**SID Netherlands
International Conference**

Wednesday 14 September, 2011

Global Values in a Changing World
Challenging Universality

Final report

Introduction
On Wednesday 14 September 2011 the Society for International Development (SID), in cooperation with Amnesty International, PwC, NCDO and the Worldconnectors, organized its annual conference in The Hague. It was the closing event of the 2010-2011 Lecture Series 'Global Values in a Changing World: Challenging Universality'. This report provides a summary of the presentations and discussions.[1]

Opening
René Grotenhuis, president of the Dutch chapter of SID opens the conference. He explains that the theme of today's conference, 'Global values in a Changing World: Challenging Universality', refers to the lecture series hosted by SID in the past year. In October 2010, Professor Willem van Genugten gave the opening lecture on the history of the Universal Declaration of Human Rights; in June 2011 Professor Kate Nash closed the series with a lecture on the role of global citizens in upholding human rights.

According to Grotenhuis, the universality of human rights is increasingly disputed. Over the last ten years in particular, the relativity of global values has come to the fore. Interestingly, this stands in contrast to the simultaneous and on-going process of globalization. In the Netherlands, human rights are increasingly framed as being part of the European history. In other words: Human rights are a European invention, and it is our task to advocate and uphold these rights in other parts of the globe.

As managing director of Cordaid, Grotenhuis has had many opportunities to travel to developing countries. During these travels, his conversations with women in particular, have led him to conclude that human rights are above all endogenous: people feel the value of human rights from within. At the same time it is important to appreciate the cultural diversity of people. It is important to bring these two tendencies – universality and cultural diversity – closer together. "It is my wish that this conference will contribute to doing just that", Grotenhuis concludes.

Session I - The Universality of Values
Opening Speech by Jack Donnelly, professor at the Josef Korbel School of International Studies, University of Denver.

Donnelly has worked on issues of universality in the field of human rights for more than thirty years. What he has learned about human rights relates, he says, also to discussions about sustainable human development, a concept that substantially overlaps with human rights. Professor Donnelly puts forward three main arguments: The first is that, although universality and relativity are often presented as opposites that cannot be reconciled, universality is in fact compatible with a considerable degree of relativity. Secondly, Donnelly argues that fundamental values of late modernity, such as human rights and development, are universal in at least three important senses (international legal universality, overlapping consensus universality, and functional universality), but that in two senses (namely ontological universality and anthropological or historical universality) they are not. His third argument is that it is important to distinguish degrees of universality or specificity.

Donnelly presents several different definitions of the concept 'universal' that lead him to conclude that universality is limited. The Oxford English Dictionary provides the following definition: "Extending over, comprehending, or including the whole of something." This means, argues Donnelly, that universal is defined as relative to a 'something' that is encompassed. The second definition is that universal, means: "applies across all of a particular domain." For example: universal health care, universal primary education, and universal suffrage.

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[1] Report by Roeland Muskens, Wereld in Woorden – Global Research and Reporting.

Donnelly argues that these 'universalities obviously do not cover everyone on the globe (let alone anywhere in the universe). A third definition of 'universal' is: "Of, or pertaining to, the universe in general or all things in it; existing or occurring everywhere or in all things." Also in this sense 'universal' is by no means really 'universal'. Donnelly therefore prefers to use the term 'relative universality' when speaking about human rights.

Nevertheless, human rights can be considered universal in the sense that they are deeply rooted in international legal consensus. The six core international human rights treaties have an average ratification rate of 88 percent. This legal consensus allows human rights advocates to take action when people's rights are violated.

Secondly, human rights are also universal in the sense that they are subject to 'overlapping consensus universality': an international overlapping consensus on the body of internationally recognized human rights has emerged among proponents of very different political, philosophical or religious doctrines. Despite their differences, and for their own very different reasons, they have come to see in human rights a political expression of their deepest values. The implication of this argument, Donnelly says, is that human rights have no single philosophical or religious foundation. Rather, they have multiple foundations.

The third argument for universality is that human rights have become overriding social and political goals and practices as a result of the rise of modern states and modern markets. The latter have created threats to human dignity, which in turn has created the strong need for human rights (and for development).

