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## Keynote Address - Rule of Law and International Human Rights in Challenging Times

Mary Robinson

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# Key Note Address—Rule of Law and International Human Rights in Challenging Times

The Honorable Mary Robinson

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PROFESSOR MALUWA: On behalf of the faculty and students of the Dickinson School of Law and on behalf of the organizers of the symposium, I would like to welcome our keynote speaker, the Honorable Mary Robinson. Mary Robinson was, as you all know, the first female president of Ireland. She held office from 1990 to 1997, after which she became the second High Commissioner for Human Rights in the United Nations, an office that she held from 1997 to 2002. Although it is in that capacity that most of us have heard about her, Mary Robinson came to prominence much earlier initially as an academic when, at the age of 25, she was appointed Reid Professor of Law at Trinity College, Dublin in Ireland. She also was a barrister both at the Irish and English bars, a campaigner and a member of the Irish Senate from 1969 to 1989. When she joined the United Nations and took up her position as High Commissioner, she turned the office into a leading operational agency of the UN, providing leadership in human rights throughout the UN system. Indeed, she became the moral voice of the United Nations and the premier advocate for the international human rights movement.

Mary Robinson was very, very passionate about her work. And she was particularly passionate when dealing with issues of injustice, inequality, discrimination, social inequities and under-development in the Third World and, in particular, African countries. I mention this because one of her lasting testaments as High Commissioner for Human

Rights was her role in presiding over the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance which was organized in South Africa in 2001 and which, in fact, was quite important in articulating and placing an unprecedented focus on issues of discrimination and inequality in the world today. The outcome of that conference continues to be one of the major achievements, but also part of the unfinished business, so to speak, of the United Nations.

But she has also been many other things besides. She has been since 2002 the Honorary President of Oxfam International. She is Chair of the International Institute for Environment and Development, and she is a founding member and Chair of the Council of Women World Leaders.

More recently, after leaving the United Nations, she established an NGO of a kind. This is the Ethical Globalization Initiative. It is an NGO project in which or through which she promotes equitable trade and development, with a particular focus on promoting and supporting good governance, humane migration policies and better and effective responses to HIV/AIDS, and so on.

And she has simultaneously since 2004 been Professor of Practice in International Affairs at Columbia University where she teaches international human rights law. In addition to that, she has continued to travel around the world to lecture, teach, and engage in ongoing conversations about human rights with all manner of people: political leaders, policy-makers, human rights advocates, and activists, students, ordinary citizens, and so on.

We are fortunate this afternoon to have as our keynote speaker one of the leading figures of our time: a jurist, academic, teacher, politician, and humanitarian. And on a personal level, I am particularly pleased to have her here today because she is the reason that I went to the United Nations and I learned a lot working with her in her capacity as High Commissioner for Human Rights, as legal adviser in her office.

So I am particularly pleased to welcome her to the symposium.

(Applause.)

HONORABLE MARY ROBINSON: I would like to begin by thanking my friend and former colleague Tiyanjana Maluwa for his very kind words. He should have been given the short version of my background. He certainly has very warmly introduced me. It is interesting to be linked audio-visually to colleagues who are simultaneously participating in this synchronized symposium on the *Future of International Criminal Justice from Nuremburg to the International Criminal Court* from the University Park Campus in State College. The earlier portion of the symposium today originated at University Park. Our present portion is originating at the Carlisle

Campus. I begin by greeting the experts who are gathered at the University Park.

#### Rule of Law and International Human Rights

I do not consider that my own expertise is really in the area of international criminal law, criminal justice, International Criminal Court and so on, although it is an extraordinarily important area. Instead I am going to speak on the wider issue of *Rule of Law and International Human Rights in these Challenging Times*. I must say I am quite heartened at what I think is an increasing awareness among judges, lawyers and law schools in this country of the need to reassert the vital role of rule of law. We need to restore the proper balance between protection of populations from acts of terrorism and adherence to international human rights norms and standards.

#### ABA-IBA Joint Meeting

One of the speakers at this symposium, Richard Goldstone, was taking part as I was in a symposium recently in Chicago on this theme of rule of law and adherence to international human rights standards. The symposium was organized jointly by the American Bar Association and the International Bar Association on the occasion when the IBA was holding its annual conference in Chicago. There were some 5,000 members of the International Bar Association there for that conference.

One session of the symposium involved about 400 senior lawyers from the American Bar Association and International Bar Association reviewing the situation both in the United States and internationally. I was very encouraged to hear the passionate advocacy regarding the importance of knowing what we have gained and what we brought from the last century into this century and what must be upheld and maintained despite the terrible attacks in this country of just over five years and such other attacks in places as far a part as Bali and London and parts of Africa. We can take heart from a sense that the senior judges, top law firms and law schools in this country and their counterparts elsewhere in the world are really aware of the importance of reaffirming our standards and reaffirming in particular the commitment to upholding rule of law and international human rights standards.

