

2003

The Fifth Annual Grotius Lecture Shaping Globalization: The Role of Human Rights

Mary Robinson

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Robinson, Mary. "The Fifth Annual Grotius Lecture Shaping Globalization: The Role of Human Rights." *American University International Law Review* 19, no. 1 (2003): 1-26.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University International Law Review* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE FIFTH ANNUAL GROTIUS LECTURE*
SHAPING GLOBALIZATION: THE ROLE OF
HUMAN RIGHTS

MARY ROBINSON**

INTRODUCTION 2
I. INTERNATIONAL LAW – THE NEED TO UPHOLD IN
TIMES OF PERIL 5
II. THE UNITED STATES AND HUMAN SECURITY AFTER
9/11 11
III. HUMAN RIGHTS IN THE WORLD TODAY: MAKING THE
UNITED STATES A LEADER AGAIN 14
IV. HUMAN RIGHTS AND GLOBAL RESPONSIBILITIES ... 16
CONCLUSION 25

Editor's Note: The following is a revised version of a lecture presented at the American Society of International Law's ("ASIL") 97th Annual Meeting on April 2, 2003. The Grotius Lecture Series is co-sponsored by the American University Washington College of Law, the ASIL, and the International Legal Studies Program. The purpose of the Grotius Lecture is to open the ASIL forum to distinguished scholars for discussion about new and important voices that might not be heard in international law and to create expanded space and opportunities to explore the intellectual underpinnings of international law and the issues of our time.

** Mary Robinson is the Executive Director of the Ethical Globalization Initiative. She served as United Nations High Commissioner for Human Rights from 1997 to 2002 and as President of Ireland from 1990-1997. She is a founder member and Chair of the Council of Women World Leaders. Before her election as President, Mrs. Robinson served as Senator, holding that office for 20 years. In 1969 she became Reid Professor of Constitutional Law at Trinity College, Dublin and now serves as Chancellor of Dublin University. She was called to the bar in 1967, becoming a Senior Counsel in 1980, and a member of the English Bar (Middle Temple) in 1973. Educated at Trinity College, Mrs. Robinson also holds law degrees from the King's Inns in Dublin and from Harvard University.

INTRODUCTION

Ladies and Gentlemen,

Let me begin by quoting this intellectual challenge to all of us by the economist and Nobel laureate Amartya Sen: “there is a compelling need in the contemporary world to ask questions not only about the economics and politics of globalization, but also about the values and ethics that shape our conception of the global world.”¹

International lawyers are well placed to pose, and to begin to answer, such questions. After all, international law – including international human rights law – is the expression of a value system developed over more than a century.

For that reason, it is a pleasure to be here in Washington to give the fifth annual Grotius Lecture. I thank the American Society of International Law (“ASIL”) and the International Legal Studies Program of American University’s Washington College of Law for inviting me to address you all today.

In June of 2002, when I received the invitation from Anne-Marie Slaughter and Daniel Bradlow, I was intrigued by the theme of ASIL’s 2003 conference – “Conflict and Coordination Across International Regimes.” One of the issues I had stressed during my term as United Nations (“U.N.”) High Commissioner for Human Rights was the need for what I called “bilingualism” between those of us working in the field of human rights and our colleagues in the disciplines of development and trade. I had been convinced for some time that in order to address effectively the challenges of globalization, we needed to foster greater coherence between different legal and institutional frameworks. And as I was planning to focus on this area after completing my term as High Commissioner, I welcomed the chance to reflect further on these matters with such a prestigious audience.

I hope it will not seem presumptuous to say that my remarks today will seek to reflect the spirit of Hugo Grotius, one of the founding

1. Amartya Sen, Article adapted from comments given at Seminar on Globalization arranged by Falcone Foundation (May 23, 2001) (discussing the global need to assess new challenges), available at http://www.ksg.harvard.edu/gei/Text/Sen-Pubs/Sen_On_globalization.pdf (last visited Sept. 19, 2003).

fathers of internationalism, whose writings emphasize co-operation and regulated interaction among sovereign states. Some scholars have contrasted his thinking with what they see as a more realistic, “real politik,” tradition which draws on the writings of the English philosopher Thomas Hobbes, and sees politics, and by extension international politics, as a state of perpetual war. It is my own view that both realism and internationalism must go hand in hand if we are to build a world in which security is underpinned by sustainable development and social justice.

One of the practical ways I sought to address this broad theme during my time at the United Nations was in strengthening relations between the Office of High Commissioner and the World Bank. So I was happy when I learned that Ko-Yung Tung, vice president and general counsel of the World Bank, had agreed to be our distinguished discussant today. It was a pleasure to have been invited by my friend Jim Wolfensohn and his colleagues at the Bank in December 2001 to speak on the theme of “Bridging the Gap Between Human Rights and Development.” I am aware, since then, of the close examination the Bank is making of the relevance of international human rights norms and standards to its own mission, and I was struck by the explicit way Jim Wolfensohn expressed this in an article in January in the *Asia Times*:

Yet what I believe is promising is the evidence of a growing consensus among those of us working in international agencies, and leaders in government, business and civil society, that we can begin to solve these problems only if we forge a new development path linking economic growth to social and environmental responsibility. Without social equity, economic growth cannot be sustainable. Without enlarging the real opportunities available to all citizens, the market will work only for the elites. This means providing everyone with access to education, health care, decent work and – as the new Brazilian President Lula has pointed out – with at least three meals a day.

The events of 11 September, 2001, helped drive home the message to people everywhere that there are not two worlds – rich and poor. There is only one. We are linked by finance, trade, migration, communications, environment, communicable diseases, crime, drugs, and certainly by terror.

Today, more and more people agree that poverty anywhere is poverty everywhere. Our collective demand is for a global system based on equity, human rights and social justice. Our collective quest for a more equal world is also the quest for long-term peace and security.²

I have no doubt Ko-Yung Tung will test me on how far my own thinking has developed since my address to the World Bank in 2001. I am equally anxious to hear how much he and his colleagues at the Bank have taken my words, and the words of their President, to heart!

