.

The quest is therefore to find ways of reconciling business's quest for profits and the needs of human beings for enjoyment of their basic rights. By prudent, skilful and determined advocacy, the participants in training programmes like this can make a difference. They have learned theory and practice. The compilation of their comments on the course, collected in this report, shows how useful the experience was. I congratulate the teachers and course leaders. I also congratulate the participants. In future reports, the suggestions by the participants on ways in which the training programme can be improved and its utility enhanced should be included. Social activists must constantly address the ways in which they can improve things—including themselves. By efforts such as these trainees and teachers can help to make the world a better place.

MICHAEL KIRBY

Human Rights Advocacy and Business

A Capacity Building Program for Community Advocates

Held in Partnership with the Australian Human Rights Centre, UNSW
25 – 29 September 2006
Sydney, NSW, Australia

Final Project Report

I have been dealing with mining cases in a very practical way drawing on my own experience and the experiences of my organisation. The human rights framework opens up many possibilities of linking what I know to a broader, international framework of human rights, giving me tools to use to build the case for why corporations need to recognize human rights, how they can begin to, and how they might start.

Quote from participant evaluation

1. Executive Summary

From 25 - 29 September 2006, 27 advocates from 15 countries came together in Sydney for the Diplomacy Training Program's first course on the theme of human rights advocacy and business.

Course participants came from trade unions, environmental organizations, academic institutions, human rights NGOs, grassroots and international development NGOs, government and the UN. They came from Liberia, Malawi, Cambodia, Thailand, Malaysia, Indonesia, India, the Philippines, South Korea, Burma, Australia, Sri Lanka, Papua New Guinea and Fiji.

The program participants shared interest and concern in identifying the human rights responsibilities of corporations and the challenges of holding corporations accountable to these responsibilities. Many of the participants had direct experience of seeking to hold companies accountable for their practices and their impacts on their communities and societies. These issues are currently the focus of much international debate as processes of economic globalization have transformed the roles and power of both national governments and multi-national corporations.

Beyond the influence and impacts of business in Asia and the Pacific, Asian-based companies are developing global reach. In the Pacific it is Malaysian-based logging companies that most frequently attract attention for negative environmental and social impacts. It is a Korean company, Daewoo that is currently the focus of attention for its involvement in the Shwe Gas Pipeline development that will see many Burmese forcibly displaced. Program participants also highlighted Malaysian and Chinese companies' involvement in mining and forestry in Africa. Australian-based companies are also significantly involved in the extractive industries sector throughout the region and beyond - in Africa and Latin America. While public constituencies and movements to hold companies accountable have emerged in recent years in Europe and the US, they are still nascent in Australia and the Asia-Pacific region.

The training program was officially opened by Justice Elizabeth Evatt and formally closed by Justice Michael Kirby. The participation of two of Australia's most distinguished jurists and advocates for human rights is indicative of their commitment to the practical support of human rights defenders in the region, and recognition of the importance of addressing the human rights responsibilities of the private sector.

The Diplomacy Training Program was also fortunate to be able to draw on both academic experts and experienced practitioners. Developing the program it was able to draw on the academic and NGO advocacy expertise and experience of Justine Nolan, Deputy Director of Australian Human Rights Centre (AHRC). Professor Paul Redmond, Chair of the Diplomacy Training Program, Professor David Kinley and advocates with long experience of engaging with the corporate sector, Jacqui Katona, Richard Meeran, Tim Connor and Richard Boele, all led sessions in a comprehensive and stimulating program. The generosity of the trainers in donating their time and expertise made the program possible, and their contribution is acknowledged with appreciation by the Diplomacy Training Program.

Everyone involved in the program was enriched by the presentations of the program participants. These presentations provided case studies and personal insights into the range of challenges across the region, and provided an opportunity to learn from the personal experiences of responding to these challenges.

Based on the evaluations the program met its objectives and contributed to increasing awareness of relevant and emerging global standards and processes such as the UN Norms on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, the Global Compact, industry codes of conduct, and the work of the Special Representative of the UN Secretary-General on Human Rights and transnational Business. It also provided a valuable opportunity for the sharing of experiences in this area, and the development of links and networks between participants and their organizations.

The following report outlines the background to the program, explores some of the challenges identified by participants in this area of work and provides information on participants, objectives, content and outcomes. The report is informed by the evaluations completed by participants and includes quotes from these evaluations.

The Diplomacy Training Program would like to acknowledge with gratitude the support of the Norwegian Ministry of Foreign Affairs, New Zealand AID, the Friends of the Diplomacy Training Program and the Diplomacy Training Program's partners, Oxfam Australia and Caritas Australia, in making this program possible.

Bringing in together amazing minds committed activists who are on the line and the best academics who helped to put everything in perspective. Being with others was the most rewarding experience. Hearing stories from others was the most inspiring experience.

Quote from participant evaluation

2. Background to the Program

Traditionally human rights advocacy has focused on governments. This reflects both formal power structures and avenues of political accountability, and the reality that under international human rights law, states are the primary duty-holders.

There has been growing concern this focus is inadequate given the increasingly central role that corporations play in the lives of individuals and societies. The growth in the size of transnational corporations, the hunger of developing countries for inward investment, the shrinking role of the state from key areas of service provision - from prisons to health care and key utilities such as water and electricity - have led to a shift of power that human rights advocates, and human rights law needs to respond to.

While the state retains its responsibilities to respect, protect and fulfil human rights, the capacity of many governments to effectively regulate, or negotiate with, companies in relation to human rights is often constrained, whether by international agreements or circumstance. This has brought increased attention to the responsibilities that companies themselves have with respect to international human rights standards - and how they can be held accountable for their actions.

The relationship between human rights and corporations often comes to public attention in high profile cases involving corporations that seem to have disregarded their responsibilities to human rights or to the environment. The use of child labour, and sweatshops in the manufacture of expensive sports goods, Unocal's alleged complicity in violent evictions in Burma along the route of a gas pipeline; Anvil Mining's alleged complicity in a massacre in the Congo; the activities of Freeport McMoran in West Papua and of Bougainville Copper in Papua New Guinea; and over 20 years ago the explosion at the Union Carbide plant at Bhopal in India.

The linking of private security contractors with the torture scandal at Abu Ghraib in Iraq, and the actions of the private companies running Australia's detention centres have also come under scrutiny. The willingness of both Yahoo and Google in ceding to Chinese Government demands on privacy and restriction of content has highlighted the relevance of human rights issues to new industries.

These more notorious cases are only a part of the picture. Companies are an integral part of societies and affect virtually every aspect of our lives. Companies generate employment and economic growth, and spread technological and scientific advances. They often influence government policies in a wide range of areas.