#### London Foreign Office Meeting

Last Friday I was invited while in London to a discussion in the foreign office very much on the subject that we are talking about today. Staff of the foreign office and some staff from the United Kingdom home office were involved. I learned some of the practical strains on a national

jurisdiction (in this case the jurisdiction of the courts of the UK) because of terrorist trials. Sue Hemming, head of the Crown Prosecution Service Counter-Terrorism Division, has spoken publicly about the backlog of some 34 terrorist trials involving 99 defendants. There are plans underway in Britain to create a network of high security courthouses to alleviate this crisis and to have a cadre of up to 20 specialist high court judges.

We discussed some of these pressures on the system in one country and extrapolated the situation more broadly to the need for more effective international criminal justice, whether it would take the form of effectively bringing some of the worst perpetrators before the International Criminal Court or whether it might also take the form of the universal jurisdiction being exercised in national courts.

#### Columbia Law School Seminar

I was interested that just a few days ago the Columbia Law School, Columbia (the academic institution as Tiya said that I am now linked to and will be lecturing in both occasionally this term and doing a graduate seminar next term) had a seminar on holding senior officials accountable for violations of international human rights and humanitarian law under the title “Is Universal Jurisdiction an Effective Tool?”

#### Eminent Jurist Panel of the International Commission of Jurists

I think we have to look at the issues from the point of view of possible strains on national courts and systems, the standards and how far they are upheld in countries, and then their application at the international level. These are some of the issues that some colleagues of mine and myself have been discussing and looking at in different regions as members of what is called the Eminent Jurists Panel of the International Commission of Jurists. You may know the International Commission of Jurists is based in Geneva. Those of you who want to know more about it can check the website at [www.icj.org](http://www.icj.org).

I was put forward for the International Commission of Jurists Eminent Jurists Panel as a relatively young Irish lawyer and I was very honored to participate. When I was elected President of Ireland and while I was High Commissioner for Human Rights I was no longer on the Eminent Jurists Panel during that twelve year period. I was very honored to be invited back on again when I finished with my term as High Commissioner.

The ICJ has stretched itself to establish this Eminent Jurists Panel in order to be able to look in a more systematic way at what is the impact on courts and legislation and protections and practices of countries in

different regions of the world since the terrible attacks in this country of 9/11. The panel consists of eight jurists under Judge Arthur Chaskalson of South Africa, who is the former Chief Justice and former first President of the Constitutional Court of South Africa.

The hearing that we had recently in Washington, D.C., which coincided with the fifth anniversary of the terrible attacks on this country, was the seventh such hearing. We have had hearings in Australia, in Columbia, in Kenya for East Africa, in both Belfast and London for Britain and Northern Ireland, and in Morocco for Northern Africa. We do not serve on all the panels. Six of us were present for the panel hearing in Washington, D.C. and then further discussions in New York following that. My next hearing is, in fact, going to be in Moscow at the end of January. I anticipate that the weather will be cold and perhaps also the reception may be quite cool. We will see how that goes.

I am particularly interested to assess the current situation because I had the honor to serve as UN High Commissioner for Human Rights for exactly a year from the attacks of 9/11. My last day in office in Geneva was on the 11th of September 2002. My last event as High Commissioner for Human Rights was at the cathedral in Geneva in a solemn broadly-based inter-religious service marking of the first anniversary of those attacks. The last words I spoke as High Commissioner were at that service.

I just want to refer briefly to the response of my colleagues and myself to the evidence that was brought before us at the hearing in Washington, D.C. You can get the text of the final statements that we issued on the website of the Eminent Jurists Panel at <http://ejp.icj.org/>. Therefore I am not going to go into it in great depth, but we did hear interesting evidence. In fact, I think it is worth summarizing briefly.

We heard, for example, from doctors who gave evidence on the severe impact, not only of physical but also psychological torture. They expressed to us their concern that psychologists have been asked to advise on the most effective use of coercive interrogation techniques. Some of those who gave evidence before us raised concerns as to whether the new Army Field Manual would exclude all forms of psychological torture. It was a welcome for the Army Field Manual, but we now know that the current bill does not cover activities of the CIA who can engage in these forms of what are termed coercive interrogation techniques, whether they include water boarding, as they apparently do, and other methods, they do constitute torture at the international level. It is a sad reflection that legislation going through Congress has, in fact, given the nod to practices that were happening but were not happening under quite such a seal of legislative knowledge that they were happening. I think this is worrying.

We were also very concerned about the watering down or attempts to water down Common Article Three of the Geneva Conventions. We were concerned, and unfortunately this was also incorporated in legislation, that there would be a cutting off of access to habeas corpus. And there were a number of other issues that we were looking at. Then (as is recited in our statement) the members of the panel were taken aback by the testimony they heard concerning inroads into fundamental rights and freedoms and the cumulative impact that inroads could have on the legal system and the rule of law.