My message today can be summed up simply. If we want globalization to work for all the world's people – which was the priority of the world's leaders at the U.N. Millennium Assembly in September 2000 – then multilateralism and respect for international law, in particular, international human rights law, must work as well.

Last year's Grotius lecturer, Moisés Naim, in his address - "The Five Globalized Wars," came at the subject of globalization from a slightly different angle but reached a similar conclusion. As he put it, five global wars – the illegal drugs trade, money laundering, arms smuggling, trafficking in people, and pirating intellectual property – pit individual countries against loose, shadowy, transnational networks, empowered by new technologies and by the forces of globalization.³ Naim argued that "[u]ltimately, the ability of states to prevail will depend on their willingness to strategically surrender portions of their sovereignty, work with other countries and support multilateral efforts against their new common foes."⁴

2. James D. Wolfensohn, *Choosing a Better World*, ASIA TIMES, Jan. 22, 2003 (indicating that the World Bank is paying refreshed attention to global problems such as economic and social issues), available at http://www.atimes.com/atimes/Global_Economy/EA22Dj01.html (last visited Sept. 10, 2003).

3. See Moisés Naim, *Five Wars of Globalization*, 18 AM. U. INT'L L. REV. 1, 2-3 (2002) (discussing the international legal implications of illicit global trade in drugs, arms, intellectual property, people, and money).

4. Press Release, American University, *Drugs, Money, Weapons, People, Ideas—Globalization's Five Wars To Be Discussed at AU Law Fourth Annual Grotius Lecture*, March 13 (Mar. 8, 2002) (discussing the need for countries to relinquish portions of their power in a collaborative effort toward international stability).

I do not think any of us could have imagined at this time last year that we would find ourselves today in the midst of a very different kind of war with far reaching implications – the war in Iraq. This war, perhaps like none before, is testing the very foundations of the multilateral system which has been built up over the last century. There is widespread concern about the current U.S. doctrine of preemptive strikes allied to overwhelming military superiority. The division in the Security Council reflected deep divisions in our world which continue as the war unfolds. I will argue today that the multilateral system must not be torn down or bypassed in the future by ad hoc coalitions of the willing as some commentators are already suggesting. Instead, I will contend that it is both in the national interest of the United States and in our collective interest to defend, strengthen, and yes, reform, the multilateral system in which we have invested so much so that it can meet the challenges of the twenty-first century. Key to that effort must be a greater sense of shared responsibility for and commitment to the implementation of international human rights law.

I. INTERNATIONAL LAW – THE NEED TO UPHOLD IN TIMES OF PERIL

I think it is worth reflecting briefly on the striking changes in priorities and perceptions that have taken place at the international level over a short period. The world began the twenty-first century with a shared sense of the importance of the international legal framework which had been built up over the past half century and its vital role in an increasingly interdependent world.

Government leaders expressed through the United Nations Millennium Declaration the international community's renewed commitment to the principles of justice and international law.⁵ Indeed, during the three-day special session of the General Assembly in September 2000, a total of 273 new treaty actions took place - 187 signatures and 86 ratifications or accessions – on instruments such as the Optional Protocols to the Convention on the Rights of the Child

5. See *United Nations Millennium Declaration*, G.A. Res. 55/2, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/2 (2000) [hereinafter *Millennium Declaration*] (stressing the importance of international cooperation in upholding the principles of human dignity, equality, and equity).

on the involvement of Children in armed conflict,⁶ the Convention on the Elimination of All Forms of Discrimination against Women,⁷ the Rome Statute of the International Criminal Court,⁸ and the International Convention for the Suppression of the financing of Terrorism.⁹

The Millennium Declaration stressed the need for sustained efforts to create a shared future, based upon our common humanity in all its diversity, in order to make globalization fully inclusive and equitable.¹⁰ The moment was marked by a spirit of rededication to international law and institutions as the best hope for the twenty-first century.

But just one year and three days after this historic Declaration was adopted, the events of September 11, 2001, shook the United States and the world. Since that day, the commitments which ushered in the new century have been overshadowed by the threats of terrorism, by fears and uncertainties about the future, and by questions about the viability of open societies joined by international norms and values. With the onset of the war in Iraq by a coalition of the willing, the international system's legitimacy and relevance has been put to yet another test.

Will the normative global system that restored peace and security after the Second World War be seen by future generations as an idealistic dream that was unable to respond to the realities of a changing international landscape? Or will it instead be viewed as the

6. *Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography*, G.A. Res. 54/263, 54th Sess., Annex I & II, U.N. Doc. A/54/49 (2000), (entered into force Feb. 12, 2002).

7. *Convention on the Elimination of All Forms of Discrimination Against Women*, Dec. 18, 1979, 1249 U.N.T.S. 455-6 (describing the need for equality and recognition for inalienable rights of women).

8. *Rome Statute of the International Criminal Court*, July 17, 1998, U.N. Doc. A/CONF. 183/9, 37 I.L.M. 999 (entered into force July 1, 2002).

9. *International Convention for the Suppression of the Financing of Terrorism*, G.A. Res. 54/109, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/RES/54/09 (1999), reprinted in 39 I.L.M. 270 (2000).

10. *See Millennium Declaration*, *supra* note 5 (discussing the need to respect human values and international cooperation in order to ensure that globalization is a positive global force).

essential foundation of a more just and secure world based on respect for the international rule of law?

The answer, of course, will depend on the choices we make, the priorities we set, and the values we seek to uphold.