The concept of human rights is relatively new, Donnelly states. The notion that someone can exercise rights simply because he or she is a human being is only a couple of hundred years old. Threats to these rights exist everywhere, regardless of the political systems.

The phrasing of the specific human rights in the different core treaties is remarkably simple. For example: everyone has a right to work, or the right to freedom of speech. On the level of the implementation of these 'universal' rights, however, there are huge differences. In Singapore, for example, the conception of 'freedom of the press' means that journalists know what they can write and what is no-go. Self-control is locally accepted. You can in fact write what you wish, but the consequence may well be that you lose your job. So there is consensus about the broad conception of human rights and its related values, but the implementation differs greatly. This fits within the conception of overlapping consensus. Professor Donnelly argues that local differences and particularities are hardly culturally defined. The differences are not between East and West, or North and South. The differences are between regions that are more or less enmeshed between markets and states. The more a society is enmeshed between markets and states, the more its member will view human rights as universal. Nevertheless, except perhaps for some completely isolated communities, human rights are universally important to protect individuals.

Keynote speech by Meghna Abraham, head of the Economic, Social and Cultural Rights Team at the International Secretariat at Amnesty International: 'Universality of Values in Practice: dealing with new global realities'

Meghna Abraham starts by stating that Amnesty International firmly believes in the universality of human rights. She agrees with Jack Donnelly that at the first level of the universality debate, which was the broad understanding or principled recognition of rights, there had been significant advances and most governments had accepted human rights. However, at the levels of interpretation and implementation, there continue to be significant challenges. For example, taking the examples of US and China who had historically opposed certain categories of rights, economic, social and cultural rights and civil and political rights respectively, both governments have now advanced their position. Both are signatories to the respective treaties, even if they are not parties, making it hard for them to repudiate these rights all together. China increasingly uses the rhetoric of human rights and has numerous references to human rights within its constitution. The US government has now taken what it describes as a "holistic approach to human rights". The real debate, Abraham argues, concerns the area of implementation. Broad debates around universality often masks problems with divergent views around the scope or exact content of rights and gaps in implementation and it is important to be clear about exactly where the divergences and problems lie.

At a practical level, debates which prioritise or reject some rights over others are often hard to sustain. One example is forced evictions in China. China is a party to the International Covenant on Economic, Social and Cultural Rights, which requires it to ensure that all persons are protected against forced evictions. In practice however, it is extremely difficult for victims of forced eviction to claim such protection when their rights to freedom of expression, peaceful assembly and protest are not recognised and when lawyers who take on cases regarding forced evictions are being arbitrarily detained and repressed. These rights are inherently linked and cannot be separated out in practice.

This is not unique to China. The US has a relatively high rate of maternal mortality, which is caused by the fact that women with low incomes face a number of barriers in accessing health care. In a recent report Amnesty International highlighted how within US gender, race, ethnicity, immigration status, Indigenous status or income level can affect a woman's access to health care and the quality of health care she receives. Again in practice, it is difficult to separate out women's rights to life and non-discrimination from the recognition and realisation of their right to health.

The universal human rights framework is not being challenged just on the basis of culture or 'Asian values' but is increasingly come under attack from governments all over the world who want to carve out exceptions or reduce the scope of protections in a particular context. Some examples of this is the attack on the absolute prohibition on torture in the 'war on terror', or attempts to justify discriminatory treatment of the Roma in Europe on ground of security or other grounds. If we begin to allow the universality of non-human rights to be questioned, we risk opening up the entire framework.

In terms of current challenges, the greatest challenge is how to ensure the universal applicability and implementation of human rights. Though there are different challenges in different countries, there are also commonalities. You cannot simply separate out countries that respect human rights and those who do not. Abraham argues that in fact what she saw in her own and Amnesty International's work is that groups of people who face the greatest challenges in realisation of their human rights, are typically people living in poverty and those who face discrimination, whether it is people from LGBT communities, ethnic minorities, people from particular castes, and/or irregular migrants. She states that there had been insufficient attention paid by the human rights community to the links between poverty and human rights. Another challenge that is of growing concern to Amnesty International is ensuring the accountability of new actors on the stage of human rights. In a decentralised system, how does one hold a powerful mayor accountable for human rights violations? Private companies and International Financial Institutions too increasingly exercise power in the area of human rights. This also links up to challenges around recognition of extra-territorial obligations of states. In order to ensure that human rights are truly universal, we would also need to look into for example the obligation of the Netherlands, to ensure that Dutch companies do not abuse human rights in other countries.