We then set out a series of principles that we felt related to the situation that we had heard about. We said that we wanted to recognize as follows that:

- The U.S. visit of the panel came at a time of intense debate five years after September 11, 2000 and coincided with a number of legislative proposals and the banning of certain interrogation techniques in the Army Field Manual;
- In the opinion of the panel, there is no circumstance where a person however classified can be placed outside the protection of international human rights or humanitarian law. No person should be convicted on the basis of evidence obtained by torture or cruel, inhuman or degrading treatment or punishment. No person should be convicted on the basis of secret evidence that the accused can neither see nor rebut;
- There should be no departure from minimum standards of the treatment of detainees under international law, including those contained in Common Article Three of the Geneva Conventions;
- There should be no impunity for serious violations of international human rights under humanitarian law;
- All detainees should be entitled to have the legality of their detention determined by an independent court and effective remedies for serious violation of human rights such as torture or ill treatment; and
- All persons convicted of crimes should have a right to full judicial review before an independent and impartial court.

### Current Legislation

I think you can see that the current legislation that has been passed by Congress does not meet all of these standards. It remains to be seen whether in due course the checks and balances will kick in and that there will be a successful challenge before the federal Supreme Court which will strike down parts of the legislation.

How did we get to this situation where in a very short time (five short years) there has been not just such an erosion, but such a legislative willingness to somehow give space for this type of activity? I am thinking particularly of two things. One, the fact that the CIA can carry out these course of interrogation methods. They can do it in secret prisons because although President Bush said there were no persons held in secret places of detention and outside of the United States, he did not say that that practice would discontinue. So the following day or today there may well be people in secret prisons. We just do not know.

I also find it interesting to personalize what the current situation seems to be. I am as you can surmise from my comments a somewhat critical voice of some of the steps that have been taken. I have to be. I am a human rights person. I have to tell it as it is. I am outspoken and I am living in New York. It is a bit scary because it would be possible for President Bush to designate me however he wants to designate it and I could be put somewhere and no court could challenge that. That is the reality in the United States at the moment. No court could hear an application on my behalf. I find that really less than comfortable and yet it is a reality. I do not think it will happen to me in any real practical sense because it is not a sort of Irish former president that is at risk here. But we know that there are people who are spending a great deal of time incarcerated and where if they had access to justice, they would not be incarcerated.

### Importance of Semantics—Crimes Against Humanity or War on Terrorism?

I want to spend some time trying to work out why we have arrived to such a really serious situation of such a rapid erosion of enormously important standards of rule of law and international human rights in a relatively short time. I have said on many occasions over the last five years that I believe language is vital in shaping our reaction to very severe events. The words we use to characterize an event may determine the nature of the response.

In the immediate aftermath of the attacks of 9/11, I was still serving as I said as UN High Commissioner for Human Rights. I came to New York. I went to ground zero. I met some of the families who had lost



loved ones. I met the FEMA and people who were working to try to see if there were anybody still there, to find any bodies—initially to see if there was anybody still alive and to comfort the families, to provide a whole organization. I met a lot of volunteers who were providing food and anything that was wanted for those who were part of the team addressing that terrible situation.

And I also sat with my colleagues in the Office of High Commissioner for Human Rights and we said what does this mean for human rights law. And we concluded, and this was not difficult to conclude, that the attacks that had taken place constituted under international human rights law crimes against humanity. That description is entirely appropriate to taking airplanes full of people, full of fuel tanks and aiming them at buildings to kill as many people as possible. They were ruthlessly planned and their execution was timed to achieve the greatest loss of life.

Their scale and the systematic nature qualify them as I said as crimes against humanity under then existing international jurisprudence. I did speak openly a number of times and gave a number of speeches and issued statements urging that the response should be to have the whole world which had come together very notably in the immediate aftermath of those attacks to concentrate on bringing the perpetrators to justice and cooperate more. And indeed the first resolution of the Security Council, Resolution 1373, fits this characterization because it required governments under Chapter Seven to comply with certain provisions of conventions on the broad issue of terrorism, whether or not they had ratified them in relation to money laundering and relation to other measures. In addition the fact of characterizing the acts as being crimes against humanity did not prevent military action where appropriate, and where there had been a request to the Taliban to surrender those alleged to be responsible (Osama bin Laden and his associates). The failure to do so warranted some military action in going in pursuit of the Taliban and Osama bin Laden.

Very quickly, almost instantaneously, not quite instantaneously but almost, the response to those acts was to frame the whole approach as a war on terrorism. The language used has shaped to a much larger extent the response at all levels because it has brought a subtle change in emphasis in many parts of the world. If you are at war, then certain practices become somehow more tolerable and order and security have become the overriding priorities. I do not want to be misunderstood here. I believe as a human rights person that it is vital to place emphasis on protecting populations, on securing them, and on tackling and bringing to justice those who commit terrible acts of terrorism. Human rights people are not ambivalent about acts of terrorism. Indeed we have

every reason to be even stronger in our advocacy of the need to bring those who commit those acts to justice and protect populations.