As Emory University Law School Professor David Bederman pointed out in a thoughtful work titled “Globalism and International Law: Values and Choices,” when international law was in its infancy as a legal system, few questioned that its primary value was the maintenance of the sovereignty - the internal legitimacy - of its primary actors and subjects, states.¹¹

It was not until the beginning of the twentieth century that this value system was challenged. “The Hague Peace Conferences of 1899 and 1907 [and] the League of Nations in the aftermath of the First World War, elevated peace” alongside sovereignty as a central value of international law.¹² But we all know that it took the horrors of the Second World War for the international community to accept that these values alone could not guide international affairs.¹³

The U.N. Charter placed respect for the dignity and rights of individuals as yet another fundamental value of international law.¹⁴ As Bederman makes clear, within the past fifty plus years, international law has come “to recognize a variety of essential,” yet sometimes conflicting “values just as it has embraced a diversity of subjects for its rules.”¹⁵

Bederman’s key point is that, historically, it has only been at times of profound transformation that we have seen self-conscious reflection on international law’s underlying goals. These periods

11. See David J. Bederman, *Globalism and International Law: Values and Choices*, in *THE SPIRIT OF INTERNATIONAL LAW* (Univ. of Ga. Press, 2002) (discussing the inception of international law as a legal system).

12. See *id.* at 111 (indicating the central goal of peace as the major value upon which international law was founded).

13. See *id.* (discussing the challenges that the Second World War posed to the goals and efforts of international law).

14. See *id.* (regarding the U.N. Charter as the document that “explicitly dissolved state sovereignty in its twin goals of preserving peace and protecting human rights.”).

15. See *id.* (evaluating the changing role of international law over the past several decades).

have included the Westphalian moment and the birth of modern nation-states, the period of high positivism in the late nineteenth and early twentieth centuries, [the Second World War] and the human rights revolution, and today's move towards globalization."¹⁶ The jury is still out on where the international system, under the present period of reflection, will end up.

In a recent op-ed column, Anne Marie Slaughter suggested that what we are witnessing today is an unruly process of pushing and shoving toward a redefined role for the United Nations.¹⁷ As she put it, "overall, everyone involved is still playing by the rules. But depending on what we find in Iraq, the rules may have to evolve, so that which is legitimate is also legal."¹⁸ There is considerable risk in this, particularly if the humanitarian situation deteriorates and civilian casualties continue to rise there.

But, what I also fear is that the Iraq crisis may only serve to reinforce the skepticism of many people around the world who see international law as a set of commitments that are routinely ignored by governments or worse still, selectively implemented to benefit the strong at the exclusion of the weak. This would undermine the security of all of us.

Perhaps the first truly global humanitarian law making was the process led by the Red Cross movement to define and codify international rules to protect prisoners and civilians in times of war. These now exist in the Geneva Conventions.¹⁹ They constitute

16. Bederman, *supra* note 11 at 138.

17. See Anne-Marie Slaughter, *Good Reasons for Going Around the U.N.*, INT'L HERALD TRIBUNE, Mar. 18, 2003, at 1:3 (evaluating the changing role of the United Nations), available at <http://www.iht.com/articles/90176.html> (last visited Sept. 21, 2003).

18. *Id.*

19. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Jan. 23, 1979, 1125 U.N.T.S. 3; Protocol

binding international law which is enforceable in national courts. We tamper with these standards at our peril.

In recent weeks we have been reminded of their importance. Concerns about the treatment of U.S. prisoners of war in Iraq have brought renewed emphasis here on the importance of international norms of behavior. But we cannot hope to see these norms taken seriously in other countries if we pick among agreements and choose when we invoke them. This also underlies the argument that the international rules for consular access should be enforced in the United States – for example where foreign nationals are arrested on capital offences – not only because the Vienna Convention requires this but also because failure to do so will jeopardize the rights of U.S. citizens detained in other parts of the world, where due process rights may be fragile or absent.

Over the past two years, in particular, positions taken by the United States on global issues such as justice – through the creation of the International Criminal Court, protection – through the land mines treaty, and the environment – through Kyoto, to name only three examples, suggest that the entire notion of international law is becoming one of questionable value to the world's most powerful country.

On the 11th of March 2003, the support of eighty-nine member nations, and eighteen judges presided over by Philippe Kirsche of Canada [oversaw the inauguration] of the International Criminal Court (“ICC”). In his speech that day at the Hague, U.N. Secretary General Kofi Annan stated:

There are times when we are told that justice must be set aside in the interests of peace. It is true that justice can only be dispensed when the peaceful order of society is secure. But we have come to understand that the reverse is also true: without justice, there can be no lasting peace.²⁰

Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Jan. 23, 1979, 1125 U.N.T.S 609.

20. Kofi Annan, Address to the Inaugural Meeting of Judges of the International Court (Mar. 11, 2003), available at <http://www.unic.org.in/News/2003/pr/pr31.html> (last visited Sept. 2, 2003).

Speaking on the same occasion, Benjamin Ferencz, former prosecutor during Nuremberg, had a tough message for the United States, but a message I would urge the American Society of International Law to think about as we look to the future:

The reasons given by the United States to oppose the ICC are not shared by other nations and are not persuasive. The public should be told the truth. There are more controls on the ICC prosecutor than on any other prosecutor in human history America is a great democracy and it is inevitable that there will be honest differences of opinion. Some believe only in the law of force. They are the realists who have given us this world filled with fear. They are trying hard to kill the ICC, by fair means or foul. Others believe in the force of law. Of course, improvements are needed. But the ICC is a newborn babe and it must be helped to maturity. We must give law a chance. Arrogance and threats do not encourage friendships. The trashcans of history are filled with the ashes of nations that were the superpowers of their day. It should be clear to all that law is better than war.²¹

In fact, I believe that public opinion in the United States is becoming more positive about the International Criminal Court. A recent article in the New York Times noted the appointment as prosecutor of Luis Moreno Ocampo, an Argentinian lawyer currently teaching at Harvard Law School, who prosecuted the 1985 trial of nine members of his country's military junta.²² A recent editorial concluded: "Washington should now acknowledge that the court is an ally in efforts to prevent the globe's most serious crimes and bring to trial those who commit them."²³ The American Society of International Law could be a powerful voice for this cause.

