

JOAN B. KROC

*Distinguished Lecture Series*

**The Honorable  
Louise Arbour**

*Integrating Security, Development  
and Human Rights*



JOAN B. KROC  
INSTITUTE FOR  
PEACE & JUSTICE  
UNIVERSITY OF SAN DIEGO



*Fostering Peace, Cultivating Justice,*

Joan B. Kroc Institute for Peace & Justice  
*Distinguished Lecture Series*

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Joan B. Kroc School of Peace Studies  
University of San Diego  
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**The Honorable Louise Arbour**

*Integrating Security, Development and Human Rights*

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*Creating a Safer World*



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## JOAN B. KROC INSTITUTE FOR PEACE & JUSTICE



The mission of the Joan B. Kroc Institute for Peace & Justice (IPJ) is to foster peace, cultivate justice and create a safer world. Through education, research and peace-making activities, the IPJ offers programs that advance scholarship and practice in conflict resolution and human rights.

The IPJ, a unit of the University of San Diego's Joan B. Kroc School of Peace Studies, draws on Catholic social teaching that sees peace as inseparable from justice and acts to prevent and resolve conflicts that

threaten local, national and international peace. The IPJ was established in 2000 through a generous gift from the late Joan B. Kroc to the University of San Diego to create an institute for the study and practice of peace and justice. Programming began in early 2001 and the building was dedicated in December 2001 with a conference, "Peacemaking with Justice: Policy for the 21st Century."

The Institute strives, in Joan B. Kroc's words, to "not only talk about peace, but to make peace." In its peacebuilding initiatives, the IPJ works with local partners to help strengthen their efforts to consolidate peace with justice in the communities in which they live. In Nepal, for example, the IPJ recently began its eighth year of work with Nepali groups to support inclusiveness and dialogue in the transition from armed conflict and monarchy to peace and multiparty democracy. In West Africa, the IPJ works with local human rights groups to strengthen their ability to pressure government for much needed reform and accountability.

The Women PeaceMakers Program documents the stories and best practices of international women leaders who are involved in human rights and peacemaking efforts in their home countries. WorldLink, a year-round educational program for high school students from San Diego and Baja California, connects youth to global affairs.

Community outreach includes speakers, films, art and opportunities for discussion between community members, academics and practitioners on issues of peace and social justice, as well as dialogue with national and international leaders in government, nongovernmental organizations and the military.

In addition to the Joan B. Kroc Institute for Peace & Justice, the Joan B. Kroc School of Peace Studies includes the Trans-Border Institute, which promotes border-related scholarship and an active role for the university in the cross-border community, and a master's program in Peace and Justice Studies to train future leaders in the field.

## JOAN B. KROC DISTINGUISHED LECTURE SERIES

Endowed in 2003 by a generous gift to the Joan B. Kroc Institute for Peace & Justice from the late Joan Kroc, the Distinguished Lecture Series is a forum for high-level national and international leaders and policymakers to share their knowledge and perspectives on issues related to peace and justice. The goal of the series is to deepen understanding of how to prevent and resolve conflict and promote peace with justice.

The Distinguished Lecture Series offers the community at large an opportunity to engage with leaders who are working to forge new dialogues with parties in conflict and who seek to answer the question of how to create an enduring peace for tomorrow. The series, which is held at the Joan B. Kroc Institute for Peace & Justice at the University of San Diego's Joan B. Kroc School of Peace Studies, examines new developments in the search for effective tools to prevent and resolve conflict while protecting human rights and ensuring social justice.





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United States Marine Corps (retired)  
*From the Battlefield to the Negotiating Table:  
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Secretary General – Palestinian Initiative for the  
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*Women, War and Peace: Mobilizing for Security  
and Justice in the 21st Century*
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President, University of Winnipeg  
*The Responsibility to Protect: Prescription for a Global  
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Former President of Ireland and U.N. High  
Commissioner for Human Rights  
*Human Rights and Ethical Globalization*