Businesses, particularly larger transnational companies in developed countries, are increasingly looking at their role in a broader context. This trend is signalled in developments such as the UN Global Compact, which has seen an increasing number of companies voluntarily accept responsibilities beyond the financial bottom-line, and a willingness to work in partnership with others. Particular industries and sectors have developed their own codes of conduct. There has been a huge growth in the literature and policies on corporate social responsibility, from inside and outside the business community. There are increasing examples of ways that corporations can change the way they do business in relation to workers, the communities they operate in, and the environment they impact on.

The environmental, trade-union and consumer movements and human rights advocates have all addressed aspects of corporate behaviour and the role of corporations. One

result of this has been the development of standards, guidelines, and codes of conduct. The OECD Guidelines for Multinational Enterprises refer to international standards of human rights as well as having labour, environmental and consumer clauses. The UN Norms on Business and Human Rights Responsibilities are the most comprehensive articulation of international standards relating to corporate conduct and accountability. Adopted by the UN Sub-Commission on human rights, they have been vigorously opposed by some business organizations and governments, while other major corporations have agreed to “road-test” the Norms through the Business Leaders Initiative for Human Rights (www.blihr.org).

In response to growing demands for action in this area and the divisions over the UN Norms, the UN Secretary General Kofi Annan, appointed Professor John Ruggie as his Special Representative on the issue of human rights and transnational corporations. He was given a two-year mandate to chart a way forward for the international community. This process has involved (at Professor Ruggie’s initiative) a series of regional and thematic consultations – addressing both conceptual issues and experiences from existing best practice and perspectives from business, government and NGOs.

At the same time human rights and community advocates are exploring other strategies for holding corporations to account. These strategies include use of existing guidelines and codes of conduct, constructive dialogue with companies, litigation at the national and international level, ethical investment initiatives, shareholder action, media exposure, industrial and consumer action. Indeed campaigns on major corporations may involve a range of all of these strategies.

There is therefore a wealth of practical experience in campaigning and advocacy on corporations. To date however, there have been few opportunities within the Asia-Pacific region for concerned advocates from environmental, human rights, development, labour and consumer movements to come together to exchange experiences, and to explore how existing and emerging standards of corporate behaviour can be practically applied in different contexts – or how NGOs in the region to play a more active and effective role in the international policy dialogue on these issues.

3. Program Objectives

The 5 day program had the following objectives:

- Build awareness and knowledge among NGO advocates in the Asia-Pacific region about international developments¹ in relation to corporate accountability and the human rights responsibilities of business.
- Develop the practical skills of advocates for holding business accountable to its human rights responsibilities
- Contribute to developing practical advocacy materials and training tools based on the experiences of advocates and international law, and guidelines on human rights and business

¹ These include the OECD Guidelines on Multinational Enterprises; the UN Draft Norms on Business and Human Rights; the Global Compact; and successful litigation.

- Contribute to the capacity of human rights organisations in the Asia-Pacific region to engage effectively with the corporate sector, allowing them to explore and integrate different strategies in their advocacy
- Enhance the capacity of NGOs and advocates within the Asia-Pacific region to contribute effectively to international processes and dialogue on the issues of human rights and business.
- Facilitate greater networking among NGO advocates in the Asia-Pacific Region with specialist knowledge and skills on corporations and human rights.
- Provide an opportunity and a forum for participants to share perspectives and experiences, and identify key issues for further work in this area.

The best thing from the program is not only learning from the theory but also learning from people who had experience on the issue and who are expert on the issue. Another thing is learning from people from different backgrounds such as professors, people from organizations, etc. I really enjoy exploring other experiences on similar issues.

Quote from participant evaluation

4. Program Outline

The program schedule was developed in consultation with the Australian Human Rights Centre, Professor Paul Redmond and the Diplomacy Training Program's training advisory committee.

DAY 1

The program was officially opened with a Welcome to Country from Uncle Norm Newlin, on behalf of the Indigenous traditional owners. Professor Andrew Byrnes, Associate Dean of the Law Faculty, welcomed participants to the new Law Faculty Building of UNSW. Associate Professor Andrea Durbach, Director of the Australian Human Rights Centre, welcomed participants on behalf of the Australian Human Rights Centre and read a message of support from Sharan Burrows, President of the International Congress of Free Trade Unions. Justice Elizabeth Evatt, of the International Commission of Jurists, provided the opening keynote speech identifying the major issues, themes and challenges that would be the focus of the program.

The Diplomacy Training Program was particularly fortunate to be able to draw on the expertise and advice of both Justine Nolan and Professor Paul Redmond as presenters. Their initial sessions laid the foundations for the remainder of the program.

Professor Redmond's presentation on Globalisation and Human Rights gave a clear understanding of various stakeholders behind the operations of TNCs. Being aware of stakeholders enables one to target human rights advocacy work to all concerned stakeholders. Justine Nolan's presentation on International human rights framework and corporation helped a lot in identifying relevant international standards and context which they apply. Prof. Kinley's presentations on IFC and Export Credit Agency helped gain an understanding of IFC obligation.

Quote from participant evaluation

Professor Redmond is one of Australia's leading experts on corporations law and he introduced participants to the legal identity of the corporation in the context of globalization. Professor Redmond explained the legal frameworks within which companies operate, and how companies are structured in terms of different stakeholders, corporate governance and liability.

While there are differences between the Anglo-American and the European models of the corporation, and with many Asian based corporations, the Anglo-American shareholder model is becoming more dominant. The need to maximise quarterly earnings under this model is in tension with the longer term and more broadly defined goals identified with corporate social responsibility.

The possibility for companies to construct distinct and separate legal identities, and to limit liability of (and to) these identities (e.g. subsidiaries) provides both a means and incentive to externalize the social costs of corporate activity. The ability of Union Carbide and later Dow Chemical to avoid financial liability for the Bhopal disaster was an example that illustrated this. The duties of companies and their directors to maximize profits for shareholder gain provides added impetus and contributes to a core corporate ethic of vicarious acquisitiveness.

The greater mobility of capital, the need for national governments to attract foreign direct investment to sustain economic growth, and the privatisation of state utilities (often as a condition of loans and investment) have all contributed to the shift in power from the state to corporations.

Some simple statistics highlighted the shift in economic power that has occurred in recent decades. Of the 100 largest economies in 2000, 49 were countries and 51 corporations (<http://www.ips-dc.org/reports/top200.htm>). 20 corporations have larger economies than The Philippines (#60). 70,000 transnational firms have 700,000 subsidiaries (approx) and millions of suppliers.

Professor Redmond looked then at some of the responses to these trends, including the demands for corporate social responsibility, the development of codes of conduct, the Global Compact and Global Reporting Initiative, the UN Draft Norms on Human Rights and Business and the OECD Guidelines on Multinational Enterprises.

DAY 2

The following day Justine Nolan introduced participants to the framework of international human rights standards – the content of particular human rights and the obligations of states, before exploring in greater detail the growing number of standards relevant to corporate conduct. Before joining the Faculty of Law and becoming Deputy Director of the Australian Human Rights Centre, Justine Nolan worked for a number of years for the NGO, Lawyers Committee for Human Rights, leading their groundbreaking human rights and business program.

