



Focus on Human Rights

ASIAN

PERSPECTIVES

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Indeed, many of the rights that we now identify and discuss are the offspring of international instruments that operate under the United Nations' auspices. Nevertheless, the sovereign state remains the framework in which these rights are allowed or not allowed to function.

YASH GHAI

Sir Y.K. Pao Professor of Public Law
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Introduction

Asian Perspectives: Focus on Human Rights is the ninth in an ongoing series of seminars sponsored by The Asia Foundation. Convening on September 22, 1998 at the Carnegie Endowment for International Peace in Washington, D.C., the seminar focused on the challenges regarding legal reform and the protection of human rights in Asia, particularly as those issues relate to Asia's ongoing economic crisis.

Welcoming Remarks by David Steinberg

Five issues relating to human rights flow from the Asian economic crisis, which began in 1997 with the devaluation of the Thai baht. The first has to do with the economic problems confronting each of the countries affected by the crisis. The second is whether the heralded East Asian development model remains valid. The third asks whether international financial institutions are capable of dealing with a crisis of this magnitude. The fourth specifically addresses the focus of today's meeting, namely social-political concerns, especially as they relate to law, civil society, and human rights. Finally, there is the issue of whether the IMF's interventions have triggered anti-foreigner feelings in various parts of the region.

With any of these five issues as a point of departure, a broad intellectual basis presents itself on which to evaluate the relationship between the economic crisis and human rights. Nevertheless, blame often is placed, at least in part, on collusion between the state and the private sector. I would argue that collusion here is simply a manifestation of the very close relationship between the state and civil society. Indeed, the distance between the two is very narrow in many societies.

Intellectuals also seem to have erected a "fire wall" between what is economic intervention and what is non-economic intervention. Although the Universal Declaration of Human Rights dates back to 1948, human rights as a principle was not articulated as part of American foreign policy until 1976 when the Carter Administration was in place. Since then, human rights has remained an important element in U.S. foreign policy.

The Asia Foundation, since its inception in 1954, has concerned itself with good governance, support for the rule of law, and development of a civil society. The Foundation also continues to support broadly the non-governmental organization (NGO) community throughout Asia. For example, the Foundation's work in Korea helped establish the Children and Family Court, with support for the only woman lawyer in the country at the time. In South Asia, the Foundation has supported a range of NGO activities that are focused on a variety of social problems.

The Foundation is engaged directly with issues concerning human rights and has expanded its work to questions concerning accountability and transparency in government, all under the general rubric of our support on behalf of good governance. For example, at the country level, we have supported the Human Rights Commission in Indonesia; the rule of law and human rights in Cambodia; women's programs in Bangladesh; and human rights in the face of ethnic conflict in Sri Lanka.

The Foundation also is engaged in regional programs, including efforts to establish an ASEAN Human Rights Mechanism and a Regional Human Rights Working Group.

Introductions by Richard Wilson

Human rights is one of the most important issues facing Asia and the United States. The group that is gathered here attests to just how concerned and deeply immersed people in the Washington community are in this issue. We recently held a similar program in Philadelphia and next will extend the discussion with human rights activists, individuals, and representatives of various organizations interested in supporting human rights in New York.

The Asia Foundation's Human Rights Working Group (HRWG) grew out of the Foundation's longstanding interest in human rights. That interest provides the platform for our sponsorship of what we are doing today, namely fostering regional networks and engaging in dialogues about human rights.

Our interest was spurred in 1994 when, at the height of the Asian values debate, we recognized just how useful an annual exchange of views on human rights from U.S. and Asian perspectives could be. We were not wrong. For three years, we explored the many dimensions of human rights in their political, economic, and cultural contexts.

A paper authored by Professor Yash Ghai and titled, "Human Rights and Governance: The Asia Debate," was one of the more important documents that resulted from those discussions. It was published in late 1994, but continues to inform our understanding and knowledge about the very difficult problems that exist today in the area of human rights.

Beginning in 1996, the Foundation decided to support various regional projects suggested by the HRWG. We began developing a master's degree program in human rights at the University of Hong Kong. This is to be a one-year residency program open to students throughout the region. Again,

Professor Ghai is a leading light, helping draft the proposal and assisting in its implementation. We hope the degree program can be launched in the fall of 1999.

Another project flowing from the HRWG and the Foundation's concern for human rights, relates to migrant labor groups and especially women in these groups. This issue is even more pressing today in light of the economic crisis in Asia. The Foundation has initiated a short course for labor attachés and other officials, which focuses on migrant workers' problems. The Canadian Human Rights Foundation and several Asian groups are also involved with the program.

One in-country program that has been quite successful focuses on judicial training for Chinese lawyers and judges. Professor Wan Exiang from Wuhan University has been instrumental in making this program work. In brief, a sort of moot court environment is set up where Chinese judicial procedures are compared and contrasted with procedures practiced in countries that follow common law. So far, the Foundation has supported three cycles of training in cooperation with Professor Wan and the Asian Legal Resources Center in Hong Kong.

These projects are examples of The Asia Foundation's many interests and efforts in the area of human rights. The economic crisis that has enveloped Asia gives us yet another point of departure. Today's seminar is an effort to gain broader understanding of the U.S. and Asian perspectives about how the economic crisis is impinging on the human rights of those living and working in the countries that are most affected.

Each participant has been invited to highlight what he or she believes are the most important human rights issues in his or her respective country. 🌐

Globalization, Economic Interdependence, and the Promotion of Human Rights

by YASH GHAI

The task before us invites us to explore the implications of globalization for human rights and social policy, given the fact that globalization is now the dominant paradigm for economic and social organization.

Both globalization and human rights are complex concepts. Because they are multilayered phenomena, sorting out the relationship between the two can be particularly challenging. To begin, globalization has many aspects. It is simultaneously a reflection of the discourse that develops between cultures and the result of that discourse, namely a “world culture.” It is enhanced by the concentration of media resources and the media’s ability to disseminate ideas and information rapidly, particularly via the Internet.

It also has complex economic aspects that are fundamental to understanding the process. By economic, I mean the way in which today’s market matrix is integrating national economies into the global economy.

The concept of human rights is equally complex. It began with some rather simple ideas about civil and political rights as specific aspects of the relationship between citizens and the state. With the adoption of the Universal Declaration on Human Rights in 1948, however, our ideas about human rights started to deepen. As a consequence, we now have a number of priorities that range from economic

and social rights, to environmental rights, to the rights of indigenous people.

The variety of claims means, too, that tradeoffs are necessary for the resolution of competing claims of rights.

It all makes for a rich menu, but one that is also short of impossible as a topic for a simple discussion about what human rights is or is not. To complicate things further, both globalization and human rights have contradictory tendencies, which means it is necessary to break each concept into its component parts. It is only then that we can begin to fathom the complex interplay between the two.

For example, globalization can promote certain kinds of rights, but it also can downgrade others. This duality leads one to the inescapable conclusion that globalization is not likely to be either good or bad for human rights, which, in turn, requires that we look more closely at the kinds of rights that are material to our discussion.