However, where the language is not the criminal language of bringing perpetrators to justice but rather a war on terrorism, then that emphasizes national order and security as in the past. That is what has currently happened. It has involved curtailment of standards of rule of law and human rights. Misuse of language in this way has also led to Orwellian euphemisms. Coercive interrogation is used instead of torture or cruel and inhuman treatment. Kidnapping as we have heard, becomes extraordinary rendition.

I should make it clear that characterizing major terrorists acts as crimes against humanity does not rule out the possibility of appropriate military response. However, the conflict there in Afghanistan and in particular the subsequent decision to go to war on Iraq have reinforced the perception of a war on terrorism which goes beyond the rhetorical use as we often have of a war on hunger, or a war on poverty. This is not really meant in rhetorical terms. The reality is that by responding in this way the United States has often inadvertently I believe given other governments an opening to take their own measures that run counter of the rule and undermine efforts to strengthen democratic forms of government. In some way the language of war has made it easier for some governments to introduce new repressive laws, to extend security policies, to suppress political dissent, to call acts of terrorism which before 9/11 would never have been called in any shape or form acts of terrorism and those who committed them would not have been branded to be terrorists. So this is used to suppress political dissent and to stifle expression of opinion of many with no link to terrorism that are not associated with political violence.

During my time and Tiya's time in the Office of High Commissioner, the legal counsel of the United Nations was a Swedish lawyer called Hans Corell. At a recent meeting on international law in flux he spoke about this, and I would like to quote a paragraph which sums up my concern also. He said to suppress terrorism is not a war. You cannot conduct a war against phenomenon. As a matter of fact to name the fight against terrorism a war was a major disservice to the world community, including the state from where the expression emanates. The violations of human rights standards that have occurred in the name of this so-called war no matter how necessary it is to counter terrorism have caused tremendous damage to the efforts of many to strengthen the rule of law. I think that sums up very well where I believe the rot set in. The rot was a rot of language first, the rot of framing that led to it being much easier to dip below the standards.

At another level I would say that it was counterproductive in a sad

way because if we had retained the notion of horrible crimes against humanity and disgusting horrible criminals who would commit those acts against civilians and kill so many people, which is what we were urging, it would have been much harder to perpetrate acts in the name of any distortion of religion for one thing. And secondly, if you are angry and maybe humiliated and feeling disillusioned and you are angry with your own government and you are angry in particular with how your part of the world is perceived from the west and rich countries, particularly the United States, and your anger becomes such that you want somehow to express it, it is not so bad to join forces in a war. In fact, it can be very heady and rather exciting if you feel very strongly and are manipulated to feel then that you have an enemy worth fighting, the great Satan, the United States.

So what I fear is that this language of war is also counterproductive in a different way. It is making it easier to recruit those who are on the other side of a war, and a war is a war. It has two sides to it. It is not anything like as sort of negative to an individual as to being linked to those who commit crimes against humanity. So we lost that kind of argument as well.

Again, I think what encourages me is that there are other forum not just here in the United States but at the international level where the same concern that I have been expressing about erosion of rule of law is very much to the forefront and where a lot of work is being done to restore a balance. I would like to end by this reference to the more international level so that we will have time for some discussion.

#### Club of Former Presidents and Prime Ministers

I belong to a club which we sometimes joke as being a club of exalted has-beens. It is a club of former presidents and prime ministers and it operates out of Madrid called the Club of Madrid. There are now 67 former presidents and prime ministers who belong to this club. You cannot just apply to join. Even if you are a former president or prime minister, you have to be invited to join on the basis that you were very much engaged in democracy and reinforcing good governance when you were in office and that you have a willingness to try to lend a moral voice, no longer a political powerful voice, but a moral voice to these issues.

The Club of Madrid organized a major international symposium on the first anniversary of the terrible train attacks on Madrid. It had the strong support of the Spanish government, the Spanish Royal Family, and so on. For six months before the meeting in March to coincide with the train bombings the first anniversary, there were discussions. There

were smaller round tables. There was a lot of e-mail traffic between experts. Over 400 experts who contributed under different headings. These experts were a very broad spectrum. They included military experts, intelligence experts, experts in democracy and governance issues, experts in international human rights, humanity law issues and democracy, the whole gamut of citizenship, et cetera. More than a thousand people gathered for three days in Madrid. They included a number of officeholders, the senior representatives of government, including as it happens the Attorney General of the United States, Attorney General Gonzales, who had been appointed in January. I think this was probably one of his first international meetings.