Participants were provided with an overview of the International Bill of Rights – the Universal Declaration of Human Rights, The Covenant on Civil and Political Rights and its Optional Protocols and the Covenant on Economic, Social and Cultural Rights.

Some human rights, especially in the Covenant on Economic, Social and Cultural Rights were identified as having particular relevance to corporations. These include *Article 6 – the right to work; Article 7 – the right to enjoyment of just and favourable conditions of work - being paid a minimum wage; equal pay; safety at work. Article 8 – the right to form and join Trade Unions of their choice; Article 9 – the right to social security; Article 10 – right to privacy; Article 12 – right to health.*

The International Bill of Rights was a response by the global community to the horrors of the Holocaust, World War II and the great economic depression that preceded that war. It focused on the responsibilities of states – national governments. While the Universal Declaration of Human Rights does refer to the responsibilities of individuals and of “all organs” of society to respect and promote human rights, this obligation is seen as very general in nature.

The weakness of accountability mechanisms for human rights was discussed, with governments only having to report to UN treaty bodies, and face occasional scrutiny from the UN’s special procedures on human rights and possible peer pressure in the Human Rights Council. The attempts to develop “soft law” responses to the emerging challenges of growing corporate power were charted with the evolution of the UN Draft Norms on Human Rights Business, through to the mandate of the UN Special Representative on Human Rights and Business. This has seen the most extensive elaboration of the human rights, labour and environmental standards most relevant to corporations.

Justine Nolan also outlined the content of the UN Global Compact, its utility for promoting human rights, and its limitations as a tool for holding corporations accountable. The focus of the presentation then moved to the codes of conduct which have proliferated since the 1990s. Exposure of sweatshop practices in garment manufacture and the use of child labour in the production of footballs and carpets resulted in consumer and NGO pressure for action. Major brands such as Levi’s, dependent on reputation, responded with the development of codes of conduct.

Codes of conduct focus predominantly on the manufacturing industry and on labour rights, and all are voluntary. Some are company specific, while others are more industry wide. Both trade unions and NGOs such as Oxfam have focused on issues of implementation of codes of conduct – addressing issues of responsibility through the supply chain and problems of monitoring. More recently other sectors have been developing codes of conduct – the Equator Principles for the Banking and finance industry for example. There is the Kimberly Process dealing with diamonds from conflict zones and the Voluntary Principles on Security and Human Rights addressing the use by companies of private and state security forces for their enterprises and the Extractive Industries Transparency Initiative to address issues of corruption. While the codes are voluntary, the better ones have some mechanism for enforcement. A small-group exercise to explore practical application of codes of conduct, based on two case studies followed the presentation.

Professor David Kinley presented the next session on the role of the International Finance Corporation and of Export Credit Agencies. Professor Kinley is Inaugural Chair of Human Rights at Sydney University and widely published on the relationship between business and human rights. The International Finance Corporation as an inter-governmental organization and part of the World Bank Group, and the export credit agencies of governments provide official support in a number of ways to private foreign direct investment. This intersection of public and private finance has great potential

significance for bringing the more formal human rights obligations of governments to bear. In looking at providing official support, through measures such as loan guarantees and sovereign risk insurance, governments have a responsibility to fulfill their human rights obligations under international law. This responsibility would require these government agencies to examine the human rights impact of particular activities they are considering support for.

The tools for human rights impact assessment are still under-developed. Earlier in 2006 the IFC convened an international workshop to look at the issues of human rights impact assessment as part of its broader exploration of the relationships between its work and human rights. There are however guides, principles and processes available that governments and the IFC could use, but a major barrier is the lack of knowledge and awareness among officials in these agencies. Seeking to use the IFC and Export Credit Agencies to bring human rights accountability to bear also generally implies good communication and links between human rights and community organizations in both the investing and host countries.

In the evening there was a presentation from Techa Beaumont; National Coordinator of the Mineral Policy Institute, an Australian based NGO that specializes in assisting communities affected by the negative impacts of extractive industries.

DAY 3

The third day of the program focused on advocacy skills and internet training. In the first session of the day there was discussion of a range of advocacy techniques that could be used, and of the need to adapt some traditional techniques for use in relation to companies rather than governments. An example from Amnesty International USA which is developing shareholder pressure through institutional investments was shown, before participants engaged in a short role-play exercise that involved lobbying of visiting mining company executives.

Philip Chung, Managing Director of the Australian Legal Information Institute (AustLii) then provided participants with a crash course in internet based research and website design. The sessions had a particular focus on how to use the internet to research corporations and corporate structures and took participants to some particularly useful websites.

Participants traveled to the Westpac Bank headquarters in Sydney for a panel discussion on "How Business Thinks". The panel was chaired by Professor Paul Redmond. Jane Killen, Manager of Westpac Pacific spoke of her own experience of how Westpac relates and contributes to communities, development and values in the Pacific, as well as Westpac's policies on corporate social responsibility as one of corporate leaders in Australia in this area. Richard Boele, Founding Director of Banarra, a consultancy firm specializing in advising companies on corporate social responsibility, provided very valuable insights from his experiences as an NGO advocate focusing on Shell's impact in Nigeria, working inside the Body Shop and now as an external adviser. Professor Thomas Clarke, Director of the Centre for Corporate Governance at the University of Technology, Sydney provided insights into the drivers of business policy as well as practice. He also touched on how human rights fits into management decision making processes and some of the challenges therefore facing advocates wanting to influence these decisions. The panel discussion was followed by a reception for participants hosted by Westpac addressed by Dr Noel Purcell, Westpac's Group General Manager, Stakeholder Communications.

DAY 4

The fourth day of the program was dedicated to exploring through case studies various different strategies for holding corporations accountable. Jacqui Katona, Director of the Lumbu Indigenous Community Foundation provided a personal perspective on the successful campaign to prevent the opening of a new Uranium mine at Jabiluka in the heart of the World Heritage Listed Kakadu National Park. The mine was opposed by the traditional owners, the Mirrar People, and the struggle against the mine was led by Mirrar women. The Mirrar people successfully built alliances across Australia, particularly with environmental organizations and effectively networked internationally. The campaign used many techniques – from blockades in which many were arrested, to shareholder action and protests, media advocacy, petitions, letter writing and litigation. Through all of this, there was the considerable challenge for the Mirrar to keep the community informed and to maintain control of the campaign agenda and the process. In the end the Mirrar people won their struggle after the intervention of the international governing body of the World Heritage system. The company involved, a subsidiary of Rio-Tinto, agreed not to proceed with the mine unless there was consent from the traditional owners.

Hard to say which session was the most useful. I found Jacqui's session very useful, the case study on the Uranium mining in the Northern territory - in particular on the importance of ensuring that the affected community has ownership of the process. Also learning about the OECD guidelines and other leverages (global compact, etc) was also very useful.