Given that globalization permits international capital flows to dominate economies, it is natural that a deep antipathy would develop between those who are responsible for globalization and those who are advocates of human rights. Where globalization reigns, small communities experience the effects of globalization and sometimes disruption. States are weakened, and there can be a significant shift of power from the hands of political authorities to

those of economic organizations, particularly multinational corporations.

Individuals then, are left feeling they have less control over their own individual and collective destinies. They feel they are less able to make decisions that affect their everyday lives. These feelings become all the more poignant when they are contrasted with how individuals feel about their own human rights, especially when they think of human rights in terms of their empowering and liberating characteristics.

In matters of human rights, the emphasis seems to be fairly consistently on a person's own dignity and worth. Indeed, the human rights movement advocates respect for individuals as well as group autonomy. It also emphasizes that each and every one participate in and contribute to the public process to the best of his or her ability.

But when human rights are viewed against the backdrop of globalization, an inherent contradiction becomes apparent. While globalization can have constricting outcomes where individuals are concerned, the principle of human rights retains its emphasis on empowering and liberating people. This contradiction leads me to believe that globalization and human rights cannot co-exist — unless their instruments and processes are qualified in some very important ways.

One theory holds that “marketizing” economies are part and parcel of globalization and as such, essential for the development of human rights. This is very clearly a “market view of rights.” In China, for example, a number of people believe that the shift to a more open market anticipates a wider acceptance of principles that define human rights. The correlating objective is to decentralize power, empower groups and individuals, reduce dependence on the state, require initiative, and depend on the rapid diffusion of information. Each of these elements is deemed important for the evolution of democratic societies and the simultaneous protection of rights, according to this market view of rights.

A contrary view, however, holds that markets actually diminish the value of human rights because of their inevitable emphasis on inequalities within society. The result is that whole groups are left vulnerable to the vagaries of the economy. Proponents of this point of view argue that social and economic rights, in fact, suffer when free market conditions are in play.

China may provide the appropriate venue for studying the two points of view, precisely because Beijing has been trying, on a massive scale, to shift from a command economy to one that is more market-oriented. However, it seems clear to me that the results already indicate that economic and social rights have suffered considerably in China. Within certain social sectors, there is a deepening polarity, and disparities in terms of wealth have become quite striking. Also, access to social services has become more problematic and certainly more expensive.

Turning to East Asia, the fallout from globalization seems to be especially evident in Indonesia and Thailand. Other countries — where globalization has occurred more gradually — over the last 20 years, seem to be suffering less. These economies spent the last two decades striving to become more export-oriented and relying increasingly on imported capital and technologies in order to facilitate their integration into the global economy.

In Hong Kong, where I come from, people have been sheltered, relatively speaking, from many of the consequences of this economic crisis. But who knows how long this will last. We have already started to see increasing unemployment and poverty in the midst of great affluence.

Looking at all the economies together, one finds that the Asian experience actually affords a rather good case study of 20 years of globalization. The results follow two directions. On the one hand, significant improvements are apparent. New wealth has been created, and in some cases, wealth has even been distributed in an appropriate fashion. But on the

other hand, deep pockets of poverty are increasingly evident in the midst of this increasing affluence. This demonstrates that far too frequently the fruits of integration are shared by a few and distributed unequally.

Wages have remained low. Trade unionism has been discouraged. There are few welfare provisions and very few safety nets. Where welfare exists, it is associated more with the structure and policies of business than it is with the laws and policies of government. The massive exploitation of certain communities is also evident.

Exacerbating this process of economic and social debilitation are the interventions by the International Monetary Fund (IMF) and the World Bank. On the one hand, the prevailing notion is that “market-friendly rights” promote political participation, democratic practices, and the right to free expression and assembly. But on the other, the kinds of effects that flow from interventions by the IMF and the World Bank, actually augment the negative side of globalization.

Consider the terms of these institutions’ so-called grants to Indonesia, Thailand, and even to South Korea. On the one hand, they open up the country’s institutions to foreigners who participate in the economy in exchange for equity. This has the effect of deepening the process of liberalization. But in South Korea, for example, the net effect has been legislation that reduces protections that have been afforded workers. Another example in South Korea is the requirement that all subsidies be

phased out and that interest rates be raised.

At best, the picture is uneven and depressing. Also, I get no sense whatsoever that basic rights have grown under the very authoritarian governments and military regimes that are a part of the process of integration in the global economy. In fact, one outcome may very well be that some groups end up more vulnerable than they were before the process got underway.

It is a fact that the economic crisis has raised anew the debate about what is the most appropriate form of government for a country with a developing market. One school of thought blames the crisis on insufficient government transparency, collusion between big business and government, and the lack of prudential management on the part of financial institutions. Proponents of this point of view argue that the evils of authoritarian systems are the cause of the crisis and that outcomes would have been very different had more and better democratic institutions and processes been in place.

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One counter argument, however, says that no clear correlation exists between the crisis and one kind of government or another. Proponents of this point of view simultaneously point to South Korea, which has been democratic for some time, and Indonesia with an authoritarian form of government. Neither economy has escaped turmoil, and both have suffered greatly. Thailand, too, which has a government somewhere in between clearly has not been spared.

The issue of Asian values also should be addressed in this context. The idea of Asian values began attracting interest at the time these economies started booming. Now, the question is whether these values can ever be the same.

Taken together, the competing points of view underscore the need for a suitably complex framework against which we can examine the relationship between economic change and political authority. This framework must also allow us to address an additional point, namely, what does the process that started unfolding in mid-1997, teach us about the nature of human rights? What kind of insights are we to glean?

Much of what we deem to be human rights has at its core key tenets of the international movement that started when the United Nations Assembly adopted the Universal Declaration of Human Rights. Indeed, many of the rights that we now identify and discuss are the offspring of international instruments that operate under the United Nations' auspices.

Nevertheless, the sovereign state remains the framework in which these rights are allowed or not allowed to function. In this context, globalization raises the question: Who is responsible for human rights? Does the responsibility belong to the state, even if it finds itself in a position of having its ability to set its own national policies, including a national policy on human rights, weakened by international capitalist forces?

One only has to look to East Asia today to see just how difficult it is to hold any state responsible for human rights

policies. So, who should and can be held accountable for human rights? And should we re-think our human rights framework?

Finally, I want to comment on the point of view that argues that all evil flows from the state and that human rights are intended exclusively as a curb against government abuse. Proponents of this viewpoint concern themselves especially with people who are displaced as the result of action the state takes.

The reality is that our lives are infinitely more controlled by the policies of the multinationals and other economic institutions than they are by the policies of the state. And there is no amount of legal theory that can restrict these global corporations' activities, even though some governments have tried to legislate and regulate employment and gender rights.

One consequence then is that human rights is not going to be the controlling factor that governs the relationship between

individuals and corporations. And given the massive shift in power from political to economic interests that now is underway, I am left wondering whether the human rights distinction even can be maintained.

So where do we go from here? We should start by bringing human rights up to date to deal with the new realities that are the result of globalization and of the new configurations of power that also are part and parcel of globalization. On another level, the question that also should be addressed is just what direction does East Asia take when it comes to its political and economic structures.

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Can and will globalization lead to a more open political order and more equitable economies? Or will it lead to more repression as governments struggle to deal with international lending institutions and the multinational corporations?