21. Benjamin B. Ferencz, Address to the Inaugural Meeting of Judges of the International Court (Mar. 11, 2003), *available at* <http://www.benferencz.org/remarks1.htm> (last visited Sept. 1, 2003).

22. Marlise Simons, *Argentina is Expected to Be Prosecutor for War Crimes Court*, N.Y. TIMES, Mar. 24, 2003, at A2.

23. See Yahoo! Groups, *icc-info – International Criminal Court-Information* (posting a March 29, 2003 New York Times (National Edition) editorial on the discussion forum), *at* <http://groups.yahoo.com/group/icc-info/message/2986> (last visited Nov. 13, 2003).

II. THE UNITED STATES AND HUMAN SECURITY AFTER 9/11

How can we make the case again, in our time, that the route of international law is the best way to a secure and sustainable future for all?

Human security is a pressing, and legitimate, consideration in the aftermath of 9/11. But I ask you to consider whether it can be achieved by the means that are currently being employed?

All of us here are deeply aware of the trends in the world which are working to create a growing climate of uncertainty about maintaining the standards of international human rights. A new report by the Lawyers' Committee for Human Rights titled "Imbalance of Powers: How Changes to U.S. Law & Policy Since 9/11 Erode Human Rights and Civil Liberties" makes for sobering reading.²⁴ The report highlights a pattern of actions by the U.S. government since September 11, 2001, which are at odds with core American and international human rights principles.

Central among those principles is the idea of checks and balances – the long U.S. tradition of separation of powers among the executive, judicial, and legislative branches of government. The Lawyers' Committee report ("report") provides a series of examples of how these safeguards are being undermined by aggressive executive branch actions that are usurping the constitutional powers of the federal courts and Congress.²⁵

The report focuses, for example, on the erosion of the right to privacy. It lists a series of initiatives by the executive branch over just the past six months to collect an unprecedented amount of information on Americans and non-citizens who are under no

24. Lawyers' Committee for Human Rights, *Imbalance of Powers: How Changes to U.S. Law & Policy Since 9/11 Erode Human Rights and Civil Liberties* (Sept. 2002 - March 2003) [hereinafter Lawyers' Committee Report] (detailing U.S. legislation in the aftermath of Sept. 11, 2001, and its effect on human rights), available at http://www.lchr.org/us_law/loss/imbalance/powers.pdf (last visited Sept. 2, 2003).

25. See generally *id.* (delineating a pattern of executive actions which offset the traditional balance of power in the United States).

suspicion of having committed a crime.²⁶ These include: the military's proposed Total Information Awareness Program, which would create comprehensive data profiles of everyone in the country; the use of expanded search and seizure powers under the USA PATRIOT Act to seize library, bookstore, and other records; increased powers to intercept telephone and internet communications; and the lifting of restrictions on the use of special foreign intelligence powers in ordinary criminal prosecutions.²⁷

International effects on civil liberties are equally concerning. The report refers to increasingly harsh treatment of immigrants, refugees, and minorities, such as monitoring, registration, detention, and secret deportation of immigrants against whom no charges have been made; restrictions on visitors and immigrants alike from many parts of the world; and a reversal of the United States' traditional welcome to refugees fleeing persecution abroad.²⁸

The report concludes by pointing out the international repercussions of the changes in U.S. policy and practice. Repressive new laws and detention practices have been introduced in a significant number of countries, all broadly justified by the new international war on terrorism. As the report makes plain, "[i]n lowering its own human rights standards, the United States has encouraged other governments, though often inadvertently, to lower the standards of human rights around the world."²⁹

I believe we must begin a grand conversation in the United States and around the world about what human security means and how it

26. *See id.* at 15-26 (outlining the changes in surveillance and data access like those erected by the Patriot Acts 1 and 2 as examples of privacy intrusions by the executive branch).

27. *See id.* at 16, 20, 27 (stating that libraries, bookstores, and other venues must provide relevant records on demand if the FBI declares that they are part of an ongoing investigation related to terrorism or intelligence activities, and noting that the Foreign Intelligence Surveillance Court of Review held that the government may use its special foreign intelligence powers in domestic criminal investigations provided those investigations have "some purpose of gathering foreign intelligence information").

28. *See id.* at 27 (describing the Bush administration's immigration policy as "monitoring, registration and deportation of immigrants although none of those deported have been shown to have any connections to terrorism").

29. Lawyers' Committee Report, *supra* note 24, at iii.

can best be achieved in these anxious and uncertain times. Later this month, we will have what promises to be a valuable contribution to this process. The Commission on Human Security, a distinguished group co-chaired by Sadako Ogata, former U.N. High Commissioner for Refugees, and Professor Amartya Sen, will launch its report based on work carried out around the world over the past two years.³⁰ The Commission's objectives are to promote public understanding, engagement, and support of human security and its underlying imperatives; to develop the concept of human security as an operational tool for policy formulation and implementation; and to propose a concrete program of action to address critical and pervasive threats to human security.³¹

Those who are committed to the importance of international law must be leading voices in this discussion. It will require renewed debate about national interests and the extent to which sovereignty and citizenship should be redefined in order to achieve shared social and economic objectives. I would encourage the American Society for International Law to play a leading role in fostering that discussion here and around the world. Your challenge is to ensure that the people of the United States have the opportunity to reflect on the importance of human rights today. As they consider these issues, they should also be informed about how the human rights movement is developing around the world.

30. See Commission on Human Security, *Final Report of the Commission on Human Security* (providing the Commission's response to worries and concerns on Human security and freedom throughout the world), available at, <http://www.humansecurity-chs.org/finalreport/index.html> (last visited Sept. 21, 2003).