Quote from participant evaluation

Patrick Earle then outlined two Australian cases involving NGO complaints (Specific Instance) under the OECD Guidelines on Multinational Enterprises. The first involved the multinational company administering Australia's immigration detention regime. The second involved a complaint about the relationship of an Australian bank with a Malaysian logging firm responsible for human rights violations and environmental destruction in Papua New Guinea. The OECD Guidelines are a voluntary code signed on to by OECD governments, that seek to ensure that OECD based companies abide by agreed standards of conduct, wherever their operations are.

The guidelines are promoted and monitored by an official (or officials) called the National Contact Point. Usually the official is located within the Treasury Department, Finance Ministry or the equivalent. The National Contact Point has the capacity to make a finding – for example that a Specific Instance is upheld. It also has the capacity to act as a mediator between the company and the complainant. In the case involving the company administering Australia's detention centres, there was a mediation process and the company agreed to make changes². In the case involving the bank, the National Contact Point refused to accept the Specific Instance because it ruled there was insufficient evidence of the "investment nexus" required under the Guidelines.

Tim Connor, of Oxfam and *NikeWatch*³ used a training and educational technique called Imaging Theatre to involve participants in exploring supply-chain relationships – from consumers, through the parent brand company, to the sub-contracting manufacturers, the workers and their community. It was a very effective teaching methodology that involved participants in working through how power and influence

² <http://www.bsl.org.au/main.asp?PageId=3854>

³ <http://www.oxfam.org.au/campaigns/labour/index.html>

operate and could be changed to claim and respect rights. Tim provided insights from his work over many years researching the reality of labour conditions in factories making products in Asia for the big sporting brands. Each of these brands has now developed their own code of conduct, with some being better than others. Tim looked at how international advocacy strategies through a major international NGO such as Oxfam could best complement techniques of labour and community organising. One important issue in codes of conduct is the right to organise, and to join trade unions of one's choice. The focus on major brands, where the value of the company is vested in its image more than any physical assets, means that the media has a particularly important role to play in advocacy strategies, but sustainable change depended on organizing communities.

The fourth day concluded with a session on litigation strategies led by Richard Meeran, a lawyer involved in some of the most significant legal cases taken against companies fought across national borders. His legal actions in the UK on behalf of workers and communities in Namibia and South Africa affected by industrial pollution (asbestos) have provided some restitution to these workers, their families and communities in the form of financial remedies – and access to health care. These legal actions have also led to landmark legal judgments in the British courts that give some hope that companies cannot hide behind the façade of foreign subsidiaries, and possibly weaker legal regimes and lower compensation payouts in developing countries.

Richard also looked at the extent to which the Alien Torts Claims Act (ATCA) enabled actions to be brought in the USA. Other relevant legal developments discussed included the potential to use the universal jurisdiction of the International Criminal Court for crimes against humanity. As a result of a complaint lodged by Richard's legal firm and NGOs, the Australian Federal Police are investigating the complicity of an Australian mining company in a massacre of villagers in the Congo, Africa.

The dynamic, but often slow and frustrating nature of the law and litigation was clear as Richard explained the ups and downs of long legal battles. Nevertheless the attraction of litigation and of seeking to expand the legal accountability of companies was evident in the outcomes achieved for victims and in the deterrent force of binding legal judgments and associated sanctions – and in the message this sent to others.

DAY 5

On the final day, the morning was devoted to developing media skills as a key campaigning technique. The sessions were led by Erin Farley who works with a media and public relations consultancy, and with a background in environmental and development NGOs in Australia, the Pacific and Asia. The session explored the particular value of the media as an avenue for advocacy in relation to companies, where reputation is often critical to business survival, and the ability of companies to attract and retain the best staff. The sessions mixed both theory and practice.

The formal sessions concluded with feedback on the course, some discussion of the challenges facing advocates in the region in relation to human rights and business and the completion of evaluation forms.

Justice Michael Kirby formally concluded the program, awarding certificates of completion and giving a speech that reflected on his experiences as UN Special Representative on Cambodia, and that referred to the campaigns on access to life

saving retroviral medicine as illustrating the urgency of addressing the responsibilities of business in relation to human rights.

Getting a chance and the time to think through the theory and practice of human rights advocacy. To hear how strategies have worked and also to articulate the challenges that remain. There was a really good mix of academics and practitioners and the course followed well from the conceptual to the practical.

Quote from participant evaluation

5. The Participants and Their Work

The participants brought a wealth of experience and knowledge to the program. The diversity of backgrounds, issues being worked on, national contexts and challenges faced made for particularly rich discussions. Information was shared in part through formal participant presentations. These were limited to ten-minutes for each presentation, challenging participants to summarize often complex situations with long histories. Taken together these presentations powerfully illustrate the range of issues and challenges advocates face.

This training program assisted me in developing understanding about corporate accountability which will be helpful for me and my organization in developing strategies in further work with these corporations about violations of human rights by them.

Quote from participant evaluation

Reinford from Malawi described his community's concerns about a uranium mine being proposed for their country by an Australian company. They are concerned that the company will not follow the stringent environmental and safety standards required in Australia – and that the community will not benefit from the profits generated by the mining company. The company had for example sought and obtained a 16 year tax-exemption for a mine with an expected life of only 12 years. This had been reversed after the media exposed the secret agreement.

Cherry from the Philippines described the devastating environmental and social impact of an Australian mining company, Lafayette, and its Rapu Rapu mine on her community in Bicol – an area of great natural beauty. Pictures showed the scale of the scarring of the landscape by the open-pit mine. The impact of pollution from the mine on fish-stocks and the pristine marine environment on which fishing communities depend was shown, along with the efforts of the community and the Catholic Church to stop the mine proceeding.

Carl from Mindanao highlighted the case of a Canadian mining company and took participants' through his organisation's human rights impact assessment of the company's mine. The human rights issues included impacts on the right to health, the right to an adequate standard of living, forcible displacement, and desecration of sacred sites, and the actions of security forces engaged by the company.

Pravin from the National Campaign on Dalit Human Rights (NCDHR) in India highlighted the challenge of engaging the booming private sector in India over discrimination against Dalit's and Adivasi's. This challenge has become more acute as the state sector shrinks in India and continuing caste-based discrimination in

employment and wages is endemic. The campaign is calling for both affirmative action laws and company policies and practice to address discrimination.

Buddika from Practical Action, an NGO in Sri-Lanka, involved in post-Tsunami reconstruction highlighted the growing role of the private sector in disaster response and relief efforts. Without sensitivity to the rights of vulnerable groups or the rights of communities to participate in reconstruction efforts, there is an increased likelihood that rights will be violated. There was therefore a need for NGOs, governments and UN agencies to develop knowledge and awareness within companies of human rights.

Cathy and Daniel from different NGOs in PNG, described the impact of forestry on rural communities and their efforts to work with communities so that they could make informed choices and seek to ensure that communities gained benefits from the exploitation of the resources on their traditional lands. Their experience was that private sector development in the forestry sector was associated with corruption of public officials, violence and intimidation where the government is either unwilling or unable to effectively regulate the companies involved, who wield influence through ownership of major newspapers.