What must the circumstances be that discourage repression and that lead to a greater emphasis on democratic processes?

It is indeed a very complex topic. 🌱

Assessing Human Rights in China: The Rule of Law in the Emergence of Civil Society

by WAN EXIANG

The economic signs in China are encouraging. Although exports seem to have declined because of the Asian financial crisis, the crisis itself seems to have little direct impact on China's monetary system. That is because China is able to conduct its affairs independent of international systems that are of concern elsewhere.

Foreign investment has been increasing by as much as 20 to 30 percent, even in central China where heavy floods on the Yangtze River did extensive damage this past summer. It appears as if Taiwan, Hong Kong, and countries in the West are turning away from other Asian nations and investing in China. Indeed, the level of interest on the part of outside investors is indicative of the dynamic change that is taking place all across China.

Still another indicator is the voting law for village committees, which the National People's Congress began working on in early 1998. Five points illustrate the influence of this law, and the rule of law generally, and the resultant interest generated in civil and human rights.

First, the new law has spawned efforts to ensure that people at the grassroots level understand the full extent of their rights when it comes to village committee elections. There have been similar attempts in the past but never in such a widespread or universal fashion. In the past, villages were identified as so-called test cases. Now, the new law

promotes the full extent of citizens' right to vote in villages all across China.

Why is this so important? In China, a system is already in place for electing representatives to Congress. Provisions have also been made for the congressional election of major officials in cities and provinces. The key distinction, however, between elections at the village level and those at upper levels of government, is that at the village level, candidates who stand for office no longer have to be strictly the choice of the authorities. Instead, they can be selected at random, meaning anyone can step forward and run for office at the village level.

That said, problems still persist with a system that allows anyone to be a candidate and gives no one any real control over the outcome. For example, a village may have only two powerful families, and so representatives of the two families end up vying with each other for control.

There is also the potential for cheating and fraud. Because we currently have no specific criminal penalty for fraud and cheating in the local electoral process, this becomes a new sort of problem.

Still, the new system is having positive repercussions, starting with intellectuals at the university level and with workers at state-owned enterprises (SOEs). As things now stand, workers demand to exercise their voting rights when

it comes to deciding key issues in managing the factory. But because of this new system coming into play, people at the university level, as well as those working in SOEs, are starting to speak out in favor of greater say on issues they believe directly affect them and their livelihoods. In fact, they demand things change in this direction.

Factory leaders, as well as most university presidents, are not elected by the people they govern or manage. There is some initial progress at the university level, although not at the factory level. At Tongji University in Shanghai, for example, a woman president was elected by popular vote. The same is true for the president of the Art College of Hubei Province.

Meanwhile, workers in the SOEs are only beginning to insist that they both be able to choose their directors and impeach those who are distrusted. Their argument is that popular elections will mean there is less corruption at the upper administrative levels, because popularly elected factory leaders will feel greater responsibility toward the people they manage. Proponents maintain that this is the only cure for corruption.

The second arena where the influence of the rule of law is being felt concerns tax reform. Today, few people make the connection between their earnings and the sources of revenue needed to pay the salaries of authorities and government leaders. Perhaps as few as 10 percent regard themselves as obligated to pay “income” taxes, and as such, feel they are in keeping with the basic tenets of the country.

Were there universal taxation, however, these same people would begin to make the connection that they are the

ones paying the salaries of the leaders of government and these leaders of government are responsible to them as a result. Universal taxation is a way of reminding people that they are the real “boss” and that government officials are beholden to them.

An anecdote is telling. A minister made a speech on television in order to educate people that they, indeed, are the ones paying his and other officials’ salaries. He wanted them

to see that he regards himself as their servant and that he understands that his duty is to strive to serve the people better. Because of his efforts, a group of private citizens were invited to appear on television, too, and to physically hand over the salary bags. The gesture was designed to demonstrate that these public officials understood full well the source of their paychecks.

The point is that once people make the leap that they are the underwriters, so to speak, and that they are fulfilling their obligation

as citizens, then they will begin to insist on having certain rights. Once they achieve that level of understanding, they will begin asking for ever broader rights, particularly when it comes to widespread, popular elections. Clearly, citizens exercise their right to vote for candidates now, but the issue is whether the authorities handpick the candidates or whether the candidates are simply citizens seeking election to office.

Indeed, a serious debate is now underway as to whether this is the correct and authentic way to exercise one’s right to participate in elections. The outcome is likely to be that people increasingly demand greater participation at more

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than one level of government when it comes to choosing their leaders.

The third arena of influence of the rule of law concerns the impact that judicial reform is having on political reform. Three factors come into play.

The first concerns an effort that is being made to improve the caliber of officials who sit on the bench. To this end, a growing number of law professors at universities and law schools — many of whom have been educated at American law schools — are being asked to accept appointment to posts at the intermediate, high, and even Supreme Court levels. Professors in Hubei and Shandong provinces have been invited to join the bench. The same is true for law professors in Shanghai and Beijing. Some professors now are also under consideration for or have been offered the job of chief or deputy chief prosecutor at the provincial level.

Beijing University already is represented on the judiciary. For example, the vice president of China's Supreme Court is the former vice president of the University and the former dean of the university's law school.

This is a very encouraging development. Previously, the majority of the judges in China were retired army officers with maybe three months of training for the judiciary! They were not able to keep up, simply because they did not have the qualifications or the training they needed to handle court cases, especially when it came to sophisticated and complex legal problems like intellectual property issues and disputes involving foreigners.

The growing demand within judiciary circles for independence from local government is the second factor pushing judicial and hence political reform. Judges want to be insulated from the control that local government can exert as an extension of their oversight of budgetary matters and their control of appointments. To that end, judges are asking that the central government be responsible for their financial support in much the same way that central govern-

ment is responsible for China's banking system.

Consider a case with an SOE as the defendant in a civil procedure. From the onset, the presiding judge faces certain pressures because in all likelihood, the heads of the SOE are familiar with the local authorities. Judges see the implications as an issue of control, but more so as an issue of judicial credibility.

The judiciary's own insistence on training is the third facet helping to define judicial reform. China is in the process of adopting certain principles of common law as practiced in the West, specifically as they apply to the practice of cross-examination. Cross-examination is commonplace in criminal procedures in China, as the Supreme Court has advised.

To this end, a number of judges, lawyers, and professors have participated in a moot court procedure where the objective was to apply the principles of common law in a number of cases that had been tried previously in Chinese courts. The judges who participated were shocked at the outcome. Why? Because of the "due process" they experienced from the bench.

As a result, perhaps as many as 50 judges and prosecutors now are hoping to enroll in our due process masters program at the law school at Wuhan University. One of the criteria for participation is a command of English, for obvious reasons. The program at Wuhan University also is sending judges abroad to study law as practiced in the West. Currently, one judge is studying at Yale Law School and another is at Hong Kong University.

Now, let me return to the far-reaching impact of the rule of law and the fourth arena of influence, namely the amendments to our criminal code. In October, China signed the International Covenant on Political and Civil Rights. A part of that covenant reinforces a number of amendments to China's criminal code, which were written to better protect the rights of criminal defendants.