31. See Commission on Human Security, *Establishment of the Commission* (describing the goals of the Commission as: 1) to promote public understanding, engagement and support of human security and its underlying imperatives; 2) to develop the concept of human security as an operational tool for policy formulation and implementation; and 3) to propose a concrete program of action to address critical and pervasive threats to human security), available at, <http://www.humansecurity-chs.org/about/Establishment.html> (last visited Sept. 21, 2003).

III. HUMAN RIGHTS IN THE WORLD TODAY: MAKING THE UNITED STATES A LEADER AGAIN

I think it is appropriate to explain that development by stressing a disturbing point which may seem obvious but is often forgotten here in the United States. That is that 9/11 did not, in fact, change much in the lives of most people on the planet. Human insecurity, alas, was a daily reality before 9/11 for the hundreds of millions who live in absolute poverty or in zones of conflict, and remains so. For these people, insecurity is not equated with where a terrorist might strike, but instead, where tomorrow's only meal will come from, or how a decent job will be found that will provide enough income to provide shelter for a family or purchase life saving medicines for a dying child.

Another disturbing reality is that some of the people facing these insecurities are right here in the United States, not just in far off lands. Take, as an example, the issue of child poverty, which many of you will know better than I do. The United States has some of the best programs and laws in the world to protect its children but, as United Nations Children's Fund ("UNICEF") has pointed out, the United States also has one of the highest rates of the industrialized countries for poverty and hunger among children and also for child mortality.³² Or consider the right to the highest attainable standard of health. With over forty million U.S. citizens without access to insurance for basic health care services, it is difficult to make the case that the United States is taking this internationally recognized right seriously.³³

The full range of rights – civil and political, economic, social, and cultural - were drafted into the Universal Declaration of Human Rights from proposals that came – inter alia – from the United States

32. See generally UNICEF, The Official Summary of the State of the World's Children (2003) (providing individual countries' statistics pertaining to key economic indicators), available at http://www.unicef.org/publications/pub_sowc03_summary_en.pdf (last visited Sept. 2, 2003).

33. See Loretta M. Kopelman & Michael G. Palumbo, *The U.S. Health Delivery System: Inefficient and Unfair to Children*, 23 AM. J.L. & MED. 319, 320 (1997) (noting that fifteen percent of the U.S. population remains without insurance).

with a key role played by Eleanor Roosevelt in the process.³⁴ But succeeding administrations have consistently rejected the idea of education, health, adequate housing, or food as rights to which citizens are entitled.

Arguments most often heard here contend that these are aspirations, not justiciable rights. Others fear U.S. sovereignty and states' rights would be put at risk by ratifying such agreements. These philosophical and legal issues have been debated on all sides for many years now.³⁵ But far less consideration has been given to whether the full range of rights set out in the Universal Declaration are actually guaranteed in practice for all people in this country.

As you know, the three core international human rights instruments incorporating economic, social, and cultural rights have not yet been ratified by the United States.

An important step the United States could take in signaling support for the full body of international human rights law would be to ratify the International Covenant on Economic Social and Cultural Rights,³⁶ the Convention on the Rights of the Child,³⁷ and the

34. See Universal Declaration of Human Rights, pmbl., G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948). (listing rights inherent to all humans), available at <http://www.un.org/Overview/rights.html> (last visited Sept. 1, 2003).

35. See generally, e.g., Father Robert Araujo, *Sovereignty, Human Rights, and Self Determination: The Meaning of International Law*, 24 *FORDHAM INT'L L.J.* 1477 (2001) (explaining the evolution of competing state sovereignty arguments in the context of human rights ratification); Kenneth Roth, *The Charade of US Ratification of International Human Rights Treaties*, 1 *CHI. J. INT'L L.* 347 (2000) (arguing that the U.S. approach to international treaties has been to adopt only with reservations reflects the domestic attitudes of fear and arrogance); Louis Henkin, *Editorial Comment p U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 *AM J. INT'L L.* 341 (1995) (asserting that fear of the infringement upon rights was one of the reasons behind many of the reservations by the United States government in international treaties).

36. See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1996, 993 U.N.T.S. 4, 4-5 (recognizing the responsibility of member states to promote certain rights).

37. See Convention of the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 3-4 (providing that childhood is entitled to special care and assistance).

Convention for the Elimination of Discrimination Against Women,³⁸ all three of which China, for example, has now ratified.

On July 30, last year, the Senate Foreign Relations Committee voted twelve to seven to approve the Convention on the Elimination of Discrimination Against Women (“CEDAW”), a comprehensive treaty guaranteeing human rights for women that has been ratified by 170 countries since it was adopted by the United Nations in 1979.³⁹ The treaty must now receive the Senate’s advice and consent to ratification by a two-thirds vote and the President’s signature for final approval.

CEDAW establishes a universal definition of discrimination against women and obligates state parties to address women’s rights in the economic, political, social, cultural, and legal arenas.⁴⁰ By failing to ratify CEDAW, the United States has a problem of credibility as a global leader for women’s human rights. Ratification would send a powerful signal that the United States takes efforts to advance the status of women around the world seriously and is prepared to have its own performance reviewed periodically.

IV. HUMAN RIGHTS AND GLOBAL RESPONSIBILITIES

Ratification and positive action at home will not be enough to rebuild the U.S. leadership role in human rights. The United States and the other rich nations of the world must also be able to demonstrate that they are willing to do more, to take on their appropriate responsibilities for those who are struggling to enjoy their fundamental rights.

During the five years I served as United Nations High Commissioner for Human Rights, my work took me to over eighty

38. See Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 7 (describing the need for equality and recognition for inalienable rights of women).

39. See Press Release, United Nations Association of the United States of America, Senate Foreign Relations Committee Approves CEDAW Treaty (July 30, 2002) (providing details of voting result and possible implications), *available at* <http://www.unausa.org/policy/NewsActionAlerts/info/dc073002.asp> (last visited Sept. 2, 2003).