Mohan and Jeya from the consumer rights movement in Malaysia spoke of the challenges of instilling human rights values in businesses, of promoting ethical business practices among the Malaysian business community and of getting government to act to regulate in areas where it has been shown that regulation is necessary – for example consumer protection. Pari from the Malaysian Trade Union Congress (MTUC) highlighted the vulnerability of the many migrant workers in Malaysia, how this vulnerability was exploited by employers in poor pay and conditions and abuses and how the trade union movement was responding.

Mundo from Indonesia and Jose from the Philippines highlighted the issues of workers rights in free-trade zones in particular. Jose is working on a long running case involving former women-workers with Texas Instruments who claim to have significant ill-health as a result of their work. Mundo is from a newly established union, KASBI. He highlighted the common interest that seems to exist between companies and government officials to suppress efforts to improve worker's conditions. This is particularly the case in areas designated as Export Processing Zones such as Batam bordering Singapore. Companies are hostile to trade unions and processes of globalisation are leading to downward pressure on wages and casualisation of labour. Mundo highlighted the relationship between pressing for greater recognition of trade union rights and the struggle to strengthen democracy in Indonesia.

Phallack from Cambodia both teaches business studies at University in Cambodia and works for the Arbitration Council, an independent body established to arbitrate labour disputes. Phallack identified a number of challenges in relation to business and human rights – these include a general lack of human rights awareness among both employers and employees, the institutional weakness of the state, and the fragility of rights to freedom of expression and public assembly, and of the right to form trade unions. As a country in transition Cambodia very much depends on foreign direct investment, and an efficient private sector, but also needs a framework that ensures benefits flow through to the people.

Kyle who worked for the UN in Cambodia for many years and who now works in the UN mission in Liberia highlighted the potential role of UN agencies in promoting knowledge and awareness of relevant standards, and in institutional strengthening in

relation to regulation of the private sector. There is also a role for UN agencies in encouraging dialogue between different sectors – such as government, the private sector and trade unions/NGOs.

Persida, the Chief Public Attorney in the Philippines also highlighted the need for government to do more in relation to violations of human rights by the private sector. Developing knowledge of relevant national laws and international standards was an important step toward meeting this need. Her office and its attorney's currently provide legal aid to fight cases against companies, but lacks sufficient resources.

Erwin, an academic and advocate in Manila is working with others to highlight the disturbing trend of major pharmaceutical companies to outsource medical trials to developing countries. There are concerns that these trials are being conducted without adequate medical scrutiny and approval, and without the knowledge and consent of patients.

Other participants, including Pia from Forum Asia highlighted the need to look not just at the role of major international corporations that may be sensitive to image and reputation, but to nationally based and often small companies. Across the region it is often these companies that employ migrant workers and take advantage of their vulnerable situation. Holding these companies accountable raises particular challenges.

Ah-Ree from Korea highlighted the particular context of the larger Korean companies – both their place in the culture of Korea and their structure. Korean companies operate across the region, and the prevailing view in Korea of their activities is one of national pride – symbolizing their contribution to national development and prosperity. This creates particular challenges for advocates concerned about their implication in human rights violations, for example through involvement in Burma.

Advocates from Burma⁴ and from Earth Rights International highlighted their concerns about private investment in Burma. Investment in Burma is opposed by the democracy movement as the benefits only flow to, and strengthen, the military government. Major development and infrastructure projects are accompanied by the use of forced labour and also often includes the violent displacement of villagers. The Burmese advocates feel that there is a challenge to change perceptions that investment always brings employment, growth and prosperity.

The training has provided the impetus for me to strengthen my work through applying various international human rights norms in my country to promote the recognition by various governments and stake holders of human rights and what they mean for all people.

Quote from participant evaluation

⁴ <http://www.shwe.org/>

5. Participant Evaluations of the Project

At the end of the program participants were asked to complete two evaluation questionnaires. These questionnaires are anonymous to try to encourage honest feedback. Following are some of the questions and responses. The complete set of evaluation questions and answers is available on the DTP Website (www.dtp.unsw.edu.au).

- **Will the training assist you in your work? How?**
 - *Yes, it has provided conceptual clarity on issues of business and human rights that I was not clear on before. It has given me ideas for where I could take the work of my organisation forward on this issue. I will also be able to direct better our member organisations who are looking for strategic leadership on these issues.*
 - *Yes, very much. The materials I gathered plus the knowledge I gained will help me in doing my work with activists. All I got from the training will also enable me to stage the capacity to build programs on the relations of human rights and business at the different border areas of Burma and inside Burma.*
 - *Information provided is very useful in developing new strategies.*
 - *Yes. Techniques and skills used by human rights advocates in other areas can be easily adopted to my advocacy.*
 - *Yes. I now know how to go against business and corporations for HR violations. Although the various voluntary guidelines are not binding on the parties, but they do exert some force on their course of action. Use what I have learned to raise awareness of the human rights instruments amongst the business community.*
 - *The UN norms on human rights and business are quite relevant to our CSR program. The knowledge gained from here will be utilized in our awareness campaign and also our approach to the companies doing the mining.*
 - *Yes, have picked up a lot advocacy tools from this training. I have so many challenges in advocacy work with local issues and to bring it to the attention of the international arena. This course has given me some useful insights.*
 - *Yes. I have learnt a lot about the international law conventions code of conducts that can be used as leverages to promote human rights with workers that I'm engaged with. The strategy/advocacy skills not only by the presentations but also from listening/discussing with fellow participants. These will certainly help my advocacy work back at home. The contacts that have been established will be followed up and useful back home.*
 - *It raised a lot of issues that will be beneficial to my organisation. While we are already engaged in advocacy work, it helped me as an individual to understand the frameworks and process when doing advocacy work.*

- *Yes. To use the international human rights framework (OECD guidelines) and internet skills learnt to check to TNC's and lobby for improvements of human rights in their business.*
- *Yes. I realise better the need to build a broader and better human rights focus into my work. I received a lot of focused into in a short time from excellent sources and have made contacts which will be useful. I found I had about one new idea a day to better integrate human rights into the job I do.*
- *Learning coming from the sharing of respective cases. Strengthening networks. Doing campaigns on higher levels.*
- *Yes. I gained some new principals and work from this program. In our country we fight for the human rights against the government. This is a new area for us to fight against the multinational companies for human rights which are more powerful than the same states.*
- *Most definitely. I have heard and seen the difficulties and successes in other countries from participants. The media training helps me to broaden my advocacy skills. The internet training, I can get the latest information. In my country I can use this in a different approach.*

How will knowledge of human rights and the UN system might change your work or your approach to the particular issues you are working on?