- October 27, 2005 His Excellency Ketumile Masire  
Former President of the Republic of Botswana  
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- January 27, 2006 Ambassador Christopher R. Hill  
U.S. Department of State  
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2003 Nobel Peace Laureate  
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- October 18, 2006 Miria Matembe, Alma Viviana Pérez, Irene Santiago  
*Women, War and Peace: The Politics of Peacebuilding*
- April 12, 2007 The Honorable Gareth Evans  
President – International Crisis Group  
*Preventing Mass Atrocities: Making “Never Again” a Reality*
- September 20, 2007 Kenneth Roth  
Executive Director – Human Rights Watch  
*The Dynamics of Human Rights and the Environment*
- March 4, 2008 Jan Egeland  
Former Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator for the U.N.  
*War, Peace and Climate Change: A Billion Lives in the Balance*
- April 17, 2008 Jane Goodall  
Founder – Jane Goodall Institute and U.N. Messenger of Peace  
*Reason for Hope*
- September 24, 2008 The Honorable Louise Arbour  
Former U.N. High Commissioner for Human Rights  
*Integrating Security, Development and Human Rights*



## BIOGRAPHY OF THE HONORABLE LOUISE ARBOUR

The Honorable Louise Arbour was the United Nations High Commissioner for Human Rights from 2004 until June 2008. As high commissioner, Arbour earned an international reputation for courage and tenacity and gained the respect of governments, human rights groups and human rights victims around the world.

Arbour began a distinguished academic career in 1974, culminating in the position of associate dean at the Osgoode Hall Law School of York University in Toronto, Canada, in 1987. The same year, she was appointed to the Supreme Court of Ontario (High Court of Justice) and later served on the Court of Appeal for Ontario. In 1996, she was appointed by the U.N. Security Council as chief prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda. After three years as prosecutor, she was appointed to the Supreme Court of Canada in 1999.

Arbour has received many awards and medals, including the Medal of Honour from the International Association of Prosecutors, the Franklin Delano Roosevelt Four Freedoms Medal (Freedom from Fear) from the Roosevelt Study Center in the Netherlands, the Lord Reading Law Society's Human Rights Award, the EID-UL-ADHA Award from the Association of Progressive Muslims of Ontario, the National Achievement Award from Jewish Women International of Canada, and the Order of Canada. She has served on the board of the International Crisis Group since 2000. Throughout her career Arbour has sought to liberate both the oppressed and their oppressors by creating a safe climate for diversity and dissent.





## INTERVIEW

*The following is an edited transcript of an interview with Louise Arbour, conducted on Sept. 24, 2008, by Dustin Sharp, J.D., senior program officer at the Joan B. Kroc Institute for Peace & Justice.*

**DS: I'd like to interview about a broad range of topics, touching both upon your personal life and background as well as many things related to international justice and human rights. To start with, is there anything in your early experience growing up in Canada that you feel, looking back, set you on the path to becoming an advocate for justice and human rights or to becoming a member of the legal profession? Were there any special figures or experiences that influenced you?**

LA: Essentially no, which I hope is encouraging for the numerous young people I meet who don't seem to know what to do with their lives; I hope I'm a role model for them. Certainly in the early part of my education I had no particular interest in these more specific things I ended up doing later, including becoming a lawyer. None of that was part of my landscape of interests growing up. Like a lot of people of my generation I found myself in law school pretty well by default as I didn't seem to have any talent for anything that was really hard. Law school seemed relatively accessible, and the general sense in those days was with a law degree you could then go into journalism or politics, so I was never really driven even to the law as a profession.

**DS: It was the flexibility.**

LA: Yes, it was another continuation of, in my view, a general education and subject matters that generally interested me, like literature, political science. But it's pretty clear that I found my match for intellectual interests in law school. I liked law school right from the beginning, while a lot of people didn't. My generation speaks very badly of their law school years, found it very boring. I liked everything about it. I liked the very mechanical stuff, like inheritance rules and so on. I find that intriguing. But obviously the fit for me was the combination



of (if you want to see it there) high moral content and an organizational structure to advance values. I liked everything about the law. I liked all public law issues. I liked constitutional law, but criminal law in particular.

There was sort of a defining moment, as is often the case. After my three years of law school in Quebec, in Canada we do articling to qualify for the bar. During that year, the federal government enacted the War Measures Act, essentially putting the country in a state of emergency, suspending all civil liberties in the face of what was called then – wrongly in retrospect – an apprehended insurrection at the hands of separatist terrorists in Quebec. This was an immense political awakening for me to see essentially the fragility of democratic institutions. This was a big liberal democracy, Canada, with a long history of it, and all of a sudden overnight – I lived in Montreal – the army had taken over all the police stations. The streets of the city of Montreal all were under military occupation, so it seemed. It was very troublesome.

From then on I developed a clear commitment to using the law to develop a web of protection for people, but also as the main tool for the prevention of the abuse of power. I became active in the Canadian Civil Liberties Association. So that political moment for me in retrospect was pretty defining.