For the first time in China's modern history, the criminal code spells out the presumption of innocence of a defendant at the onset of a criminal proceeding. Another first is the emphasis on a defendant's right to consult with a lawyer within 24 hours of his or her arrest. Although defendants technically had this right, all too frequently lawyers faced virtually insurmountable hurdles because they in effect were forced to get the justice department's approval to meet a defendant. Now that the criminal procedure law has been explained in judicial circles, lawyers are having a much easier time of it.

The fifth arena where the rule of law is felt concerns legal assistance programs, which make their own waves within the country's legal system. In this instance, I am proud to stand here as the representative of a legal aid center, and China's first nongovernment organization.

The Center for the Protection of Rights of Disadvantaged Citizens, set up in 1992, has six branches for the purpose of helping represent the rights of women, children, seniors, the disabled, and the environment. The sixth

branch focuses on what we call "administrative litigation," cases of citizens versus government officials accused of abusing their position of authority and power.

When the program got underway six years ago, we were handling 80 to 90 administrative litigation cases annually. Today, we work with more than 100 cases each year — and we are winning more than 80 percent of them!

We are also the prototype for a number of legal services programs, starting with the Women's Center at Beijing University. The Center offers women an array of services, including legal rights counseling. Similarly, law schools in China are following our example and establishing legal aid centers on campus. Every county and major city in China now has an official legal aid center for the poor and for criminal defendants.

Our work is frequently covered by the media, both in China and the foreign media. We have been featured in articles in *Business Week*, the *China Daily*, and in the Japanese media. 🌍

Bouquets and Brickbats: A Human Rights Audit

by SHAD SALEEM FARUQUI

If we were to conduct an audit of human rights in Malaysia, we would end up with both bouquets and brickbats. It is sad, but true, that there is a wide gap between promise and performance, theory and reality.

In the last few decades, globalization has done much to put human rights issues in the forefront of discussion. It is now recognized that national sovereignty is a shield against foreign aggression. But it cannot be used as a sword against one's own people. Human rights abuses in any country deserve a worldwide response because injustice anywhere is a threat to justice everywhere.

But globalization has its dark side. Here is why.

Globalization has advanced civil and political liberties in country after country in Asia, but socioeconomic rights have taken a beating. The recent economic crisis has increased pressures to reduce welfare benefits. This has cut deeply into the protections otherwise afforded in a strong economy. The victims are the weak and the already marginalized. The priority has become liberalizing the economy at all costs, including at the expense of social equality and equitable distribution.

As a result of the liberalization of the economy and the participation of powerful multinational corporations, the gross national product in Malaysia has grown substantially. At the same time, the lives of minorities and indigenous communities have been disrupted, in some cases beyond repair.

If industries pollute rivers, the fish will die. If the fish die, the riverine communities lose their primary source of livelihood, and the village children lose an important source of protein.

A similar cycle takes over when the forests are decimated. Tribal communities lose their homes and their livelihoods, and some say, their souls, too. Tribal people have said to me: When you cut down a tree, you cut off my limbs; when you dig up the forest, you dig up the soil where the bones of my ancestors are buried. If you take away my abode, you might as well kill me because this is where the souls of my ancestors roam. The forest is my home even though I do not have title to the land.

As it turns out, the government sells or leases forests and native lands to developers who reap massive profits, leaving the indigenous people to pay the bulk of the price.

There is no doubt that globalization has been very disruptive for many people in Asia. Indeed, such a drastic reversal as we have experienced in East and Southeast Asia is nowhere to be found in recent history. Years of hard work developing the infrastructure and creating programs to reverse poverty are now in serious jeopardy.

Some cold, hard facts will illustrate the point. The Kuala Lumpur Stock Exchange (KLSE) composite index has fallen by as much as 79.3 percent. Market capitalization has slumped from \$900 billion to \$300 billion. The Malaysian currency, the *ringgit*, has dropped 40 to 45

percent, compared to the U.S. dollar. As a consequence, foreign loans have doubled and the cost of imports is now unbearably high—particularly for industries that depend on foreign components.

Unit trusts and company assets have lost 60 percent of their value. Debts are unbearably high because of low exchange rates and interest rates, which have jumped from 6 to 14 percent. In an attempt to bring interest rates down, the government has broken with the International Monetary Fund (IMF), but I do not know how long the intervention will be successful.

Even successful companies are suffering a credit squeeze. Recession has hit us very hard. In the last quarter, the economy shrunk by seven percent. Sectors, like the construction industry, are straddling huge debt and as a result, have come to a standstill. Tax revenues have declined 50 percent. This will have a very serious effect next year when the government must provide allocations for public services, education, and poverty alleviation schemes. Bankruptcies have become inevitable for many large and small businesses. In fact, inventory liquidation has become a very lucrative business in Kuala Lumpur these days!

It is apparent that our economy is quite susceptible to damaging, speculative runs from abroad. Given the fact that we still need foreign investment, the question now is what type of outside participation is the most beneficial. We have heard a lot about the Asian development model. In my view, Malaysia never followed it. Instead, we basically aped the West's worship of the market. It is now apparent that this did us no good.

Consider foreign funds, which get invested in one of three ways. First, there is foreign direct investment (FDI), where investors set up factories and long-term facilities to help develop new capabilities. Sadly, only about 10 percent of the foreign funds invested in Malaysia are in the form of FDI.

Second, there are development loans, which equal 10 percent of the foreign investment we receive. And third, there are portfolio investments involving offshore speculators who buy local shares and currencies. In 1997 alone, these funds pushed the Kuala Lumpur Stock Exchange capitalization to 375 percent of Gross Domestic Product. In June 1994 alone, \$30 billion dollars in external capital buying was managed in the Malaysian stock and bond market.

Sadly, much of Malaysia's touted growth in the 1990s was due to the inflow of speculative capital. It meant that when the plug was pulled and the capital withdrawn, we were left absolutely helpless. This is why some developing country economists question whether our development approach was wise. Perhaps our problems are not as serious as those facing Indonesia or South Korea are, but certainly the situation in Malaysia is serious.

The social costs have been monumental. Retrenchments and unemployment are on the rise. The public and private sectors are not recruiting new employees. This is especially problematical for new graduates and professionals, who face difficulties finding suitable jobs despite their education and training.

However, the biggest impact is in the foreign work force. Foreign workers are losing their jobs and are being forced to repatriate. Some are resisting, and consequently, there has been some violence. Nevertheless, the deluge of illegal immigrants continues, with its attendant social and economic ills. Crime involving illegal immigrants is on the rise. Many diseases which had been wiped out, are re-emerging. Illegal workers suffer from sexual harassment, low salaries, and no social security. They live in hovels and shanties.

Because of the downturn, public funds are in decline and subsidies for education and health have been reduced significantly. Budgets for public education institutions have been slashed by as much as 25 percent despite enrollments at universities climbing by 20 percent. The growing enroll-

ments are one way the government hopes to keep young people off the streets and to prevent social unrest.

A number of parents who sent their children to study abroad, to the United States, the United Kingdom, Australia, and New Zealand, have had to bring them home for fear of losing all their savings. Poverty remedial projects have been sidelined. Meanwhile, there is a growing disparity between those with wealth and those without. Salaries and benefits have been cut while inflation continues to ravage our standard of living. Privatization has increased the prices of all essential services.