40. See Convention on the Elimination of Discrimination Against Women, *supra* note 7 (listing member nations’ responsibilities and the Convention’s goals).

countries. I was able to speak with people of all walks of life and hear their views on what they saw as the best way to achieve a more peaceful and just world. What I heard them say again and again, from Calcutta to Cairo, from Caracas to Cape Town, was that global challenges – poverty, trafficking in persons, HIV/AIDS, and environmental changes, to name only four – recognize no borders and can only be addressed by nations working together with shared resources and common goals.

People are drawing the conclusion that a world increasingly connected by a web of technology, information, transportation, and commerce must also be connected by shared values and norms of behavior. This was confirmed by the largest ever public opinion poll carried out in conjunction with the U.N. Millennium Assembly.⁴¹ An overwhelming majority of people from all parts of the world stressed the need for greater protection of human rights as being their top priority for the twenty-first century.⁴²

I would like to turn, at this point, from the world of international lawyers to the daily experience of a doctor working in a context where human rights are directly relevant to his work. Professor Paul Farmer of the Harvard medical school has helped revolutionize our view of health care for desperately poor people sick with complex diseases like AIDS or tuberculosis.⁴³ I shared a forum with him recently in Boston and heard him describe his work as a doctor in Haiti, where he is achieving an important breakthrough of access by the poor to healthcare and drugs. He was as passionate as I am about the importance of treating health as a human right and taking economic, social, and cultural rights seriously. In a recent interview in the New York Times he put it this way:

41. See *We The Peoples: The Role Of The United Nations In The Twenty-First Century*, Report Of The Secretary-General, U.N.GAOR, 54th Sess., U.N. Doc. A/54 ¶ 59 (2000) (highlighting the need to protect human rights as being a significant concern to those polled), available at <http://www.un.org/millennium/sg/report/full.htm> (last visited Sept. 21, 2003).

42. *Id.*

43. See *Partners in Health, Biography, Paul Farmer* (describing Dr. Farmer's achievements in the field of medicine), at http://www.pih.org/calendar/011013aids/bio_farmer.html (last visited Sept. 2, 2003).

The human rights community has focused very narrowly on political and civil rights for many decades, and with reason, but now we have to ask how can we broaden the view. Civil and political rights are critical, but not often the real problem for the destitute sick. My patients in Haiti can now vote but they can't get medical care or clean water.⁴⁴

Meeting grass roots organizations in different parts of the world, I was impressed by the degree to which human rights activists were increasingly able to link their activities with groups addressing economic and social development, the environment and other issues of global concern. I saw this clearly last September in Johannesburg at the World Summit on Sustainable Development.⁴⁵ The broad human rights agenda, covering civil and political as well as economic, social, and cultural rights, was seen by environmental activists, development experts, and human rights advocates as being of deep relevance across the broad range of issues on the Summit agenda.⁴⁶ From rights relating to the environment such as access to clean water; to public health and HIV/AIDS; from corporate social responsibility to economic development; the environmental, development and human rights communities have never been so joined in common mission and agenda as they are today.

Development Nongovernmental organizations (“NGOs”) such as Oxfam, of which I am proud to serve as President, are also adopting a rights-based approach in their work.⁴⁷ They are aware of the human rights covenants and conventions that have been ratified in countries

44. Patricia Cohen, *Health Care for the Poorest as a Central Human Right*, N.Y. TIMES, Mar. 29, 2003, at D7.

45. See United Nations Division for Sustainable Development, Johannesburg Summit 2002, *The Johannesburg Summit Test: What Will Change?* (stating that the Summit laid the groundwork for sustainable development action), available at http://www.johannesburgsummit.org/html/whats_new/feature_story41.html (last visited Oct. 8, 2003).

46. See generally United Nations Division for Sustainable Development, Johannesburg Summit 2002, *Basic Information* (providing basic information on the purpose and agenda of the Summit), available at http://www.johannesburgsummit.org/html/basic_info/basicinfo.html (last visited Sept. 2, 2003).

47. See Oxfam, *5 Aims – A Rights-based Approach* (outlining Oxfam's goals in adopting a rights-based approach to human rights), at http://www.oxfam.org/eng/campaigns_aims.htm (last visited Aug. 29, 2003).

they are working, they know what reports have been submitted on steps taken by the government and the comments of the relevant treaty committees, and they know if there have been visits and reports by any of the special rapporteurs of the U.N. Commission on Human Rights.⁴⁸ They are linking this information to their own work and in particular how they seek to empower civil society groups in using this framework to push for results.⁴⁹

But we all know that the challenges are enormous. The Monterey Conference on Financing for Development addressed the investments needed to ensure access to education, health care, and social welfare for children and the elderly and to provide basic infrastructure, improved governance, and protection of the environment.⁵⁰ We are still far short of meeting the proposals made in the Zedillo Report which estimated that reaching the development goals would require almost doubling the current official developmental assistance (“ODA”) total of more than fifty billion dollars per year.⁵¹ Global military expenditures in 2002 were estimated to be at least \$700 billion.⁵² It is a tragic failure of political will that the world has not been able to raise more than a small fraction for development spending of the amount it spends for the weapons of war.

The importance of responsibilities is recognized in the Universal Declaration of Human Rights, which, in Article 29, refers to duties to

48. See Oxfam International Programs & Campaigns (providing an overview of Oxfam’s international agenda, partnerships and progress in the countries in which it is active), at <http://www.oxfam.org/eng/campaigns.htm> (last visited Aug. 29, 2003).

49. See *id.* (noting that Oxfam “link their work to practical changes at grassroots level”).

50. See generally United Nations, Follow-up Process to the International Conference on Financing and Development (outlining the substance of the Monterrey Conference and the progress that has transpired since then), available at <http://www.un.org/esa/ffd/> (last visited Aug. 30, 2003).

51. See Report of The High Level Panel on Financing Development, June 22, 2001 (indicating that one of the goals was to double the current ODA), available at <http://www.un.org/reports/financing/recommendations.htm> (last visited Aug. 30, 2003).