**DS: As a student and as a young law professor, would you say your focus was more on domestic civil liberties, protections, than it was international human rights per se?**

LA: Yes. I went to law school from 1967 to 1970, and this was probably the peak of the very aggressive discourse of nationalistic aspirations by French Canadians. In fact, it's after that that I went for the first time to the rest of Canada, to English Canada, which culturally was very foreign. When that happened a few years later I was just amazed at the political issues that people were discussing in English Canada, like the Vietnam War, poverty, gender equality. During my years in law school in Quebec, the oxygen was entirely taken by the question of Quebec nationalism. It was not the sole issue – we had debates about abortion, and of course we were conscious



and we had positions and views on the Vietnam War – but in proportion, the question of the proper place of French-speaking Canadians and Quebecois exercising their right to self-determination vastly dominated all other issues.

We were consumed by that, which then became very interesting for me when I worked as the prosecutor, particularly in the former Yugoslavia where nationalism had been a pathology. Where I came from, nationalism was for the most part a very romantic, positive aspiration – there was nothing wrong with it. It was a very legitimate, very romantic set of aspirations that were advanced in Quebec mostly by poets and filmmakers and writers and intellectuals – and by a lot of ordinary people who wanted space to live their lives within their own culture. So it was very shocking to me to see the underbelly of nationalism and to see it having essentially turned into not the ideology of inclusion, but the ideology of exclusion – to the point of genocide.

**DS: I think within the larger human rights community it's not unusual to find people who were drawn to it by their experience as a racial or religious or cultural minority in the countries in which they've grown up. To what extent did your experience growing up as a French Canadian help draw you into human rights at a later point, or at least spark your interest in civil liberties and the boundaries of state power?**

LA: Depending on your perspective, you're often a minority and a majority. French-speaking Quebecois are a minority inside Canada, but a very large majority inside Quebec. So, if you're intellectually honest, you have to be very conscious of that, of how assertive you need to be as a member of the minority vis a vis carving a space – cultural, economic, political space for yourself – amongst the majority, but also how you can very easily in doing so become the oppressor of minorities – for instance, in Quebec, of aboriginal peoples, or if you're not looking just in terms of cultural minorities, of poor people, people with disabilities, other sub-groups of your own community who are in a minority position. So, maybe it does provide, if you're willing to address these issues, an insight into the advancement of rights.



**DS: Over the course of your career you've played an extraordinary number of roles and also a diversity of roles, going from law professor to judge, human rights investigator, chief prosecutor for the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), high commissioner for human rights. It's many people's experience that if you spend a long enough time in a certain career, there's a certain professional sensibility and worldview that's shaped. At some level, do you still see yourself as a professor or judge? Do you identify with any of those roles? Do you see these in some ways as roles that you've played on the stage or costumes that you've had to wear, and your identity lies in some other place behind that?**

LA: Well, as a matter of fact, in at least one of these roles I had to wear a costume – on the bench – so the metaphor is not at all inappropriate. I have to say that when this is all over (and it's not all over; I hope I still find myself gainfully employed if I could just make up my mind about what to do with my future), I think of myself as a jurist. I suppose I could say a lawyer, but I am a person of the law. I won't think of myself perennially as a judge, though I've done that for a large part of my career. I was also an academic for a considerable part of it. Then I was an international civil servant in my two international roles, but they were very different – that of prosecutor and that of high commissioner.

But the one common thread through all of this is I come to all these positions very much as a person of the law, as a jurist. I believe in the law. It's the field in which I have expertise in which I'm very self-reliant; I trust my own judgment and analysis of the law. And the rest of it I think I was an accidental tourist on the more political scene, for instance internationally. And I've learned I think I'm probably better at it than I was when I first entered all that in understanding the complexities, say, of the United Nations. But the common thread is absolutely, clearly for me the necessity to use the rule of law as an organizing principle of international and domestic affairs.



I am probably less an advocate than anything else because the one thing I've never really done is be a courtroom lawyer. I know a lot about techniques of advocacy, certainly courtroom advocacy, viewing it from the bench, and I've participated in lots of these things, but one thing I haven't done myself is the kind of advocacy that now I'm freer to do than I've ever been really in my life.