The financial crisis is also having an impact on politics in Malaysia — and elsewhere in Asia, too. Governments no longer seem to have control of the strategic direction and policy framework of their economies. Instead, the control is in the hands of international institutions, like the IMF and the World Bank.

This is the case despite the lingering, unanswered question: What mandate do these institutions have to determine the fate of nations? To add insult to injury, these institutions exercise power but demonstrate little or no social conscience or social perspective.

Nevertheless, we must live with the reality of what they dictate. Once the emerging economies are forced open by external participation and particularly after shares have come available at bargain basement prices, outsiders are able to lay claim to a dominant position in a country's financial sector.

If circumstances deteriorate further and the government falls short, then, no doubt, there will be more and louder voices of dissent. Someone will have to accept the blame and if so, what follows will be either outright repressive measures to curb dissent or more openness and transparency.

The currents and crosscurrents make it difficult to conduct any truly reliable audit or review.

In reviewing the international response to the Asian financial crisis, it seems that those with influence still are

reluctant — more than a year later — to check the trigger that set off this turmoil, namely the volatile, short-term speculative capital that moves in and out of markets in search of quick and massive profits.

Instead, their focus has been on the weaknesses within individual national systems, some of which are real and would seem to call for urgent reversal. For example, the lack of transparency in our banking sector in handing out loans to persons and businesses linked with the ruling coalition for projects with no real developmental value.

A second issue of great concern is the link between big business and political parties. A dangerous precedent was set 10 years ago when proxy companies on behalf of the ruling party or coalition began to tender for franchises to operate highways, banks, social services, and telephone companies. Involvement of political parties in entrepreneurial activities destroys the necessary check and balance between holders of political and economic power. This is a very serious problem that must be addressed.

Coming back to our economic crisis, it appears that the lukewarm international response to our plight underlines a bias that is inherent in the West's human rights theory. This bias would seem to favor protection against state power and insufficient attention to the potential threat to human rights from private centers of power — in this case the invincible currency and fund managers who have wreaked havoc upon the economies of Asia.

The irony is that the institutions that are so concerned with human rights are indifferent to the social costs that a small group of international financiers is laying at the feet of an entire population.

Even the IMF, whose original mandate was to ensure stability in the world market, is unwilling to tackle these currency traders and hedge fund managers. To illustrate, it is said that a total of \$650 billion in speculative capital or 'hot money' travels around the world every 24 hours.

Nevertheless, the IMF shies away from criticizing these kinds of capitalistic activities. Why? Because the IMF is focused on cutting social expenditures, which hurts the poor the most.

It is a position that suggests that the IMF believes that socioeconomic rights are dispensable when there is a trade-off with market rights. It seems that individual rights are more important to the IMF than are the rights of the community. Liberalization and deregulation are more important than satisfying basic necessities. Economic efficiency is the overriding concern, even if the costs are high in terms of social and human concerns.

It is indeed ironic that despite clear evidence that the unregulated flow of capital benefits only a few, most governments are not calling for measures to make currency trading more accountable and transparent.

Now it is not for me to say what needs to be done to pull us back from the economic precipice. My background is not in economics. I do know, however, that when a herd instinct to pull out of the market takes over, the sudden withdrawals of foreign capital result in gross undervaluation of exchange rates.

We do need a free market, but one with a social conscience. Unbridled liberalization leaves us ordinary folks in an extremely vulnerable position. Our domestic economy is turned upside down, and we are sidelined with little else to do but watch helplessly.

We do need a free market, but one with a social conscience. Unbridled liberalization leaves us ordinary folks in an extremely vulnerable position. Our domestic economy is turned upside down, and we are sidelined with little else to do but watch, helplessly.

In an untamed, globalized world market, the money dealers rule. Where does that leave the democratic process? It is clear that economics is devouring politics. Commerce has become a culture. The power of the state has been handed over to financial oligarchies from abroad. Footloose investment capital, free of any state control, is threatening to decide the destiny of entire nations, with significant

implications for the regime of human rights.

The capitalist economies of today are a gambler's paradise. They promote boom or bust. They allow instant gains, and catastrophic and sudden losses.

With the benefit of hindsight, Malaysia, Thailand, and South Korea were wrong to liberalize and de-regulate to such an extent that they opened up their economies to volatile, speculative capital. Malaysia, for example, removed all regulations affecting capital movements decades ago. Foreigners could withdraw their investments without having to ask permission and convert the local currency into foreign

exchange. This might sound good on paper, but the consequences have been devastating.

No longer is an economy measured in terms of exports, mineral deposits, forests, oil, a 90-percent literacy rate, wasteland reserves, a history of never defaulting on foreign loans and overall, sound economic fundamentals. None of that matters. What matters is how much capital went in and went out of the stock market on a particular day.

This crisis has put our system of government and our leaders on trial. It has caused many to ask whether something is seriously wrong with the way we manage ourselves. Some things are seriously wrong, and they need to be corrected. But it cannot be denied that this financial crisis also puts capitalism and the free market system on trial. And we must ask, are they conducive to the protection of a regime of human rights, or do they favor survival of the fittest?

Over the last decade, many in Asia have argued that the best way to ensure human rights is to provide for a political system that is democratic and an economic system that is capitalist and based on the free market. We now are eating our words when it comes to the free market system.

It is worth a footnote that when communism and socialism were alive and well, capitalism was forced to adopt a human face. It had to show a caring face because of the appeal of communism and socialism to those with virtually nothing to lose.

It is necessary that Malaysia should plan its recovery in a way that it avoids being held hostage to currency speculators and fund managers from abroad. Any moves to regulate the immoral market will, however, mean that our growth rates will have to be pegged lower. But that will be a steadier path to progress and an approach to development that is consistent with our ethical principles and our religious and moral philosophies. 🌱

The Rule of Law in Bangladesh

by SALMA SOBHAN

The problem of law and order in the context of Bangladesh is a manifestation of an overall breakdown of society's own sense of responsibility. Since the revival of parliamentary democracy in 1991, a number of institutions have been strengthened, but the strengthening is less dynamic than many of us had hoped for.

Obviously for most of us, a return to democracy is a plus. However, the real problem is that the return to democracy has not been followed by stronger institutions that can support that democracy. And to a certain extent, there are those of us in Bangladesh who feel like the country is being held hostage to globalization, and that globalization has impeded to some extent, our ability to set our own house in order.

Instead, we are having to look over our shoulder at the dictates of powerful monetary forces that have their eye on the global picture but miss the problems facing any one, single country.

This, I think, is what creates a climate in which law and order deteriorates. And in the case of Bangladesh, this has been quite significant. One thing we do in my organization, Ain O Salish Kendra (ASK), is to document various types of human rights violations. Lately, we have taken note of a significant increase in the incidence of police violence, police brutality, custodial violence, rape and death in custody. This has left us very concerned because the last thing we expect to see in a country trying to return to democracy is this sort of increase in violence.

Clearly, violence is on the increase all around the world, but it gives me pause when that violence is increasing at the

hand of the very institutions which are in charge of enforcing law and order.