Q&A between Jack Donnelly, Meghna Abraham and the audience, led by Andrew Makkinga

- One member of the audience raises two challenges that were not touched upon by the speakers. The first is the matter of the economy. The current economic system will lead to huge problems of sustainability, which will have serious repercussions for human rights. Secondly the speaker questions the current priority setting by policy makers, where billions are spent on military expenditure and much less on serious global challenges.
- Another member of the audience thinks that regarding the relativity of human rights an exception should be made for the freedom to speak about human rights themselves.

Jack Donnelly replies that when people can freely talk about human rights, it shows that a lot has been accomplished. Freedom to talk about human rights is, therefore, not a strategy but rather a result.

Meghna Abraham adds that the right to information is universal, because without information it is impossible to exercise your rights. Abraham agrees that there is a disconnect between economic policies and human rights. Human rights should shape a framework for economic policies. But currently both matters are completely disconnected and priority setting has gone askew.
- Another question from the audience concerns the link between democracy and human rights.
Jack Donnelly provokingly states that he is not a big fan of democracy if indeed democracy means rule of the people. Simply because people often want terrible things to happen to others. Human rights are, on the contrary, a limitation of democracy. If a democracy is capable of executing its citizens, Donnelly argues, it should be curtailed. That is what human rights are about.
- One member of the audience emphasises that there is growing accountability of states regarding their human rights records. Is this part of the overlapping consensus?
Jack Donnelly agrees that accountability by states has greatly improved. On the other hand, he feels that this is not where 'the action' is. The real issue at stake is local accountability, not state accountability. Current systems of accountability are important, but they are not enough.

Session II – Panel and discussion: Different Approaches towards Universality
Panel members are *Seth Kaplan* (Alpha International Consulting), *Tom Zwart* (School of Human Rights Research), *David Forsythe* (University of Nebraska-Lincoln) and *Meghna Abraham*.

Seth Kaplan kicks off the panel discussion by stating that the subtitle of today's conference is '*Challenging* Universality', where in fact the goal of the conference seems to be '*promoting* universality'. According to Kaplan, the way the West tries to promote human rights is offensive for many people in other parts of the globe. The problem is not the agenda as much as the manner of promotion. Kaplan compares it to the spreading of Christianity by missionaries in Africa. In fact, human rights are widely shared. There is agreement on 90% of the package. Perhaps we should be happier with the 90% we have agreement upon. The perfect often is the enemy of the good. There must be some room for disagreement.

In countries with much social stability, for instance, there is usually more room for free speech than in countries with social unrest. On Times Square one can just about say anything, whereas in a place like Kigali, Rwanda, certain opinions are perceived as damaging the social fabric of society. As a matter of fact, Kaplan adds, since 9/11 in the US too there is less tolerance for free speech than before. This should be a matter of debate, Kaplan stresses.
If members of the human rights community really want to help the poor, it should be much more focused on building the capacity within states to enforce the basic rules of law instead of simply pushing an agenda that has little relevance for the great majority of people in the developing world. For billions of people on the globe, the discussion about human rights is hardly interesting. These people have never seen a lawyer, they have never been able to trust a police officer, and they have never set foot in a courtroom. Unfortunately, strengthening institutions crucial to improving the rule of law has had a very low priority, both for human rights organizations as well as for development agencies. Rule of law is only a very small part of the development agenda and of budgets, concludes Kaplan.

Tom Zwart stresses that the main challenge regarding human rights is indeed implementation. His study group at Utrecht University focuses on just that: the implementation of universal values. Governments enjoy a large degree of freedom in the implementation of the human rights they have agreed upon through the ratification of treaties. The treaties do not include guidelines on how to implement these rights. In the West, the focus is on the rule of law and on legislation. One of the research topics of the School of Human Rights Research is to look

for other ways of implementing notions of human rights. For example matching institutions. Local institutions have succeeded in lowering female circumcision in Senegal by 70%. In South Africa, the HOPE program targets black South Africans who won't use modern anti-Aids medication and who instead prefer to consult a traditional healer. The HOPE program trains traditional healers in recognizing symptoms of HIV/Aids en tries to convince them to prescribe modern anti-Aids medication to their patients. Tom Zwart stresses that in many cases it is just not effective to try and impose western systems onto local, traditional circumstances.