**DS: I also wanted to talk about the relationship between career, gender and family issues. In the context of the current U.S. presidential election, questions have been raised in some quarters about the ability of Sarah Palin, the nominee for vice president on the Republican ticket, to serve as vice president of this country given that she has five children, including one child with special needs. Of course, many people have pointed out that the same question would never be asked of a male candidate, and I know you have three children, and grandchildren as well. In your career, have you had to face this double standard as well as other double standards along the way?**

LA: I have made choices, professional choices, that always took into consideration all my circumstances including the fact that I have three children and I was their mother in this world. Whether cultural constraints and so on still impose gender roles that are different for men and women, if you look at it globally I think overwhelming it is true. And yet I have many friends who are women lawyers who've had husbands whose careers have given them more leeway to be at home. I think there is a growing change in the otherwise stereotypical model of the North American family unit. But it's changing very slowly.

My daughter is now in her career where I was when she was born, a 31-year-old lawyer, expecting a second child, and frankly, sometimes I think, God we've made no progress. She faces exactly the issues I was facing about childcare and what kind of arrangements can be put in place. We've progressed a little bit; I think the maternity-leave support and so on is more advanced and better developed.

But essentially I would never lecture another woman about how to run her life and manage her family circumstances. I think it depends first of all on the partnership with her spouse, of the role she wants to play in the upbringing of her children. There were things I deliberately decided not to pursue, and



in part maybe that's why I never went into private practice when my children were quite small. Even though I always worked, my being available to them was very important to me when they were quite young. Basically the jobs I've done a little later in my career I could not have done when my children were little – one, because I didn't have the experience obviously, but also because my family circumstances would not have permitted it.

**DS: I want to shift gears and now talk about issues of international justice and international judicial policy, international tribunals and prosecutions. From 1996 to 1999 you served as chief prosecutor for the ICTR and ICTY, and as you've said publicly before, these tribunals are part of the legacy of Nuremberg and in turn they're going to leave their own legacy. Of course, no initiative is perfect – you might say little by little we're conducting experiments in international justice, hoping that each one is better than what came before it. What are the lessons of the ICTY and ICTR? What do they represent in terms of achievements? But also, what would we change if we could go back, knowing what we know now?**

LA: I think the biggest achievement of the two ad hoc tribunals, taken together, is that they were sufficiently successful to lead to the creation of the International Criminal Court (ICC). It was not obvious when they started whether this would not be a one-shot affair, what would be the lesson learned. There are lots of shortcomings. I think if we had to do it again, I would like to think we would have found a formula that would be less costly, more efficient – but as they say, it's like dogs dancing: Sometimes it's a miracle they're dancing at all, so you don't watch the steps too closely.

There is something absolutely miraculous about the fact that these tribunals have hit their stride and led to the creation of the International Criminal Court. When I say it's miraculous, it's because there were obviously strong political winds blowing constantly against the expansion of the idea of accountability. In a sense it was done very rapidly. There are lots of structural flaws. If you're interested in criminal law for instance, it's very clear to me in retrospect that we copied basically domestic models of criminal law enforcement and



transposed that to the international community, but the environment is completely different. And the ICC has not fixed that.

I think in the longer term we'll have to move to a criminal law model that is very indigenous to working in the international forum, which means all the obvious – we don't have our own police force – but it also means that in a lot of cases there is a state working against you. If you indict a head of state or a high-ranking military officer, it's possible – not in every case, but it's possible – that his government will have an interest in getting him acquitted and will work very systematically in that direction. The rules are premised on the fact that it's the prosecutor who has all the state's powers, so to restore the balance you have to put constraints on the prosecutor and give advantages to the accused, like the presumption of innocence and the right to be tried in a reasonable time and the right to counsel and all kinds of rights. You put constraints on the methods available to the prosecutor. In these environments very often the situation is completely reversed: The state is on the other side. So we still have conceptually some work to do. But the biggest success is that we got there.

As one example, even though they might not have been completely dismantled, when I arrived in 1996 as prosecutor, there was a credible possibility that the tribunals would adopt trials in absentia because the judges in particular were so frustrated at the limited prospect of arrests of indicted war criminals. Now, to me, this would have been a catastrophic setback because it would have become very addictive and the tribunals would have basically become courts of archives. If there was an alternative to arrest, the little political will there was to perform these arrests would have completely dissipated. So the fact that we actually managed to make these tribunals work as real courts where, hard as it was, all the parts eventually fell into place, from investigation to arrest to trial to conviction to incarceration, is nothing short of miraculous.