A case in point occurred about two and one-half months ago. A young man was picked up from the street and brutally beaten. He died the same day, which caused enormous anger, revulsion, and criticism of the law enforcement agencies. Since then, there have been a number of judicial inquiries and a lot of writing and talking about what is wrong with the system.

Of course, the penal code in Bangladesh is part of the legacy left to India and Pakistan by the British. Our law is based on common law, yet certain powers now enjoyed by the authorities were enacted later, during a time when it was considered necessary to give police enhanced powers. An example of enhanced police power is the right to arrest without a warrant and on flimsy grounds. Then, in 1974, the Special Powers Act was passed, which gives government the power to detain someone for as long as 90 days in the first instance.

This law was adopted in 1974 when a democratic government was in place. We had had a series of martial law governments, interspersed with civilian rule. But during the entire period, every political party, including the party that was responsible for promulgating the Special Powers Act and which is back in power today, argued that the law was appalling and should be repealed.

But as soon as this same party came to power, they discovered how valuable a law like this can be. As a consequence, no one has repealed it. I actually support the party

that is now in office, but I still think the Special Powers Act is an appalling piece of legislation and should go.

I would like to share this thought with you. Earlier this year, when President Clinton expressed his outrage over terrorist acts targeting U.S. diplomatic posts in Africa, and British Prime Minister Tony Blair expressed similarly strong sentiments about attacks undoing the peace process in Ireland, both vowed that terrorists would never be allowed to claim success because of their acts of terrorism.

These leaders' outrage and their words were fine, but their message was disturbing in its implication that police powers should be extended readily and without regard for the rights of individuals. At the very least, these words struck us in Bangladesh as ironic. While we are fighting inordinate powers for police, the leaders of the democracies in the West are crying,

'Oh, my god, the situation has gotten out of hand. We had better authorize more power. We had better empower our law enforcement agencies.'

This was the same argument that was used in 1974 when the Special Powers Act was adopted in Bangladesh. At the time, we were a newly liberated country. We had many enemies and a lot of problems. The government in place at the time said special police powers were the only answer if Bangladesh was to deal with its problems. Of course, I did not subscribe to that point of view then and do not now. The regime that left office as a result of the elections in 1996 also had tried to introduce draconian laws in an attempt to counter terrorism. The efforts were resisted — successfully.

Bangladesh has a long history of fighting for social justice, and now its people find themselves in a situation where they are not the masters of their fate.

My point is that special police powers never really succeed in controlling terrorism or in protecting people from terrorism. Instead, they end up being used against ordinary men and women.

Turning again to the issue of globalization and the many problems that have flowed from that, I can say safely that Bangladesh has never had the sort of boom that Southeast Asian and East Asian countries have experienced. Still there

are some among us who genuflect with such frequency before the new icon of globalization, one would think their knees would get locked in the supplicant's position.

This attitude has led not only to a weakening of institutions in a country that is trying to return to democracy, but also to a profound sense of dismay. Bangladesh has a long history of fighting for social justice, and now its people find themselves

in a situation where they are not the masters of their fate. They are discovering that they are not even supposed to try to decide for themselves what it is they should do and how they should do it because larger influences out there supposedly know better.

This is a prescription for a society out of balance. It is not that Bangladesh has not progressed or that there has been little or no economic gain for people. Certainly, there has been. But it has been so skewed. For example, Bangladesh has a strong garment industry, which in fact may be the major foreign exchange-earning sector in our society. Nevertheless, the people who work in this industry are the ones whose rights are marginalized. It is not because we do not have good labor laws. We have excellent laws, even

though they might need some fine-tuning. The basic rules and regulations are sound, but people are not permitted to unionize.

My organization works extensively with garment workers, and we know how often they are denied their rights. Yet these are the very people who are contributing to the economic growth of Bangladesh. The same is true for farmers, who are the hardest working people in Bangladesh. They manage to produce three crops a year, yet they are not permitted subsidies. The irony is that when they have a good

harvest and the price of rice goes down, they don't earn the profits they need because they are so busy paying off their unsubsidized loans for water and fertilizer.

These are just some of the realities in Bangladesh. I am not an economist, but I know as a human rights lawyer that many of the problems we now face can be traced directly to the fact that our whole economic structure is being skewed.

It is, in fact, a situation that deprives people of the chance to fulfill their rightful expectations to try to improve the quality of their lives. 🌱

Questions and Discussion

Panelists:

Yash Ghai, Sir Y.K. Pao Professor of Public Law,
University of Hong Kong

Shad Saleem Faruqi, Professor of Law; Legal Advisor,
MARA Institute of Technology, School of Law and
Administration, Malaysia

Wan Exiang, Professor of Law; Director, International Law
Research Institute; Director, Center for Protection of Rights
of Disadvantaged Citizens, Wuhan University Law School

Salma Sobhan, Executive Director, Founding Member,
Ain O Salish Kendra (ASK)

David Steinberg, Director of Asian Studies,
Georgetown University

Richard Wilson, Senior Advisor, Regional Relations,
The Asia Foundation

Richard Wilson: A lot has been said, understandably, on behalf of the case against globalization and the economic crisis in Asia. Obviously, the profundity of that crisis is very hard to exaggerate. For those of us who travel in the region and who have some experience with the region, it truly is momentous. There is just no other word for it.

It is therefore important that we all think carefully about the pros and cons of where we have been going up until last year, when all of a sudden this whole system seemed to come apart at the seams in so many ways. Unfortunately, as the speakers have pointed out, much has happened at the expense of the ‘common man.’ This is what strikes me in the case of Indonesia, which is the country I know best. Progress was made over three decades there and today, that progress is very

much in danger of being lost, not completely, but certainly set back very, very severely.

It means we all have to work hard to try to ameliorate those effects. With that, let me open the floor to questions.



Will Professor Wan elaborate on the changing concept of citizenship in China and how paying taxes connects with feeling entitled to certain rights?

Professor Wan: When new ideas concerning western-styled taxation were introduced in China, it started people thinking that they were the bosses and the masters in their country. They began to realize that all government officials get their salaries from the public — from their taxes. So today, as more and more people wake up to this notion — that government officials are accountable to the public. Citizens ask, ‘What are my rights?’

This has become the most frequently asked question in China these days. It has also sparked a lot of suggestions about whether more people should be paying taxes on their salaries. Everyone, even children when they are buying their papers, pens, and bags, pay sales tax. But not everyone pays a tax on his or her salary. So the question is whether giving everyone something like a social security number or a tax identification number, would go further to raise awareness and consciousness of what it means to be a citizen and the government’s creditor.

Q There is a debate in the United States about whether the World Trade Organization should insist that prospective members meet a human rights standard. Is that what is being recommended here for international institutions like the International Monetary Fund (IMF) and the World Bank?

Professor Ghai: It seems to me that there needs to be action at different levels. I certainly do think the World Trade Organization (WTO) needs to be examined. But I also think fundamentally the point you make is that we need to bring the economic decisionmaking process to bear on human rights, and this applies to not only the WTO, but also the IMF and the World Bank.

In recent years, the World Bank at least has paid some lip service to the need for human rights and environmental policies. Still, I am left with the impression that these remain peripheral issues. So much so that if you look at the so-called bailouts for countries, it is difficult to find much, if any concern about human rights. I am talking about human rights not only in terms of individual choices, but also in terms of the democratic process itself. I would note especially that the whole process has been conducted seemingly in secrecy.