- *It makes me consider more carefully on human rights. It will change my teaching as I will include this concept in my business law course.*
- *The UN Conventions on human rights are important in the absence of domestic laws applicable in the country where the violations occur.*
- *The methods of implementation are very useful. Approaching the public of the host parent company. Raising awareness of the shareholders. The effectiveness of different standards OECD will not work with non-members.*
- *This knowledge already existed to a large extent but I will be trying to mainstream issues of corporate accountability in the existing work of my organisation in relation to treaty bodies special procedures and other aspects of the UN's human rights machinery.*
- *There are techniques that I was unaware of before this course to try to hold corporations responsible/accountable with those techniques directly and through NGO's develop initiatives targeting relevant actors.*
- *It will help us internationalize our critique of the actions/violations of the mining company. We will use them in meeting the mining companies (and making them) accountable to respect human rights.*
- *The work on logging and some mining industries issues can now have a broader approach to some companies operating are from OECD member countries so we can use this pressure point.*

- *The OECD guidelines, its existence, and its potential of being used in our advocacy work with mining community will be invaluable.*
- *I have been dealing with mining cases in a very practical way drawing on my own experience and the experiences of my organisation. The human rights framework opens up many possibilities of linking what I know to a broader, international framework of human rights giving me tools to use to build the case for why corporations need to recognize human rights, how they can begin to, and how they might start.*
- *We are working for the promotion of human rights in other countries and actually we fight against the government but this program opened us a new area how we can/should fight for the government, the multinational companies in human rights issues and violations.*
- *Though we have not worked on issues relating to human rights and UN yet, but through networking with other NGO's I learnt that there are companies from my country who are committing human rights violations in the host country. I hope to start some advocacy work on it or to look at the possibility of educating the community in my country.*

What was the most useful session or sessions for you and why?

- *The International human rights framework and holding corporations accountable sessions were the most useful. All the sessions were important but my understanding developed from those sessions.*
- *Sessions by Paul Redmond and Justine Nolan on the theory; because it put the issues in a framework which was useful and conceptually rigorous. Also the session by Tim Connor which showed the practical value of these conceptual frameworks and how large successful campaigns have been designed and implemented.*
- *Different perspectives/views on corporations and human rights issues. Participant introductions and presentations- real life issues and a diversity of backgrounds which promoted awareness of methods.*
- *The sessions on holding corporations accountable (litigation) and media skills. They provided new ideas and strategies.*
- *The International Finance Corporations and Export Credit agencies. Even though it was done too quickly, this session gave me new and different insights in conducting campaigns to try to hold corporations accountable.*
- *Jacqui Katona's presentation on the Jabiluka campaign.*
- *The section on holding corporations accountable and media was the most useful for me as I am working in a closed society because what the best thing we can do to advocate for people inside the country and internationally is to use the media and know our own strength.*

- *Promoting Business, promoting human rights by David Kinley. The international HR framework and the corporation by Justine. Holding corporates accountable-developing strategies- Patrick. Using the internet- Philip. Participant's presentation. These 5 topics stand out for me because David's presentation touched on the bigger picture and identified the different levels of who holds the power, and Justine's identified the different instruments that can be used, Patrick's gave us a practical case study, Philip opened the door to resources and had a wealth of experience.*
- *Seminar by Richard Meeran because it is helpful with my work as a human rights lawyer. Session by Justine Nolan who was able to present the various UN guidelines simply. Seminar by Philip Chung- internet legal research in crucial forms.*
- *Jacqui Katona's session of the case study on the Mirrar. The range of tools, methods and techniques she displayed and the passion she displayed and the passion she brought to the session. Also the way Jacqui built up the understanding of how they learned along the way and took control of the agenda was inspirational.*
- *The one with Tim Connor because it is very directly related to my work.*
- *Globalisation: The Corporation and the human rights. Seeing the developmental aggressions suffered by the marginalized sectors are coming from the global demands. The struggle is not only on the ground but also in the international arena.*

What was the best thing about the training program?

- *Arranging the program in very good order and easy to follow.*
- *The flow. The sessions were building on each other.*
- *The topics, sessions, and discussion. Though the time was really limited.*
- *Sharing of experiences, expert speakers, opportunity to meet funding partners, expansion of networking.*
- *The best thing was the exchange of ideas from the presentations of the participants*
- *Networking with similar minded people who are working on real issues and hearing their inputs.*
- *Well organized and planned*
- *Participatory approach*
- *Everything*

- *Presentation and experiences from people and the diversity of participant's areas of work. The many aspects of issues taught in a way that many participants' areas of advocacy have been touched.*
- *It pooled ideas from different perspectives from different settings/country/background*
- *Learning from each other/participants and to know that you are not alone.*
- *Being much clearer on the issues, activities by meeting with different relevant persons*
- *Adding knowledge to continue my capability in promoting human rights.*
- *Generally everything about this training program particularly the choice of topics and the opportunity to meet other friends from different NGOs and different countries sharing and learning from each other.*
- *Of course the people who attended and told their own stories. Next was the range of information which was shared. A treasure trove of tools and insights to take home and study.*
- *Learning and gaining knowledge on human rights advocacy in the various countries and the problems they face and how to confront their problems.*

5. Program Logistics

- **The Partners.** The program was held in partnership with the Australian Human Rights Centre at UNSW.
- **Venue.** Most training sessions were conducted in the new Law Faculty Building of UNSW, Sydney. The Diplomacy Training Program is grateful to the staff of the Faculty of Law for their hospitality and for sharing their Common Room with participants during the program.
- **Accommodation.** Accommodation was organized at the student residences of Baxter College, UNSW.
- **Catering.** Catering was organized by staff and volunteers of the Diplomacy Training Program.

The Diplomacy Training Program would like to acknowledge the hospitality of Westpac Bank which hosted a panel discussion on one afternoon of the program and a reception for participants in Sydney.

10. Reflections, Conclusions – Next Steps

Program Focus, Training Schedule and Content

Feedback from course participants indicates that the program was well structured, and covered the issues well, with a good mix between theory and practice. The evaluations also suggest that more time should be allowed for this program, and that in future it be extended by another two days or more, and include time for a field/trip or exposure visit. Participant evaluations also indicated the need for more case studies from the region.

Participants.

The program benefited greatly from the range of participants skills and experiences. Clearly there can be tensions in having participants from both governments and NGOs, given their very different roles. The lack of awareness of the human rights responsibilities of companies and the role of both government agencies and NGOs in ensuring accountability of companies' means there is much to be gained from fostering collaboration where this is possible. In future it may also be useful to seek the participation of staff from National Human Rights Institutions.

Location.

Sydney proved to be a very good location for the program. It facilitated collaboration with the Australian Human Rights Centre and made it possible to draw on some leading academics and practitioners.