**DS: Some people have criticized the tribunals in particular by saying that they weren't anchored in the communities which they were most intended to serve. What do you think of this criticism? To some extent,**



**one can ask the question whether it's possible to do international justice or international tribunals in a way that avoids this, given that the international community only intervenes when the national systems have already failed, so there is some disconnect between tribunals and the victims to begin with. Do you think something like the Special Court for Sierra Leone, a more hybrid model, has hit the mark, even though it obviously has its own shortcomings?**

LA: Certainly in the common law tradition, the fundamental concept of the jury system is that justice has to be local and as local as possible. A change of venue is already an extraordinary measure that can be employed only when a fair trial is otherwise at risk. So the idea that justice is very local and has to be owned by the injured community is very strong. I think we have to ask ourselves whether this is desirable in the international forum, and if it is desirable, then we should do everything we can to accommodate, recognizing that in some cases it will not be immediately possible. If we take Rwanda, for instance, if we believe that this local aspect to international justice is critical, the question is, how soon could you hold a trial in Kigali?

I think first we have to ask ourselves fundamental questions: Are we again just transposing a domestic model onto the international model? When a crime is “against humanity,” who is the injured community? Where is the appropriate venue for the trial? I think it's worth thinking about because if it's too local, it loses in part the deterrent effect, but most importantly, the denunciation effect of an international voice. If you take the Special Court for Sierra Leone, you might say – it'll be interesting to see if this can be measured – it would have greater impact domestically because it was closer to the ground so to speak, but maybe a lot less impact internationally in telling the Sierra Leone story to the world and, in that way, rallying the international community in its denunciation of what happened, serving as a deterrent model. I think it cuts both ways. Maybe this will all become irrelevant as we move into an era when geography is a lot less relevant with the kind of information technology we have.

I think the key though as we refine these models is constantly to ask ourselves,

what is the guiding principle, what is the desirable objective? And then do everything we can to foster that objective, as opposed to conceding without much thought whether we could get much closer to the ground. With ICTY, for instance, it might have been true at the beginning, maybe less true later in the process.

**DS: Do you think the ICC obviates the need for ICTRs and ICTYs? Are these the last ad hoc tribunals we're going to see? Also, you mentioned the issue of cost. It's often been said that war and human rights violations are much more costly than justice will ever be, but politically the issue of cost in the United Nations is very problematic. Will the combination of the ICC and the cost of the ICTR and ICTY mean that they will be the last of their kind?**

LA: I think it's very difficult to imagine that the Security Council would set up another ad hoc tribunal, particularly now that it has created the precedent of sending a referral to the ICC in the case of the Sudan. Now that the Security Council has used its referral power, it would be hard to imagine on what kind of rationale it would choose not to refer a case to the ICC and call on all the expenditures for setting up a fully parallel process.

It doesn't mean that the Security Council's role in activating accountability is over – quite the opposite. I think that, in a sense surprisingly but happily, they did exercise that jurisdiction in the case of Sudan. But it seems to me that that sends a signal that this is the route to go in the future, and we're unlikely to see totally self-standing international ad hoc initiatives like the first two. We'll probably see a lot more hybrid-type models and probably see also a branching out, as we're seeing in the case of Lebanon, outside the traditional war crimes tribunals.

There's a danger there I think. We have to think pretty seriously about whether the United Nations wants to be in the supplemental criminal justice business, but unattached necessarily to war crimes or crimes against humanity in some cases where there may be a lot of political difficulties in just using



the national systems. After Lebanon, the same issue percolated in the case of the assassination of Benazir Bhutto, for instance. Here's a sovereign country that has a lot of capacity for investigations and prosecutions, but where there could be political suspicions. So, will the United Nations be drawn into criminal justice enforcement outside the war crimes models? I think the jury's still out on these kinds of issues.

As for cost, you are entirely correct. It will continue to be so that a year in the life of a tribunal or the ICC is cheaper than a day of peacekeeping operations. At the end of the day, it's not how much money it costs in the abstract or in comparison to war or in comparison to a day in the budget of MONUC in the DRC.<sup>1</sup> The question is and will always remain: If that was all the international community was prepared to put into post-conflict reconstruction, was it money well-spent to put it all into the trial of 12 or 50 people, say in the case of Rwanda? Who should have the right to answer that question? Is it the victims, the people of Rwanda? Would they have said, "Well, if you had told us you would be spending a billion dollars in this exercise, we would have said no thank you, just write the check and we'll do something else with it"? But that's not the way I think that one can realistically look at it.