It is actions like this that weaken institutions at the domestic level. As a consequence, there is this great sense of helplessness that has been talked about here. That said, I do not want to despair because I think we need to do whatever we can to strengthen domestic political forces. I think we need to rally around the domestic forces and do what we can to

create the democratic institutions that are necessary to deal with things. I recognize this is not an easy task, but it seems to me that we have to operate at different levels. We have to operate at national levels in government and with civil society. All these arenas need to be tackled.

Professor Faruqui: Did you mean that the WTO should have a human rights index for prospective members?

I think we need to rally around the domestic forces and do what we can to create the democratic institutions that are necessary to deal with things.

— Yash Ghai
University of Hong Kong

Q The discussion in the United States is directed specifically at China's entrance into the WTO. If China is asked to comply with certain human rights standards, then current members would also have to comply retrospectively. That is the general idea.

Professor Faruqui: In seeking to promote human rights, the WTO should bear in mind that human rights are not only civil and political but also socioeconomic rights.

I am a little reluctant to suggest that noncompliance with international standards should be grounds for exclusion from the WTO for two reasons.

First, you can punish small and powerless nations. But can you avoid the temptation to deal with nations with large markets waiting to be exploited? Second, if a government already has committed human rights violations, and the WTO comes along and makes human rights compliance a criterion for admission, then the WTO is not punishing that government alone. The hapless citizens of that state end up suffering twice — first at the hands of their own government and then at the hands of the international community. Iraq is a case in

point. Millions of children and women are suffering because of the international embargo.

Ms. Sobhan: I do not feel qualified to address the point about the WTO, but I can say that there is enormous concern about the issue of intellectual property. An example illustrating that concern occurred recently in Bangladesh. Women's groups joined together to protest the introduction of various genetically engineered seeds, but particularly those called 'terminator seeds.' It was argued that these seeds would lock farmers into a cycle of dependence, which, of course, is a very serious situation in a country that is primarily agricultural. It is very serious when the farmer cannot provide for the continuity of his own profession.

So I think that these issues can become intellectualized at a level where the actual effect of certain claims and developments on ordinary, common citizens is lost. Countries that are not as powerful as others may not have the ability to resist being taken over, so to speak, or the resources of a community being brought under the umbrella of some private domain.



Does your legal rights institute in Wuhan Province address workers' concerns about nonpayment of back wages from state enterprises?

Professor Wan: Yes, we do take on cases involving retirement benefits and layoff provisions, especially as they apply to female workers. It seems women are almost always the first to suffer. Disabled workers also fall into that category. So if their salaries are not paid on time or if they are fired without adhering to their (employment) contract, they will come to us, and we will sue the joint-venture factory.

Some cases are decided through mediation. Others require a judge's decision because of the issues in dispute. The difficulty is that many state-owned enterprises are deeply in debt and are not paying their loans back. And if there are too

many enterprises declaring bankruptcy, then the banks will also end up bankrupt.

In our province, the summer floods pushed many SOEs to the edge of bankruptcy, and it is not clear how many will be rebuilt and which ones will be sold off to foreign investors. Whatever happens, the most important thing to us is what arrangements are made on behalf of the workers who are involved. We try to make sure they are transferred to another factory or that a new factory is built and new jobs are created.

But while there is demand, there is also tension because many argue that we should not be in such a hurry in light of the financial crisis. Still others say that China is so large, that we have not been in a hurry to be part of globalization and that we are able to protect ourselves. Because China is so large, our domestic demand will be strong enough to support the new factories that are needed to provide jobs for these laid-off workers. We also have lots of railways and outposts to build.

In other words, there is enough demand domestically to make sure those laid-off factory workers get work.



Even as amended, the criminal code in China seems to be at variance with certain international human rights standards. Professor Wan, when China signed the International Covenant on Civil and Political Rights, were further amendments to the code anticipated as a result?

Professor Wan: Actually, it has been 12 years since China signed two conventions, and the issue of whether to make changes came under review then. Recently, our state council and the ministry of foreign affairs again raised the question of whether we should change our domestic laws; what resulted is the amendment to fully protect a defendant's rights.

But this amendment means something different in China than it does under western law. And most of the provisions in our criminal code are really very broad. In fact, you may find

many things that contradict one another. It is the job of the Supreme Court to reconcile the contradictions, or at least to try to explain them in order to show that China is abiding by the intent of the convention.

Labor camps are something that cannot be ignored, however. People still can be put into a camp without a trial, and this is not due process. At the moment, the legal system is undergoing a lot of criticism. The debate also raises the question of whether this practice violates the standards of the international covenant on human rights.

It is a difficult situation because the camps are not controlled by the judiciary, but by the police. Whether the Supreme Court can succeed in making suggestions to the foreign ministry, remains to be seen. At any rate, it will be a question in China for the next few years.



The international human rights system developed after World

War II, holds the state responsible for the protection of human rights.

The argument can be made that this system is out of date, especially when applied to persons displaced by circumstances outside a state's control. Also, international economic institutions can have tremendous impact on human rights. Do you foresee a framework or a code of conduct that requires these institutions to be responsible for human rights?

I think it is still appropriate that the basic responsibility [for the protection of human rights] be concentrated in the hands of the government, even if there are other institutions or groups within governments who share that responsibility.

— Salma Sobhan
Ain O Salish Kendra (ASK)

Professor Faruqi: A central question is, who bears the responsibility for the protection of human rights? Clearly, the state plays a role, but so should individuals and communities. For example, there are Asian scholars who say that the care of the unemployed, the sick and the elderly are not solely the state's responsibility but the family's as well. This is important in

countries where a social security net is lacking or is too small.

This notion of families being encouraged to care for their own is consistent with our religion. Under Islam, if I can inherit something from you, then I must accept certain responsibilities when it comes to caring for you. The principle is one of reciprocity. Another example is in Singapore, where a law has been proposed to allow parents to seek 'compulsory maintenance' from their children. In Pakistan, the possibility of requiring that better-off family members care for poorer relations is a topic of discussion.

In Malaysia, certain groups stepped forward to provide legal aid after it became apparent that the government's legal aid bureau

was rather inadequate. In both the United States and India, there are provisions for public interest litigation on behalf of the rights of communities. But with rights, there are duties. In the Indian constitution, a chapter on rights follows a chapter on duties. In Africa, I am told that tribes take responsibility for one another.

That is the kind of system that should be encouraged. When it comes to welfare and human rights, the state alone should not be held responsible.

Ms. Sobhan: I think it is still appropriate that the basic responsibility be concentrated in the hands of the government, even if there are other institutions or groups within governments who share that responsibility. At the same time, the focus is often on a government's violation of human rights when nonstate parties can commit violations, too.

Professor Ghai: It is true that individuals, families, and groups who work with human rights should all share in the responsibility of a society to protect human rights. But I would not like to see that overshadow an appropriate emphasis on the state's responsibility.