At the end of it, drawing on the work of these experts, the members of the Club of Madrid drew up what is called the Madrid Agenda. You can find that on the website of the Club of Madrid at <http://www.clubmadrid.org/cmadrid/index.php?id=1>. The agenda makes a compelling case not only for more effective joint action against terrorist organizations. It is an agenda that is tough on combating terrorism and terrorist organizations, but also the need to increase resources aimed at tackling the humiliation, the anger, the frustration felt by many that can be manipulated to draw recruits for terrorist action. Most of all it makes very clear that while being very firm and more united and more effective in tackling terrorists and acts of terrorism that it is vital to know what the standards are. The democracies must uphold the standards of international human rights and rule of law. The Madrid Agenda noted that these standards have flexibility within them, that if there is a need to take emergency measures, these can be taken.

So the current situation is that although we still have measures taken at the national level in this country and I would have to say it is our experience on the Eminent Jurists Panel, in most of the jurisdictions that we have been looking at, there are worrying trends. Nonetheless, I frankly believe that we have passed a certain point where it seemed to me as if either indifference or a sense that maybe the standards of human rights have changed in our post 9/11 world, has been reversed. But I would be very interested in your views on that. I think now that there are more people who are expressing a serious concern for and advocacy at a passionate level for knowing what democracy stands for and knowing that there is a minimum core that we have to reassert, and that that minimum core means that we are adamant that torture is not acceptable or that you can have people held indefinitely with no recourse to courts. These are unacceptable standards below which a country should not allow itself to dip.

These are advocacy points in some parts of the world, but they are I hope going to be the swing back of the pendulum. If it is really going to

swing back, it is going to need law schools such as Penn State Dickinson Law School and the colleagues in the wider symposium participating in our discussion today. In other words, it is the old story that democracy needs vigilance. We need to make as strongly as possible the case for going back to the core values of rule of law and a full upholding of the international human rights standards in dealing with terror. The standards do allow measures to be taken as long as they are taken under the terms that they are for the purpose under scrutiny, and it is understood that they will be reviewed as required under international human rights standards.

It is now time for me to hear your views on all of this. You have been a very good audience and I hope that our colleagues at University Park in State College will join us in some discussion of these issues. Thank you very much indeed.

(Applause.)

PROFESSOR MALUWA: Questions? Yes.

STUDENT: I have seen a lot of what you are talking about dealing with Amnesty International where we are trying to work to free prisoners of conscience or other people that are working to achieve democracy or acting democratically in their country. The first defense we constantly obtained from these governments has been that they are just trying to put down the terrorists or, they are just doing their job on the war on terror. I also think about the war on terror and how it sort of originated from this neoconservative movement happening now to make the world safer through the spread of democracy. Is this being attributed to this movement that has committed to spread of democracy?

HONORABLE MARY ROBINSON: I am very aware of Amnesty's extraordinary front line work in this area and of course Amnesty has given evidence to the various hearings of the Eminent Jurists Panel. We have drawn on some of the studies and reports of Amnesty International.

I think you are right that we need to be in more debate and that is why I actually mentioned that I was very pleased to be invited to go along with the foreign office in London and to have a really good discussion with both officials of the foreign office and at the home office. Their attitude was one of trying to grapple with difficulties. And they were asking what would you advise, what do you think? One of the difficulties is these control orders that they have tried to impose on those that they can not send out of their jurisdiction. So they do not want them they can not convict them because they do not have evidence in this court and they do not want them going around possibly being a threat. This is the dilemma.

I think it is a problem that can be addressed more with the kind of

resources because in any situation of civil criminality, I will put it that way, very serious criminal gangs, the police watch them. They do not incarcerate them, but they keep an eye on them. It is a matter of allocating resources if you are really concerned. But to either impose the restrictive orders without any evidence or hold people for 90 days, which is the other issue that is being discussed, these are I think very difficult ways of eroding the standards of checks and balances that are necessary.

But I mean I would be very happy if I got a similar invitation to go to the Pentagon even and discuss these issues because in fairness during the hearings of the Eminent Jurists Panel, we had a number of former advocates general and in a couple of cases the judge advocates who came privately to us to talk about their view particularly on Common Article Three of the Geneva Conventions. Without exception what was said at the public hearings and what was said in private was we have never had any problem of interpretation. There is no ambiguity, there is no need to change or redefine and it would put our forces at risk, our defense forces at risk. So there is within the military a strong code that is being eroded also. I think the army manual was an attempt to reassert standards and now it is being bad-mouthed because it does not apply to the CIA and secret detentions. So you move in one direction and then move back and in another.

But I agree with what you said that we need more discussion and debate about this because there has been a kind of imposition without proper discussion and I have to say regrettably, I do not want to get involved in U.S. politics naturally, but it has been sad not to see more, you know, real scrutiny by elected representatives of the people of what is happening, a real concern in such a kind of fear that this would have repercussions I think with the electorate.

STUDENT: Do you think the moral slide that our country has been experiencing is a result of this administration's insecurity in being able to legally put forth this agenda? And if so, has anybody made any effort to address their group psychological mindset of these people on a personal basis?