**DS: When we talk about the future of tribunals, the future of the ICC, but more globally the future of international accountability mechanisms and international justice, one of the big questions out there – and it's argued different ways by different sides – is the question of politicization. Concerns are typically raised on at least two levels, the first being that given limited resources and the amount of time it takes to prosecute someone, only the biggest fish are going to be prosecuted, which inevitably raises questions about individual selectivity.**

**And the second issue: African governments often maintain that they are disproportionately targeted by international justice mechanisms. They say that when you look around the world, Africans are brought to book while abusers from the U.S., Russia and Israel are left to**

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<sup>1</sup> United Nations Organization Mission in the Democratic Republic of the Congo.

**carry on. This is particularly raised in the context of the ICC where all the indictments and prosecutions thus far have been Africans. I'm wondering what you think of this issue generally.**

**I'd also like to ask you, as a former prosecutor who did have to operate with limited resources, how did you go about choosing whom to indict? Was it solely a legal determination, or do political policy and pragmatic concerns inevitably slip into the mix?**

LA: I think on this question of politicization of the role of the prosecutor and this whole package, first we have to understand what we mean by political considerations. If we mean, at one extreme, would the prosecutor seek the consent or the approval of a permanent member of the Security Council before taking a certain initiative or would they attempt to intervene – then that kind of blatant, purely political interference is completely inappropriate.

In a domestic context, the general assumption is that all crimes detected are prosecuted unless there's a kind of *de minimis* rule – that they're so minor they can be ignored or disposed of by some form of minor dispute resolution. Universal prosecution is the norm. The minute you work in an environment internationally, that's clearly not the case; nobody claims that every person implicated in the genocide in Rwanda will be prosecuted before an international court. It invites the exercise of discretion, which is not the same thing as political consideration. It's political in the juridical sense, based on the policies.

It seems to me that what we need is a more explicit framework developed by the prosecutor to guide the exercise of his or her discretion, so that it would be transparently visible why certain things are done and not others, why certain countries and not others. I think what is problematic is that, assuming there is a guiding policy, it's not disclosed and it's not discernible, so it looks very capricious. Discretion is not the same thing as arbitrariness. It seems to me that in some cases, the pursuit of opportunity is not in and of itself reprehensible. Everything else being equal, if you have an opportunity



to arrest someone who is a high-ranking suspect, and next to that you have a file where you conduct a two-year investigation but you don't even know if the suspect is still alive, this could be a consideration. The likelihood of apprehension is one of the many factors you want to look for.

The key is for prosecutors to circumscribe their own discretion by articulating the parameters within which they will exercise it, and the rest you do on a case-by-case basis. It's the same for judges; that's the framework. Lots of decisions made by judges are discretionary. It doesn't mean they are capricious or unguided by experience or precedent or "political," but it means you are not bound to do one or the other. And I think that it's important when we embark on that discussion to be very clear about that.

**DS: But supposing for example that one were to look at the African cases before the ICC and one determined that in each individual instance they were made on the basis of the best principle, the most neutral insight available, even so, to what extent do you think that if this pattern were to continue of targeting almost exclusively African cases, the ICC is risking some of its long-term credibility as a young international institution?**

LA: Then it would assume that there is something wrong with this so-called targeting of principally or exclusively African countries. This begs several questions. The first one is, have they ratified the ICC, the Rome Statute, as opposed to others? It'd be very nice to go somewhere else, but if they haven't ratified and the case is not raised to the Security Council for a referral, having no jurisdiction is a really good reason not to be somewhere. I think before being too quick to say, well, these are all African cases, you have to look at who has ratified the treaty, where is the jurisdiction to start with.

The second thing is, the prosecutor has to look very early on at the question of complementarity and admissibility of cases. Again, I think it's not an exaggeration to say that if there were hypothetically credible reasons to believe that war crimes may have been committed in different countries,



you may want to ask yourself, what is the likelihood that a credible national investigation will be conducted? And again, it's not surprising – when they enacted the Rome Statute it should have been perfectly apparent that the ICC would essentially be a default jurisdiction for countries that did not have adequate legal systems and law enforcement and judicial systems in place to conduct in a credible manner complex and high-stake prosecutions.

So, for a part of our history, if we continue to invest in other areas but not in this one – and I hope we will invest much more than we are now in the development of law enforcement and judicial capacity in African countries – there's no question the ICC will be the default jurisdiction. And this will be correct in law, even though it may be denounced for political reasons as incorrect. So, again, I think we have to look pretty carefully at the reality.