52. See Lawrence Korb et al., *Arms Spending Instead of Basic Aid*, INT’L HERALD TRIBUNE, Aug. 22, 2002, at 6 (estimating the total military expenditures for 2002), available at 2002 WL 2888229.

community.⁵³ Too often, however, discussions associated with globalization pay little attention to changing notions of community and ignore its national and global dimensions. In reality they are complementary, and action must be taken at both levels if policies are to succeed. International interventions without national commitment have invariably failed, while it is also clear that no country (including industrialized ones) can address effectively all the issues that are of concern to it without international collaboration and assistance.

This challenge is all the more complex in an age when some attributes of state power are diminishing because of the forces of globalization. While few would question that the primary responsibility for protecting human rights remains with national governments, there is increasing recognition that it is essential to ensure human rights obligations also fall where power is exercised, whether it is in the local village, the boardrooms of transnational corporations, or in the meeting rooms of the World Trade Organization (“WTO”), the World Bank, or the International Monetary Fund (“IMF”). In a world where markets, ideas, and peoples impact one another as never before, the time has come to reconsider how a shared sense of responsibility for the realization of human rights can be developed. This, for me, is the essence of a more values-led, ethical globalization.

One of the partners in the new work I am developing to address these issues is the Geneva based International Council on Human Rights Policy (“Council”). The Council has recently completed a report titled “Duties sans Frontieres – human rights and global social justice” which I believe has made an important contribution to efforts aimed at defining more precisely global responsibilities for human rights.⁵⁴

53. See Universal Declaration of Human Rights, *supra* note 30 (stating “everyone has duties to the community in which alone the free and full development of his personality is possible”).

54. See INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, DUTIES SANS FRONTIERES – HUMAN RIGHTS AND GLOBAL SOCIAL JUSTICE (2003) (reporting how bringing together human rights law, ethics, and public goods can help poorer societies), available at <http://www.ichrp.org/ac/excerpts/137.pdf> (last visited Aug. 30, 2003).

The report poses the question: who is responsible for making sure that economic and social rights are fulfilled?⁵⁵ Of course, the starting point of international human rights law is that national governments are primarily responsible for ensuring that human rights, including economic and social rights, are met. But what should be done when national governments are manifestly unable, unwilling or incompetent to ensure access to education? To basic health care? To adequate food? As the report asks: "If children in a poor country do not attend school because there are no schools in the villages where they live, and no resources to build them, who determines that resources are not available? . . . Who is in a position to decide that resources are misused or wasted?"⁵⁶

The Council's report is clear in its assertion that states have a duty to act first in their national interest to ensure the rights of their citizens.⁵⁷ But we must recognize that duties go beyond this point. Richer societies also have an obligation under international human rights law to assist poorer states, through international co-operation, and within their means, to achieve protection of fundamental rights. The reality is that levels of international aid continue to fall well below the amounts considered necessary by development experts. Developed country commitments of giving 0.7 percent of their gross domestic product in foreign aid have not been met for over two decades by the majority of the richest countries.⁵⁸ The question we need to pose is: can we expect developing countries to take the principles of good governance seriously if rich nations will not support adequately their efforts to improve judicial and police systems, provide basic education, and fight health crises such as HIV/AIDS?

We have seen recent examples of where the line between national interests and shared responsibilities has been contested recently in

55. *Id.* at 9.

56. *Id.* at 22.

57. *Id.* at 21-22.

58. See Earth Summit 2002, *It's Time to Stop the War on Earth* (stating that only Denmark, The Netherlands, Norway, and Sweden have honored their commitments to donate 0.7 percent of their GDP going to foreign aid.), available at http://www.archive.Greenpeace.org/earthsummit/background_agenda21.html (last visited Aug. 30, 2003).

the WTO, first, over the issue of access to essential drugs. Here again, the United States sent a “go-it-alone” signal when it refused to sign off on an agreement that would help poor nations buy generic medicines needed to protect against the major infectious diseases.⁵⁹ As many of you know, developing nations had hoped that the Doha round of trade talks would help them fight AIDS, tuberculosis, malaria, and other diseases.⁶⁰ But the United States, with the strong approval of the American pharmaceutical industry, used its vote to prevent the deal.⁶¹

As WTO director general Supachai Panitchpakdi said recently, “[t]hat was a great pity. It would have sent a powerful message that we talk not only about trade deals but humanitarian deals.”⁶²

The U.S. administration has said that it wants an agreement that helps provide medicines. But the current agreement is seen as too open-ended, and could lead to developing nations buying generic versions of drugs under American patents to treat a range of other less threatening diseases.

Such examples of power politics are not confined to the United States. As an editorial in last week’s Washington Post pointed out:

[R]eduction in agricultural subsidies and price supports, perhaps the most important goal of the current trade negotiating round, has long been stopped in its tracks by Europe’s inability to reform its own agricultural

59. See Associated Press, *WTO Diplomats Silent on Generic Drugs* (Aug. 26, 2003) (stating that all nations except the United States have agreed to sign onto a deal that would allow poor countries to order pharmaceuticals from foreign manufacturers), *available at* <http://www.twincities.com/mld/twincities/2002/12/15/business/6621492.htm> (last visited Aug. 30 2003).

60. See Celia W. Dugger, *A Catch-22 on Drugs for the World’s Poor*, N.Y. TIMES, Nov. 16, 2001, at W1 (describing optimism that talks would help poorer countries treat disease), *available at* <http://www.commondreams.org/headlines01/1116-03.htm> (last visited Aug. 30, 2003).

61. See *supra* note 59 and accompanying text (discussing U.S. refusal to sign onto a deal allowing poor countries to order pharmaceuticals from foreign manufacturers).