David Forsythe talks about the progress that has been made regarding international justice. There is some agreement on universality: people who commit acts of genocide must be persecuted and punished. On a theoretical and abstract level, there is agreement on this. And based on this general agreement, progress has been made especially in the establishment of several international criminal courts, with which most states co-operate.
The UN Security Council has a mixed record regarding international justice. It often calls upon member states to uphold human rights, but in some cases the Council has specified exceptions to the general rule of international law. For example: the ruling that international peacekeeping soldiers cannot be brought before international criminal courts.
The US has always exempted itself from the International Criminal Court. It has done so, explains professor Forsythe, for two reasons. The first reason is emotional and nationalistic: the US deems itself too good to be subject to prosecution by the ICC. The second reason is more analytical and/or political: international relations are nasty, and sometimes it is necessary to do nasty things.
China's role in the Security Council is remarkable. China either abstains from casting its vote, or it votes in favour of international law. China's behaviour is calculated and instrumentalist. It does not want to risk disturbing its relations with either the US or with the developing nations. For example, China voted in favour of handing over the Libya case to the ICC. Obama too agreed to a role for the ICC in this case.
In the case of Sudan, even the Bush administration agreed to a role for international law, be it under pressure of domestic religious groups. In short, the US and China are quite willing to agree to international law when the culprit is a country other than their own.

Meghna Abraham concludes that the vital issue is that a legal framework regarding human rights must have practical meaning on a local level. It is relatively easy to talk about and agree on treaties; implementation is the real bottleneck. Not open to debate, Abraham repeats, should be the fact that all rights are applicable to all people everywhere. Law is not the only instrument in upholding people's rights, but it is vital. If you want to hold a local mayor accountable for forced evictions you can only do so on the basis of a legal framework, rooted in international rules and regulations.

Discussion among panel-members

Seth Kaplan agrees with Tom Zwart on the importance of local culture in upholding human rights. Kaplan is less enthusiastic about the ICC and the way the international community selectively hands over cases to this criminal court. A law that does not apply to everyone is repugnant, says Kaplan. Finally, he stresses that he did not mean to say that human rights are irrelevant for billions of poor people, but that the *debate* on human rights is irrelevant to them. Tom Zwart agrees that the law is important in upholding human rights, but he argues that lawyers have wrongly hijacked the debate on human rights. The focus should not just be on the law, but also on other instruments.
According to David Forsythe the problem of universal standards versus dirty deals is not new. In international relations it is sometimes sensible to accept a less than perfect situation, because this may lead to improvements in the future. The veto-right of the five permanent members of the Security Council gives them virtual impunity. This veto right was a *sine qua non* for the birth of the Council. In history there are many such cases. For example: the Nuremberg Trial was far from perfect, it was a case of 'victor's justice'. But 50 years later, Nuremberg led to the establishment of the ICC. The ICC was faulted because the US refused to participate, but since its

establishment the US increasingly allows a role for the ICC. The practice of international relations is full of double standards and dirty deals, Forsythe stresses. But sometimes these lead to something good.

Open discussion with panel-members and audience

- One member of the audience stresses that states do have an obligation to provide a legal framework for human rights. The permissiveness that Tom Zwart implies is incorrect.

Tom Zwart concedes that there are certain obligations for states regarding their legal framework, but emphasizes that states do have a substantial discretionary freedom to shape their national laws and regulations regarding human rights. It is important to also search for 'home grown remedies' for human rights advocacy. For instance, it is impossible to deal with homophobic practices in Africa without involving people at grassroots level.

- Another question relates to the dubious position of the ICC, which is seen to apply double standards. Isn't that common practice for the whole of international law?

Kaplan dislikes the ICC because it does not apply to everyone equally. Whereas 88% of states have ratified the human rights treaties (and therefore at least try to implement their rules), less than 1% of relevant cases ever reaches the ICC. Who decides? No system that reaches so few people so discriminately can be considered the rule of law. On the contrary, it can too easily become the rule of politics.