Importantly the location of the program in Sydney enabled some participants to raise their concerns about Australian companies, develop their links with NGOs here in Australia and even to meet with relevant government officials, company representatives and journalists. Reinford from Malawi for example was able to extend his stay and to visit with Indigenous communities with experience of negotiating with mining companies as well as members of parliament. Mon Lhwe was able to meet with members of the Mon and Burmese communities in Sydney and Canberra and officials from the Department of Foreign Affairs and Trade. Cherry from the Philippines was able to meet with staff from Caritas Australia in relation to the concerns of the Catholic Church in the Philippines about the Rapu Rapu mine.

Regional Solidarity

There are clearly many different perspectives within the region and within countries about the relationship between business and human rights. There are different challenges and different priorities.

One value of a regional program on these issues is an opportunity to share experiences and knowledge. The opportunity provided for environmental advocates from PNG to meet with consumer advocates from Malaysia may lead to growing awareness and concern in Malaysia about the human rights and environmental impact of Malaysian logging firms.

Concerns about corporate influence and behaviour are common in NGOs across the region, and that knowledge and awareness of relevant standards that might be brought to bare is still very limited.

Future programs.

The Diplomacy Training Program will explore the possibility of developing a longer term capacity building program based on meeting the need to

- **develop a deeper understanding among NGOs of international human rights standards relevant to business.**
- **develop advocacy skills that are particularly relevant to human rights advocacy toward business**
- **develop specific advocacy tools and education resources useful to NGOs and advocates in the region and drawing from case studies in the region**
- **strengthen national, regional and international collaboration between NGOs, academics and other practitioners**

It is hoped that it will be possible to organize a further training program on this thematic focus in 2007.

Appendix 1: Program Schedule

	Monday 25	Tuesday 26	Wednesday 27	Thursday 28	Friday 29
Morning 1 8.30 to 10.30	8.30 – 9.00am: Registration 9.30am: Opening Ceremony – Welcome to Country – Uncle Norm Newlin Associate Professor Andrea Durbach – Director, AHRC Professor Andrew Byrnes – Law Faculty Justice Elizabeth Evatt Chair: Patrick Earle	The International Human Rights Framework and the Corporation	Holding Corporates Accountable – Developing Strategies Skills	Holding Corporations Accountable – Case Studies – Jabiluka, International Solidarity and World Heritage Listing	Campaigning on Corporations - Media Skills
Facilitator(s)		Justine Nolan	Patrick Earle	Jacqui Katona	Erin Farley
Tea 10:30-10:45					
Morning 2 10:45-12:30	Participant Introductions – Course Outline	Human Rights and the Corporation - Emerging Global Codes – The OECD Guidelines, UN Norms ILO Tri-Partite Agreements	Using the Internet – Skills for Corporate Research	Holding Corporates Accountable – Case Studies – Using the OECD Guidelines -	Campaigning on Corporations - Media Skills
Facilitator(s)	Patrick Earle/DTP	Justine Nolan	Philip Chung	Patrick Earle	Erin Farley
Lunch 12:30-1:30					
Afternoon 1 2:00-3:30	Globalisation, The Corporation and Human Rights	Human Rights and the Corporation – Practical Exercise	Using the Internet – Skills for Corporate Research	Holding Corporates Accountable – Case Studies – The Supply Chain and Shame - Manufacturing Industry	Discussion on Future Directions/Challenges
Facilitator(s)	Prof Paul Redmond	Priya Sivakumaran	Philip Chung	Tim Connor - Oxfam	Patrick Earle /Andrea Durbach
Afternoon Tea 3:30-3:45					
Afternoon 2 3:45-5:30pm	Globalisation and the Corporation	Promoting Business, Promoting Human Rights – The International Finance Corporation and Export Credit Agencies	Panel Discussion – How do Corporations Think? Hosted by Westpac Bank	Holding Corporates Accountable – Case Studies – ATCA and the path of Litigation	Participant Evaluation and Review of Training Program
Facilitator(s)	Prof Paul Redmond	Prof David Kinley	Chair – Professor Paul Redmond	Richard Meeran	Patrick Earle - DTP
Evening Exercises	Diary	Diary	Diary		Closing Ceremony – Justice Michael Kirby
Evening Events	Dinner – The Spot	Dinner – Presentation – Techa Beaumont – MPI Law Faculty Common Room	Reception – Westpac Bank	Solidarity Night - UNSW	Farewell Dinner – UNSW Law Faculty Common Room

Appendix 2: List of Participants and Trainers

Participants

Michael Dendle
David C. Jamali
Aye Hnin Thu
Mhwe Lon
Anna Rosario Malindog
Phallack Kong
Ponipate Ravula
Cissy Lui
Pravin Vitthal More
Raymond Jatmiko Kusnadi
Joseph Lee Kyle Gillespie
Reinford Mwakabana Mwangonde
Mohan Sankaran
Jeyaseelen Anthony
Parimala Moses
Paul Mambrasar
Cherry L. Minero
Edwin Erfe
Persia Rueda Acosta
Carl Cesar Rebuta
Jose Alberto Marrero
Daniel Edmond Kaima
Cathy Bolinga
Sahng- Ah Rhee
Arosh Buddika Hapuarachchi
Manamela Handi Pubudu Alwis
Pia Oberoi

Participants' Organisation

Oxfam Australia
Oxfam Australia
JACDB
Mon Women's Organization
Earthrights International
Arbitration Council Phnom Penh Center (A)
Citizens' Constitutional Forum
Oxfam Hong Kong
National Campaign on Dalit Human Rights
KASBI Congress of Indonesia Unions Alliance -JI
HR and Protection Section, UN Mission in Liberia (UNMIL)
Citizens for Justice
ERA Consumer Malaysia
National Consumer Complaints Centre
Malaysian Trades Union Congress
ELSHAM Papua
Bicol Regional Social Action Commission
Ateneo Law School, Ateneo DeManila University
Public Attorney's Office
Legal Rights and National Resource Centre Inc
Ebgan Inc (Intervention Center Toward Human Development in the Cordillera)
The Center for Environmental Law and Community Rights (CELCOR)
Caritas PNG
Korean House of International Solidarity
Practical Action South Asia Programme
Movement for the Defense of Democratic Rights (MDDR)
Forum Asia

Trainers

Prof. Paul Redmond
Justine Nolan
Richard Meeran
Prof. David Kinley
Philip Chung
Tim Connor
Jacqui Katona
Erin Farley
Patrick Earle
Priya Sivakumaran

Appendix 3: Opening Address by Dr. Elizabeth Evatt

DTP, UNSW, Human Rights Advocacy and Business

25 September 2006 9.30am

The Diplomacy Training Program

The founders of the DTP include Garth Nettheim, a distinguished member of the Law Faculty, and Jose Ramos Horta, Nobel Peace Prize recipient, and now Prime Minister of the country whose interests he defended for so long in exile.

The Program has many admirers. It is one of Australia's most significant contributions to strengthening civil society and human rights in our region.

The diverse outreach of this program

It is in keeping with the spirit of the DTP that 15 or more countries are represented at this program, mostly from the Asian and South Pacific regions.