Coming to the specific point concerning the responsibility of dissident or even terrorist groups, it is very difficult to parse out how to deal internationally with that. And when it comes to dissident or terrorist groups acting outside the state's authority, it is very difficult to know how to deal with them. Clearly, their activities are in violation of a state's penal code more times than not.

There is also the difficulty that arises in cases where the state is complicit in terrorist acts. We have many examples in many countries where outsiders finance these so-called terrorist groups. I hate to say it, but the U.S. government is one of the most culpable as regards the promotion of terrorist groups in other countries. So it is not just a matter of private groups taking the law into their own hands. It is much more complex, and unless we unravel the complexity, we cannot find simple answers to this problem.



Does the Asian financial crisis improve opportunities for more and better governance, or does it favor more authoritarian political systems?

Professor Ghai: When the crisis first hit, I too, thought that crony capitalism, insufficient central banking mechanisms, and too few democratic controls were responsible. Since then, I have had a chance to reflect and also to speak with a number of economists. While we may appear naive in our viewpoint, we do live in Asia, and we are grappling daily with the problems of the financial crisis. It is very hard to escape from the fact that the cause is the globalization process as reflected in the capital flows in and out of Asia.

It was not my intention to describe Asia as having been victimized or to say that we should absolve the leaders in these countries. Governments bear some responsibility for what has happened. My intention was to present a kind of framework that is within the context of today's economy and the politics that are in place. It is a framework that reflects my point of view, which is that globalization, as we know it today, has contributed to this crisis.

I don't blame anyone as such. But I do take issue with the simplistic deduction that currency traders simply were playing the market. I also object to the notion of an autonomous market. The market is the handiwork of human beings. It does not represent something that simply springs up one day. The market is the result of the IMF, of state departments, of USAID. These are its drivers, and globalization is its distinctive characteristic. The market is not autonomous.

Look at South Korea. The new president there committed his entire life to certain goals and within a week of being in office, he reneged on all that because the IMF put pressure on him. This is well known. So I think we cannot avoid these facts.

The market is created by governments and by the IMF. It is not an autonomous process. Whether there is a backlash or not remains to be seen. Maybe it has started already. If it has, then we shall see just how much the process is autonomous and how much is the result of statecraft and other impositions.

Ms. Sobhan: The whole point of my argument was in fact that globalization is undermining the democratic processes in my country. What I see, and what the man and woman on the street sees, is that the government he or she has put in office, is not acting according to the will of the people. Instead it is acting as if it is responsible to a higher authority, and that authority is not even God. The people of Bangladesh simply do not see the validity behind this willingness to follow the dictates of the IMF.

Professor Faruqi: I plead guilty to being naive, as charged. That said, not one of us is refuting the argument that blame for the crisis belongs in part to deficiencies in our own economic and political systems. But to say the crisis is the result of insufficient democracy is another matter.

It is ironic that people are suffering even in places where liberalization has proceeded ahead of other parts of Asia. Hong Kong does not struggle with the kind of authoritarian government that Malaysia and Singapore do, and yet the people in Hong Kong are suffering. Thailand is freer than Malaysia, and yet Thailand is suffering terribly.

It is a fact that the present system has permitted this massive outflow of capital. But to say this would not have happened were a country more democratic, is bizarre. An economy with a small GDP simply cannot withstand a massive transfer of capital no matter how democratic the political system may be.

On the subject of rights, political rights mean less to someone who is hungry. Rights are also socioeconomic in application. They are about basic necessities. It is my belief

that the present world economic system shows very little concern for the plight of the weak and the marginalized. It is a jungle out there where the rule is Darwin's survival of the fittest. We need to be less ideological. We need to devise political and economic systems in which the weak are not left to fend for themselves, which is why I disagree with the simplistic notion that even if there are no structural changes, more political freedoms will be the best way to protect human rights.

There is no dignity to an economic system that does not show sensitivity for people who are less well off.

On the subject of Malaysia, it could turn out that the government's intervention might have disastrous outcomes. That remains to be seen. For now, our house is burning. Something has to be done, and the advice we have gotten has not worked very well. As to your criticism about Malaysia's policy of isolation, I view it as insulation!

David Steinberg: I can not help but get involved in this. I made two points in the beginning, which now are quite relevant. The first concerned the adequacy of the international financial institutions to deal with the crisis. This is a subject of some debate within the IMF as we have seen from released memoranda and on the part of Jeffrey Sachs, director of the Harvard Institute for International Development. Jeffrey Sachs has been very critical of the IMF.

The second has to do with the issue of anti-foreigner feelings. I would not have characterized this as victimization. I know some governments, like the Korean government, are very concerned about their own inadequacies and in fact, their own lying to the international press about the state of the economy before everything came unraveled.

Yet, the realization on the part of the outside world is that anti-foreigner feelings exist — anti-Chinese feelings in Indonesia and anti-American feelings in Korea, Thailand, and Malaysia, related to a perceived belief that Washington

controls the IMF. This is very important. And whether the crisis improves the chances for democracy or not is a very interesting question.

A very reputable survey that was conducted in July 1997 in Korea — before the crisis — suggested that 20 percent of the population would be willing to sacrifice some rights for a stable economy. That survey appeared before there was a real problem. But I think it raises some real issues about the whole question of the role of the relationship between democracy and the financial crisis as we now see it.

If we are talking about rights, then access to the market at equitable rates of interest is an example of a right. We have seen in many societies that the average small business-man does not have access to the market at rates that are equitable when compared to larger corporations. So for me, this is an important right in the context of a discussion about economic rights.

The last issue has to do with when the multinational corporation or a large corporation moves into a society and brings with it a whole set of different problems. It not only marginalizes the small entrepreneur, it often marginalizes provincial entrepreneurs — not those who live in the capital and who have access to financial capital, contacts, government contracts, trade permits, and whatever else is required.



On the subject of amendments to China's criminal procedures, do the amendments permit an attorney to actually represent a defendant?

Professor Wan: Lawyers have welcomed these changes, but they are also finding that they mean different things to the justice department and other authorities. However, it now

appears as if the justice department, the Supreme Court, and the prosecutors, as well as the security police have come to a meeting of the minds. They seem to basically agree that criminal procedure provides for a lawyer to meet with a defendant without first getting permission from the justice department or any other public security section. Meetings also can take place without any guards from public security present.

Still, progress is a step-by-step matter.

Conclusion by David Steinberg

I recently attended a seminar with 20 international academics. The purpose was to produce a two-volume study of globalization. In the midst of the discussion, which took place over two days, one observer said, 'Wait a minute. All of you are assuming that globalization is a good thing.'

The point made was important in its effect. As a result, I went back to my desk and wrote an op-ed piece for Korean newspapers called 'Globalization as Ideology.' Today, we are again getting a very different view from four very eloquent discussions of the problems as they relate to rights. Clearly, the debate has to continue; clearly there are going to be problems on both sides of the issue of globalization.

It may be inevitable that globalization continues — and I think it probably is inevitable. At the same time, a mechanism has to be put in place to facilitate governments and other organizations in protecting the political and economic rights of citizens. We have started that discussion today, and all that has been said here is food for thought for each of us.

On behalf of The Asia Foundation, I would like to express my appreciation to each of you for being here and participating in this discussion. 🌱

The Participants

Wan Xiang

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