- The WTO's policies and actions are often contradictory to the acceptance of human rights. Where should we denounce the WTO?

Meghna Abraham highlights the work of the Special Rapporteur on the Right to Food on this issue. The heart of the matter is, says Abraham, that there is a disconnect, even within the same government, between people in the ministries focusing on human rights and others who are engaged in international trade law. Abraham highlighted the importance of ensuring that international trade agreements were consistent with states' human rights obligations.

- Answering a question about the human rights implications of the military intervention in Libya, Seth Kaplan replies that this is very tricky and certainly no black-and-white matter. David Forsythe adds that Obama decided that the US could not stand by idle while the people of Libya revolted against Qhadaffi. But Obama also stressed that a military intervention should be an international one. So the reaction of the US was both based on both American and internationalist values.

Closing: Implications for Dutch Foreign Policy
Lionel Veer, Ambassador for Human Rights, Dutch Ministry of Foreign Affairs. 'The Universality of Values: Drawing Conclusions for Dutch Human Rights Policy'.

Ambassador Veer starts off by stating that The Netherlands firmly subscribes to the notion of the universality of human rights. At the same time, he realizes that a shift is taking place from emphasis on the standards towards emphasis on the implementation of the values of human rights. The standards are undisputed, but implementation is less straightforward. The Dutch government is always concerned with the effectiveness of its policies. The progress in upholding human rights must come from society itself. It is very context specific. Not only talk about universality, but also focus on change for the better. It reminds you of the Beatles song: Words are flowing out/Like endless rain into a paper cup/They slither while they pass/They slip away across the universe/
And the refrain: Nothing's gonna change my world
According to Ambassador Veer Human Rights Law is not like, for example, the law of gravity; the latter is to understand gravity around the world, but the first is to change the worldwide human rights situation. These laws

must be seen as agents for change. We live in a society based on the rule of law. Citizens are supposed to uphold and answer to the laws of society. Citizens give up part of their freedom in exchange for protection from the state. Human Rights are about the relation between the state and the people. The state is there for the people; not the other way around. These ideas come from the era of Enlightenment. This is what French philosopher Rousseau called the 'social contract'. Interestingly he was influenced by the works of Confucius. Many scholars at that time looked at China as an example. So in its origins Human Rights are not only Western. The 88% of countries that have ratified the human rights treaties can be seen as having agreed to a kind of social contract.

A recent development is that states are willing to intervene in other states where human rights are violated, which comes with the concept of R2P (Responsibility to Protect). Non-state actors increasingly play a role in this. The Dutch government focuses on human rights defenders, because it believes that change must come from within, which requires local agents of change.

The Netherlands cannot take on all challenges regarding human rights, Veer stresses. Universality is not disputed, but selectivity is inevitable. We cannot do everything, but doing nothing is not an option. Effectiveness is one of the major defining elements of Dutch human rights policies. Ambassador Veer does not agree with John Lennon when he sings: Nothing's gonna change my world: "Because, at the end of the day, something's *gotta* change my world."

In his closing words, *Eduard Nazarski*, director of Amnesty International in The Netherlands, responds to the argument made by Tom Zwart to focus on local solutions to human rights violations. Nazarski agrees that it is important to look at the local context. Yet on his travels to Uganda and Kenya, Nazarski witnessed the enormous importance of international human rights as a weapon for marginalized people. Laws are essential, says Nazarski.

Some say that human rights are not valid in China. China sees itself as different. Others stress that human rights are universal. But the issue is how to convince the Chinese authorities of that universality. According to Nazarski, human rights activists play a vital role in changing the Chinese attitude towards human rights. Human rights activists are change agents, who merit international support. A third position is that China is simply too powerful to raise fundamental questions about human rights. In this view there can be some discussion on the universality of these rights, but discussions should not hamper business opportunities. Nazarski analyses that China is not merely a new player on the international stage, but that it is a 'game changer'. This realisation throws up many uncertainties: what will the position of China be? In what direction will the country head? Will China challenge the existing human rights framework? Several answers are possible.

Nazarski encourages SID Netherlands to continue raising the issue of human rights, and he promises that Amnesty International will participate in the upcoming debates.