62. See Elizabeth Becker, *U.S. Unilateralism Worries Trade Officials*, N.Y. TIMES, Mar. 17, 2003, at A8 (quoting Supachai Panitchpakdi), *available at* <http://www.globalpolicy.org/soecon/bwi-wto/wto/2003/0317unil.htm> (last visited Aug. 30, 2003).

subsidy regime . . . Without a doubt, the primary victims of Europe's intransigence are the world's poorest countries, whose economies would benefit far more from freer markets for their commodities than they would from new injections of aid money. Indeed, until trade barriers are lifted, any conversation about 'helping the developing world' will always have a farcical ring.⁶³

More must be done to remind governments of their human rights obligations within negotiations at the WTO. But calls for greater coherence between the principles pertaining to different legal regimes, such as trade and human rights, are not only about reconciling distinct bodies of international law. They also require reconciliation of institutional divisions at a national level – which sometimes amount to a virtual 'lobotomy' – for example, between government officials who work in trade ministries, and those working in the ministries of foreign affairs or justice.

The same thinking applies to other key inter-governmental institutions like the World Bank and the IMF. These institutions too declare their commitment to poverty eradication and human development.⁶⁴ Yet their record – on debt relief, structural adjustment, and other matters - has also been the target of bitter criticism. Rightly or wrongly, many consider that these organizations epitomize an international system organized to benefit developed states at the expense of developing ones. It is clearly necessary to strengthen confidence in international institutions, not least by enabling developing countries, and their citizens, to play a fuller part in decisions that affect them.

The new project I am developing in cooperation with the Aspen Institute, the International Council on Human Rights Policy, and Columbia University – which we are calling the Ethical Globalization Initiative – seeks to work with those who are

63. *United By Free Trade*, WASHINGTON POST, Mar. 24, 2003, at A12, available at 2003 WL 15468355.

64. See International Monetary Fund, *How Does the IMF Lend? A Fact Sheet*, (describing ways in which the IMF lends to poorer nations), available at <http://imf.org/external/np/exr/facts/howlend.htm> (last visited Aug. 30, 2003).

committed to bringing the values of international human rights to the tables where decisions about the global economy are being made.⁶⁵

The human rights framework adds to trade and development policy the notion that education, food, adequate housing, and health care are rights, not merely needs. This implies that the poor should not simply benefit from the charity of more resources, but must have legal and political space to claim their rights and take part in decision-making. It implies that government policies should ensure access to justice, protect against discrimination, and fulfill economic and social rights. In designing social safety nets, and poverty reduction strategies, their policies must respect the right to an adequate standard of living, including food, housing, health protection, education, and social security. Budgetary processes should be transparent and consistent with the right to information.

The human rights framework, supported by international law, makes it possible to bring principles of accountability, non-discrimination, and participation, which are also central values of development, into sharper focus. By focusing on protection of the most vulnerable, human rights can be used to assess national progress by disaggregating national averages in order to establish, for example, how many girls, minorities, the rural poor, or indigenous people are, in fact, enrolled in school.

Where policy choices must be made between different goals, the human rights framework can also help to rule out retrogressive choices that will harm those who are poor. When poorer countries are tempted or pressured (for example in the course of structural adjustment reforms) to cut social spending and social budgets or reduce the provision of health care, education or food security for the poor, the human rights framework affirms that economic, social, and cultural rights must be respected. During periods of economic reform, it strengthens the position of vulnerable groups in relation to their governments, and strengthens the hand of vulnerable governments in relation to their donors or the Bretton Woods Institutions.

65. See Ethical Globalization Initiative: A Human Rights-based Approach to Globalization (providing information on the goals, initiatives and accomplishments of the Ethical Globalization Initiative), at <http://www.eginitiative.org> (last visited Sept. 10, 2003).

CONCLUSION

I conclude by returning to the crucial role of this country. The United States played a key role in developing the international human rights system and has urged countries around the world to take on these legal obligations at home. But what I found during my five years at the United Nations was a reluctance by the United States to embrace the full corpus of international human rights law and to look to these international standards in interpreting its own Constitution. This reluctance had a knock on effect which was damaging. It made it more difficult to hold other governments accountable to their legal obligations and thus move human rights protection forward internationally.

Where the United States engages with the international human rights system, it sets a powerful example and sends a moral message. The Palermo Protocol, which creates human rights protections for the victims of trafficking, is one example.⁶⁶ Another can be seen in the U.S. report under the Convention against Torture which took place while I was High Commissioner. That high quality report candidly reviewed U.S. policies against the standard set in the Convention, and also identified gaps in those safeguards.⁶⁷ The delegation presenting its report to the oversight Committee was both senior and expert – led by Harold Koh, then Assistant Secretary of State for Democracy, Human Rights and Labor.⁶⁸ But subsequent events in the context of the war against terrorism have placed a question mark

66. See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001), reprinted in 40 I.L.M. 335 (2001) (containing what is referred to as one of the two “Palermo Protocols”).

67. See generally U.S. DEPARTMENT OF STATE INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE COMMITTEE AGAINST TORTURE, Oct. 15, 1999 (providing information on the status of U.S. measures to give effect to the Convention Against Torture), available at http://www.state.gov/www/global/human_rights/torture_index.html (last visited Aug. 30, 2003).

68. See generally Press Release, On the Record Briefing on the Initial Report, Oct. 15, 1999, available at http://www.state.gov/www/policy_remarks/1999/991015_koh_rpt_torture.html (last visited Aug. 30, 2003).

against that message, which some less democratic countries have been quick to exploit.

In the end, we face a fundamental choice. We can choose to rescue, rebuild, and reform the international system that has been built up over the past half century and place more emphasis on the values, expressed through international law, which should underpin it. Or instead, we can choose to fall in on a conception of national security and national interest that sees the world as a place requiring more walls of separation between nations and peoples rather than more bridges of trust and shared responsibilities.

But one point cannot be denied. There are not two worlds – rich and poor. There is only one. It is for us to decide if we are committed to working together to shape it into one which is based on human rights and social justice as the best hope of achieving peace and security for all people.

Thank you.