HONORABLE MARY ROBINSON: I think you raise an interesting question about insecurity. I am going to answer in a slightly broader way initially than your precise question. That was one of the things that I really became more both aware of and understanding of when I came to New York and I listened and I read the newspapers in the following days after the attack. It was the extent of the trauma. I do not think that it is always fully understood in Europe or in other cities and countries of the world because in Europe and in other places in the world attacks by terrorists on trains, on whatever, are not so unusual. For example, the UK had the IRA bombings and so on and Northern Ireland.

But there was I think a sense before 9/11 of immunity from that in the United States and suddenly and without any real apprehension, and there was a huge trauma and therefore I think I agree with you in a sense. That was why the visceral response was we have been attacked, we are at war. It was much more than, for example, when the train attacks took place in London a year or so ago, you did not have the defense secretary talking about it. It was police and security and home secretary and France, the same, and Spain, the same thing. Interior minister in charge of how it would be responded to. So that is the first point.

But the scale of the trauma meant that there was more of a tendency and perhaps more of a disposition culturally to see it as being a matter of defending against more of it than otherwise. I do not see much conversation around the point I made about the sort of consequences of calling it a war for those who are angry and humiliated and disillusioned and bitter on the other side that it is not so bad to be at war. No reasons to really discuss that, it is counterproductive.

Now, that is not quite soul-searching that you were talking about with those who may just want to cover up their own sense of insecurity. Another insecurity that we did come across during the hearings of the Eminent Jurists Panel in Washington, D.C. was a fear of being brought to trial for war crimes. That is I think a very real fear and is at the back of this legislation. It is certainly behind the immunity given in this legislation so that no one can be prosecuted for any acts done since 9/11 of this kind. That is a course in the courts of the United States which links with the possibility of universal jurisdiction and International Criminal Court possibilities that are being discussed in the wider symposium, but care was taken to close off any possible liability under United States law for war crimes, which means that some people must have thought that they were close to being at risk of such prosecution.

STUDENT: When you were talking about the Madrid symposium, you mentioned an emergency provision. Please tell us a little bit more about that.

HONORABLE MARY ROBINSON: Yes. Under the International Covenant on Civil and Political Rights, there is provision to derogate in situations of emergency, but there are situations you cannot derogate from, and that is also true in the Convention against Torture. Ironically, and Tiya will correct me if I am wrong about this, I think it was about a month before 9/11 the committee that had jurisdiction over the International Covenant on Civil and Political Rights came out with a comment. I think it was General Comment number 29 which actually spelled out precisely how you can derogate. It is very interesting that the United Kingdom derogated from the International Covenant on Civil and Political Rights and the European Convention on Fundamental

Rights and Freedoms and there was a lot of criticism in the UK when the British government derogated, but in my conversation the other day with the officials in the department in the foreign office and some of home office officials, I actually said that I prefer that a government derogate than that a government flagrantly fall below the standards and just ignore. It is one of the sad aspects that I also tried to bring out while I was serving as the UN High Commissioner, that it undermines the International Covenant on Civil and Political Rights that the United States has not even bothered to derogate. So that is another breach.

Recently there were hearings both at the Convention against Torture in Geneva and the International Covenant on Civil and Political Rights. Both committees were very critical of the United States and that angered some of those who were trying to defend the United States before those two committees. But there was nothing they could do about the standards and they had to apply them internationally and objectively and rightly therefore found that the United States was in quite severe failure to uphold the legal commitments that the United States had entered into. This undermines making the system more effective in other parts of the world, a problem that I saw in a very clear way.

I would raise issues with ambassadors in countries, I am talking particularly in the Middle East and in parts of Asia and I would say—and former Soviet Union that my office has information about the way in which you are extending your security law which is completely unacceptable. You have ratified the covenant. This is not permissible under the Convention against Torture. The answer I would get from the minister or if it was in Geneva, the ambassador was well, do you not know the standards have changed. I draw myself up to my full height and say I am the High Commissioner and they would say look at the United States, look at the United States, over and over again. So politically the standards depend on being supported particularly by the most significant countries. The United States as we know is the largest country in that point of view and is significant.

STUDENT: How do human rights regimes interact or compliment international crimes, the enforcement of international crimes? How do they interact with the type of work that you do in order to stop say conscription of children and trafficking issues?

HONORABLE MARY ROBINSON: One thing that I am very conscious of having served for five years as UN High Commissioner for Human Rights is that we do now have a whole series of international human rights instruments with standards ILO, labor standards and crime conventions and protocols against trafficking and protection of children under protocols about child soldiers, et cetera. The problem is implementation. The problem is making them effective. The initiative



that I now lead, which is small and not actually self-standing, and linked to the Aspen Institute here in this country convenes business people and members of congress, influential people to help bring our messages to them. Columbia University helps particularly on right to health in developing countries and African countries making the right operational on the ground, talking about effective health systems. We call the initiative Realizing Rights, it is an Ethical Globalization Initiative. What we are saying is that we mean "realizing" in two senses. One, everyone in the world should realize they have human rights. We know that millions of people have no knowledge, and in fact, particularly women in many parts of the world do not know that they themselves have rights and have rights that matter greatly in a very practical sense. Secondly, those with power should realize those rights. Those with power today is not just governments that have the primary responsibility and the United Nations, but also other institutions like ILM, IMF, World Trade Organization, World Bank and regional organizations like EU, et cetera, OAS and the AU, but also the corporate sector.