But it is the case that the bulk of the ICC's work, if not the totality of its work, comes from Africa. Again, you can have two reactions. You can try to change the appearances by running around trying to find cases elsewhere for the sake of addressing this alleged shortcoming – which in my view is a political decision, and I'm not sure the right one. Or you can acknowledge that reality and engage with Africa, be very explicit about the fact that that appears to be the case. To my mind the question would be, shouldn't the ICC then maybe talk to the African Union about having an African presence much more systematized, maybe holding some of the trials on the continent and so on? Sometimes you can transform liability into something more positive, rather than concede that it's a liability and try to fight it.

**DS: When you were chief prosecutor, many of your efforts were directed at looking how high up the chain of command responsibility could legally be attributed. In the wake of rights abuses that have been committed by U.S. soldiers in the context of the U.S. war on terror and in Iraq and elsewhere, it seems that responsibility, at least legal responsibility, has often stopped at a relatively low level. Often when we talk about impunity for human rights abuses, we associate this word with poor and war-torn countries, but of course some argue that**



**that term does have applicability in the context of the U.S. war on terror, particularly as it relates to torture, extraordinary rendition and other abuses that have been committed. How do you assess the human rights legacy of the U.S. war on terror several years on and what it's done to the ability of the U.S. to act as a good-faith promoter of human rights around the world?**

LA: That's a very difficult issue. We always put "war on terror" in quotation marks, as though intuitively the many who are forced to use that expression want to question all the baggage that is contained in that because it seems to call for the application of the laws of war. And when they're not very convenient, then the war on terror is seen as a metaphor, so it's really the war in Iraq and the war in Afghanistan. But secret detention centers, assuming some existed in some European countries, would be part of the "war on terror" but not a real war. So, I think there's a tremendous *obscurantisme* around the use of that expression, not unlike the "war on drugs" as a worldwide net that covers everything from very targeted operational activities to ideological positions, for instance about syringe exchanges and needle exchanges and so on. I think the war on terror carries a lot of that ambiguity when it comes to the application of the law and which laws and to whom and by whom.

Now, again, to the extent that the United States has not ratified the Rome treaty, its eventual exposure if it were a party to the Rome treaty would depend on the quality or an assessment of its genuine ability and willingness to conduct its own investigations. There again, it seems to me it would be in the interests of the U.S. to be very forthcoming about exercising to the fullest its national capacity – which is the best bar against any external scrutiny – through the principles of double jeopardy, but even within their own statutes.

It's sometimes difficult to understand why there's continued resistance to much more public, much more transparent investigations and accounting for apparent misbehaving, either in the use of torture or, as is currently the case in Afghanistan, with the very surprising and continued high number of civilian casualties, which then lead to investigations that are never made public and



never seem to find anything, not even the smallest amount of negligence, and yet with undertakings that it won't happen again – which is not very credible when you cannot explain what happened in the first place.

**DS: Very soon in this country we're going to have a new president and a new administration. What are two or three things for the incoming administration to do not only to rectify some of the problems and the excesses of the war on terror, but also to regain some of that moral standing that at points in our history we've enjoyed?**

LA: I think the growth of what has been called American exceptionalism is a very serious liability for the kind of human rights and political advocacy that the U.S. wants to do elsewhere. It's an untenable position to say you should be doing A, B, C or D, but we are not going to hold ourselves to these standards or at least we refuse to be scrutinized for that; tyrants should be brought to account, but we don't have any tyrants and if we do, we'll do it ourselves, so we don't ratify or don't join in any international consensus; we're great champions of human rights but we don't ratify any international instruments – but you should, it'll be good for you. These are constantly called double standards and they become a serious liability for the advancement, the championing of human rights by the U.S. In some cases they are clearly double standards, in a lot of cases they are not, but because they are credible in some cases, they taint just about every American initiative in these domains.

I think the first thing the U.S. would want to do is bring itself into the fold: take a seat on the Human Rights Council, ratify international instruments, send a lot of signals that it's now a player and that it's engaged and advocating for the importance of the rule of law. For the rest of the world, the entire Guantánamo exercise, secret detentions and so on were a blatant effort by the executive to bypass judicial review, which is a hallmark of American democracy.



The United States has three branches of governance and the efforts by one to completely marginalize the other – that is, the executive trying to bypass completely the oversight of the courts – sends by action a signal entirely contrary to the message that the U.S. is sending about the spread of democracy. So then, the real message is that you should have democracy reduced to pretty gross electoral machinery: You should elect people in elections that are sort of free and fair in the sense that there were not massive frauds at the ballot box, and then that's enough – you have a working democracy.