Australia, Burma, Thailand, Bangladesh, Cambodia, Fiji, India, Malawi, Malaysia, Philippines, PNG, Sri Lanka, Liberia, Indonesia, Pakistan.

The work of advocacy and training in which each of you are engaged is important and challenging, touching as it does many groups whose human rights are at risk, such as indigenous people, women, refugees, children, tsunami survivors, workers, migrant workers, and other disadvantaged or excluded groups. You are the movers, the activists, and your work will help to change society for the better. We hope that this course will strengthen you in your efforts.

State and individual in treaty bodies

Human rights people worked for many years to establish the basic principle that the compliance by States with human rights standards is a matter of genuine international concern, not an infringement of State sovereignty. Numerous international covenants and conventions are based on the principle that States are answerable for their human rights record.

I have had some experience in the UN treaty body system, supervising States implementation of the Women's Convention and the International Covenant on Civil and Political Rights. Many States take seriously their obligations to report on implementation law and practice, and some are willing to put into effect the decisions of the Committees. But not all do so. There remain some serious deficiencies in the enforcement and implementation of international human rights standards. Nevertheless, the principle that States are responsible and answerable is established.

New departures in human rights

But the debate has now moved into a new area. States are sometimes less powerful, and have less resources than major multi-national corporations, whose activities can have profound effects on human rights.

And the global system of trade leaves some people at a great disadvantage in economic terms.

Your work covers many human rights issues, such as workers' rights, health, poverty, the environment, which are directly affected by the operations of private global enterprises. The question is, how should multinational corporations be made accountable for the impact of their operations on the human rights of workers and communities affected by their activities?

Can global enterprises be made directly accountable?

One answer is to make corporations liable under the law of the State in which they are incorporated or in which they are operating. There are examples of successful litigation within the State. But to bring a corporation to account by this approach requires ready access to the courts and to legal remedies. It requires appropriate laws, and an effective legal system, independent judiciary, etc.

There are instances of States which have bound corporations to meet human rights standards, wherever they operate. The United States has its Alien Tort Claims Act under which US courts can hear claims by foreign citizens for injuries caused by actions in violation of the law of nations or a treaty of the United States. But solutions of this kind are not available everywhere, and do not necessarily extend to all kinds of human rights violations.

There remain many situations where the State in which a multinational is operating is unwilling or unable to protect human rights, for example, through lack of political will, lack of appropriate law, or through weak institutions, or corruption. Often the State is not anxious to deter investment by insisting on high standards of respect for rights.

Many, if not most of the participants in this course come from countries where democracy and the rule of law have a rather weak hold, or where there has been military rule or even military coups in the last few years, even very recently in some cases.

So, if the State or its institutions are too weak to impose liability on corporations operating in its territory, what other ways are there?

There is growing interest in proposals that business enterprises, including multinationals, should respect and comply with human rights standards in their activities, and that they should be held accountable for this either under the law of their home State or directly under international law.

Various options have already been promulgated or are under consideration. These will be the subject of intensive consideration this week, and I will refer to them only very briefly.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977

The ILO is unique in that it has representatives of business, employers, and unions as part of its structure. In 1977 the ILO Governing Body adopted a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy which calls on multinationals, to respect the ILO Labour Standards. There is a certain degree of monitoring in that regard.

OECD guidelines

States parties to the OECD have undertaken to ensure that multinationals incorporated in their countries comply with human rights standard in their operations. This principle applies to multinationals not only in the home State but to the actions of the multinational wherever it is operating, such as in developing countries. There is a procedure under the Guidelines under which the home State can be called on to supervise compliance with the standards. NGOs can initiate action under this monitoring procedure.

UN global compact

The UN has itself set up a voluntary scheme called the Global Compact, under which participating business entities are called on to make a commitment to respect basic human rights. Its aim is to “help to promote a culture of respect for human rights from within the company”. It is rather weak on supervisory measures, but is a useful consciousness raising activity.

The UN Norms on Responsibilities of Transnational Corporations and Business Enterprises with Regard to Human Rights

A potentially exciting initiative is the work being done in the OHCHR on developing UN Norms on the Responsibilities of Transnational Corporations and Business Enterprises with Regard to Human Rights. The starting point for the Draft Norms [which have no set legal status as yet], is the principle that transnational corporations and other business enterprises should respect and protect human rights. They are asked to respect the Norms, to incorporate them in contracts and deal only with others that do the same.

Monitoring or supervision of compliance presents real problems, as the idea of direct accountability of transnationals under international law is rather controversial and there seem to be many obstacles to surmount before the Norms are formally adopted in anything like their original form. A Special Representative of the Secretary-General (SRSG) has been studying the issues which arise in relation to the Norms - Professor John Ruggie. He published an interim report in February 2006. While expressing extreme caution about direct accountability, his work reveals that there is certainly scope to work with corporations to improve their awareness of norms, their internal accountability mechanisms, and their willingness to account publicly for their human rights activities.

Ethical trading initiatives

There are ethical trading initiatives which operate on an industry basis. There could be opportunities for NGOs to take up relevant programs with particular corporations, and to persuade them to accept whatever monitoring system is in place.

Knowledge can count

These programs, about which much more will be said this week, have a connecting theme. They all promote awareness by the organizations, the business enterprises, of the impact of their activities on human rights and of the universal standards that they should meet. Some enterprises, of course, will remain indifferent to the impact of their activities on people, their concern being only the bottom line.

But in other cases the individuals who make the decisions, or who can influence the decisions which lead to harm, act out of ignorance. When the situation is explained and the background of human rights accountability is set out clearly and firmly, they may be ready to adjust their thinking, to change their attitudes and encourage others to do the same. Supporters of human rights compliance may emerge from within an organization. And the importance of maintaining a good image may also help to get changes in approach. [though if you saw the film "thank you for smoking, you might not agree].

Some observations

Over the next few days you will be looking closely at some of these ideas, and no doubt searching for ways to tackle the human rights problems arising from the operations of multinationals in your own countries.

Another issue I can't touch on today is how to get human rights on the agenda of world trade and finance organizations.

The hope, and indeed the expectation, is that after a week of intensive study, you will return to your human rights work, with new ideas and new skills to use in your struggle for a better world and to pass on to your colleagues and associates. By sharing your experiences with other participants in the program you will learn from each other, and this will add enormously to the formal program being presented.

The well-being of many people depends on your efforts, working in the front line for human rights and passing on the knowledge and skills gained here to others who are also carrying on this fight. The battle for democracy and human rights requires not the weapons of violence but the power of advocacy and skilful lobbying. It requires the knowledge and skills to be fully informed about the organizations you are targeting and their activities, so that you and all your associates are well armed to confront and confound those who have failed to respect rights, and to insist that they respect the rule of law and principles of justice and human rights.

Everyone hopes that you will be strengthened in this struggle by your experiences here, and by learning more about the strategies you could employ in negotiation with business organisations. We look forward to hearing of your successful struggles, as you continue your work for democracy and human rights.