Now, we can bring all that back to your question about enforcement. Take the issue of trafficking, it is a huge, dark underworld of globalization. The trafficking is in human beings and sometimes the smuggling, which is the fee that is paid by a migrant who wants to get out of a totally bleak situation where there is nothing to feed the family and wants to get to Europe say now on a boat from Senegal to the Canaries and then from the Canaries to Spain. It may well be that what starts as smuggling becomes trafficking when the person lands, particularly when a woman lands and her passport is taken and she is forced into the sex trade or forced into a modern slavery, one kind or another. As we know that is happening more and more. It is happening with children as well.

My long winded response to your question is that I think we need a much more effective alliance of energies to good effect and that the private sector corporations have a responsibility. I say that because we are working as Tiya said in a number of African countries at a very practical level and we are finding that it is possible to work more with the private sector. Amnesty is working more now with the business community. We have these standards of business and human rights. We are talking a lot about them. I will be in Boston tomorrow talking about the responsibility of the business sector and business and human rights. If we had more effective alliances, we would be able to tackle the problem of trafficking more because we would not just be talking about the primary responsibility of governments. We would also be talking about complicity of large corporations.

STUDENT: Oftentimes we hear what I consider a well-considered

opinion that you cannot attack the problems of crime without dealing with the socioeconomic conditions that spawn it. It seems that the Madrid Commission has also taken this view in terms of terrorism that you cannot deal with terrorism without dealing with the problems of the third world and their relative conditions.

The problem is if we take the United States, for example, and look at crime domestically, the gap between rich and poor is continuing to increase. If we look at that in terms of the world situation, the gap between the developed world and the less-developed world is also increasing, but especially in terms of areas like Africa. So the question I have regarding the Madrid committee, is whether they really have come up with an agenda, a program that will really make a difference in essentially dealing with the socioeconomic conditions that spawn terrorism?

HONORABLE MARY ROBINSON: It is a question I must say that I think about a lot, and the short answer is no. However, at least there was a framing [of the issue]. That said, we need to be implacably tough on acts of terrorism, better at bringing terrorists to justice, but uphold our standards of rule of law and human rights, and that we need to look as you said at the deeper causes. We need the knowledge of shifts that are really significant, not the least of which is the demographic shifts.

The three billion new members of the human race that will be added between now and about 2045 or 2050, will be mainly in the poorest countries. I follow pretty closely as best I can what is happening in Somalia at the moment. It is really quite frightening to see a country sliding from a failed state into potentially another very angry zone with an increasingly angry young population that can be drawn into the conflict. So that is another possible area of real worry because it is getting into that dangerous area where it can be a haven for those who really do want to attack outside their borders, and it is not the only country in this situation.

Relating this to the socio-economic issues you raised, I had the privilege with other members of the Global Commission on International Migration to establish a report to Kofi Annan, before the high level dialogue of the General Assembly last month on migration development. We had the opportunity to go to different regions to focus on issues of migration and development.

We were in the Manila, for the Asian region, and the one hearing that made a permanent impact on me (mainly because I am a European and I was very, very struck by the complete divides that were so stark) was in Cairo for sides of the Mediterranean; it consisted of representatives of governments of both sides of the Mediterranean, some

North African countries and European countries and Gulf states, and representatives of international organizations, the United Nations, the IOM, UNHCR, all these organizations, and experts on migration. The third group was just the wider civil society, business, trade unions, wider NGOs, faith-based migrants organizations, human rights, et cetera.

The first thing we got was a profile of the North African region. The profile was that that region needed 100 million new jobs by 2020 to maintain even the current level of economic development, 100 million jobs. Does anybody really realistically think that there is a plan for those 100 million jobs?

Now, more recently in July there was a meeting in Rabat in Morocco with between representatives of European countries and countries mainly of North and Central Africa. That was the first time there was this kind of meeting on migration and development [underscored], the need for decent work in those African countries and [explored other] ideas about development. But this is very new and very different kind of debate.

I think that such debate is needed absolutely urgently. If not, we are going to see even more worrying factors which contribute further to a widening of the divides and potential slide towards the clash of civilizations. I see no reason at all why there is any sense of inevitability or this is going to happen in someway. On the contrary, I think we have many ways in which we can take steps, very practical steps like steps on migration and development issues, but also steps on getting back to characterizing acts of terrorism as terrible criminal acts and be more effective in bringing the perpetrators to justice and having more effective means of doing that, which is what our Widener symposium today is looking at as well, the Future of International Criminal Justice.

I certainly am glad that the Madrid Agenda did not ignore the socioeconomic factors, but it is a much wider discussion. We have a failed dogma in development around at the moment. That is contributing to a sense of injustice and unfairness in developing countries that they do not have fair in terms of trade to try to pull more of their population out of poverty and create more decent jobs. And so with the demographic profile and the situation potentially worsening and now in London today you have a report on climate change, which is truly frightening because it is an issue which lawyers and human rights people need to be looking at as well. We will have climate change refugees in the hundreds of thousands and we will have other ways in which the neglect to deal with climate change will put the most vulnerable populations at huge risk of their lives and their livelihoods. What is the human rights responsibility there?

So plenty of challenges as I said. That is what I was talking about

the rule of law and a time of big challenges.

STUDENT: You talked about the importance of choosing language and wording. One word that seems to be prevalent in any conversation on terrorism in the United States or abroad or migrants from Africa to Europe is the concept of fear. That word fear is very prevalent. Do you believe that there is a sort of a global culture of fear? If so, what do you think could be done to address this global culture of fear? Please address that, if you can?

HONORABLE MARY ROBINSON: This is a very thoughtful question. I think you are right, that there is huge insecurity worldwide and more fear and that a number of political figures in different parts of the world use the fear to maintain their own grip on the situation the way that they want it to. We are having quite a lot of discussion among women leaders and very recently a new forum was launched in Columbia University (in fact last month) called the Women Leaders Intercultural Forum, which is precisely to address this kind of issue. It is intercultural and interregional. I think you will be happy to know it is intergenerational. It actually is also saying that women of different generations do have different perspectives, different starting points, and different concerns. What we are going to try to do is discuss among ourselves, but primarily try to bring our messages as a forum collectively to other forums. We have had our first success. The Arab Strategy Forum, which is taking place in Dubai in December has invited members of Women Leaders Intercultural Forum to present there and we will be saying, "we are women leaders, we have discussed a whole lot of issues and we have discussed very much issues of fear and the other differences and how we can have a language that really listens and speak to each other."

What we are convinced about is that women who are actively involved in their local communities or at the national level have far more in common than anything that would divide them. They are concerned about economic empowerment, and domestic violence in all our countries at all different levels. One of the issues is women migrants, women on the move during war and their vulnerability in different regions and in different countries.

When you were asking your question, I was thinking about the wonderful passage of a former great president of this country, President Roosevelt, who talked about the only thing to fear is fear itself and about the four freedoms, two of which are freedom from want and freedom from fear. So it is not the first time the world has been faced with appalling catastrophes, two terrible world wars, a terrible Holocaust, and then the kind of willingness to establish multilateral institutions like the United Nations, the value system of the Universal Declaration of Human

Rights.

What we have not seen yet emerging is a similar vision of how to move forward and integrate better in our modern world. As I mentioned I have just come from London. There is a huge public discussion at the moment and a very heated discussion about women that is symptomatic of something very deep because these are UK born and some significant portion are converts to the Islamic religion. They feel for whatever reasons that this is the way that they show that they do not want to be part of a society they feel denies them, excludes them, humiliates them. These are issues that need to be discussed certainly in all of the European countries and I sense also here. There is an anger in the Arab Muslim world and the wider Muslim community here in the United States that is not being addressed or talked about sufficiently because people as you said have fear.

(Applause.)

PROFESSOR MALUWA: You will have noticed that one of the things I learned at the United Nations is that you do not interrupt a member of the Madrid Club or former Presidents and Prime Ministers. But I would like to invite you and our colleagues at University Park to thank our keynote speaker this afternoon and at the same time I would invite Professor Del Duca to thank our distinguished presenters Judge Goldstone, Ambassador Okun and the others up there at University Park.

Once again, thank you so much for an engaging presentation and thanks to you, the participants, for an enriching discussion and exchange of views. We will have a reception on the third floor, in Café Per Se, and President Robinson will join us for a few minutes before she leaves.

Professor Del Duca, back over to you.

(Applause.)

PROFESSOR DEL DUCA: Thank you very much.

We have had a very enlightening, interesting and inspiring inquiry into *The Future of International Criminal Justice—Evolving Individual Accountability from Nuremburg to the International Criminal Court*. It has been a wonderful day with stimulating discussion from both sides of the podium.

I am sure that those of us on the presenters' side of the podium have a feeling of confidence based on the attention, quality of questions, and participation from the audience that the new generation will meet the challenges and opportunities that lie ahead. There is hope that a modicum of rationality may be permanently injected into the system.

We have been fortunate indeed to have the opportunity to benefit from the highly specialized unique perspectives of each of the presenters representing many years of experience and highly motivated inspired work. May I ask the audience to thank the wonderful panel of presenters

beginning with Judge Richard Goldstone, the Honorable Herbert Okun, Professor Dermot Groome, Professor David Crane, Ambassador Clint Williamson, Professor Tiya Maluwa, and the Honorable Mary Robinson for a truly informative and inspiring day. Thank you.