This is a vision of democracy that is not what Americans believe in. Democracy requires a whole set of institutions of checks and balances, free media, civil society organizations, courts that work, a real balance between legislative and executive power. So again, the Guantánamo message, quite apart from the sheer brutality of state action, sends a signal that when we talk about the rule of law, we don't really mean it – given the opportunity we will bypass even our sophisticated control mechanisms. So at every level I think these activities have been very costly for the advancement of human rights and democratic values.

**DS: In the course of these last seven years, the U.S. administration has had a lot of high-profile clashes in the Security Council and with the United Nations. You've just stepped down from your post as high commissioner, so I wanted to talk with you about the Office of the High Commissioner for Human Rights (OHCHR) and the U.N. human rights system. What was the high point of your time as high commissioner, and what were two or three of your biggest frustrations or disappointments working within that system during your time there?**

LA: The high point was probably what happened to us during the secretary-general's reform initiative, what eventually led to the outcome document of the World Summit in 2005 – this was Kofi Annan's very ambitious reform agenda. He failed in his attempt at reforming the Security Council, but as part of this exercise we were mandated to develop a plan of action for the



Office of the High Commissioner for Human Rights and through all these initiatives, we rapidly presented a plan of action that in my view had a very explicit vision. It was very frank about how we wanted to be involved in implementation of rights, not just further normative exercises. To be more specific, we requested as part of that a commitment by the General Assembly for the doubling of our share of the regular budget of the United Nations within five years. It was a monumental achievement that we managed to get that commitment in the outcome document of the reform exercise.

It was also part of reforming the Commission on Human Rights into a Human Rights Council; there were lots of other things. But for OHCHR itself, basically it has meant that after my four years as high commissioner, I left the office with twice the size it was when I came in, twice as much money, we grew to twice as many staff members, and therefore had the capacity to work in the field. This was transforming. It was on an order of magnitude that went beyond just regular budgetary increases; it actually transformed an organization that was otherwise devoted almost exclusively to servicing member states, servicing the Human Rights Council, servicing the treaty body system, and all of a sudden through this influx, OHCHR was able – in addition to these tasks – to develop its own agenda of promoting and protecting human rights in the field. So, this was I think pretty fundamental.

### **DS: And frustrations and disappointments?**

LA: Some of them are very technical and they would not be of general public interest, but for me they were very real. One of them is my failure at attempting a parallel reform of the treaty body system. It's very obscure, it's a system that's not very well-known, it may not mean much for a general audience. I think in retrospect the kind of appetite for reform in the United Nations had dwindled. By the time they managed to get enough energy to abolish the Commission on Human Rights and create the council, to take on a major institutional reform of the treaty body system was just too much at that time. But I remain persuaded that as a monitoring body it's archaic, it's invisible, and as a result of that, it has very little authority, it's not well-



known, it's not easily accessed, it's owned in a sense by a very small circle of experts. I think it has the capacity to be a lot more than that. And I was completely unsuccessful. Member states I think were very wary that this eventually, over the horizon, was a plot on my part to create a court.

On a day-to-day basis, what's frustrating for the human rights high commissioner, probably more than for any other U.N. official – but for all U.N. officials to one degree or another – is that at the end of the day, you cannot make states do what they should do but don't want to do. The barrier of state sovereignty in the human rights field is pretty catastrophic, but I'm sure the high commissioner for refugees feels the same way on a day-to-day basis. The under-secretary-general for humanitarian affairs I'm sure is at times hugely frustrated at his inability to deploy. But in human rights, it's endemic.

**DS: It seems like so many human rights blockages do just boil down to a question of political will, which is of course hard to generate as an international civil servant.**

LA: Yes, that's right. But that's why, because at this stage there's so much to do, you have to make a pretty cool-headed assessment of opportunities and temporarily lost causes, and deploy when there is a chance for action. Of course you get heavily criticized for being here but not there, but at the end of the day you have to work with what's available. And some things are just not available.

**DS: When we talk about the Human Rights Commission and the Human Rights Council, is there a distinction? Is there a difference and are there new possibilities for an effective institution that didn't exist before?**

LA: I think there is, structurally, good news, but no, we cannot underestimate the fact that the morning after the commission was abolished and the council was created, it was the same men and women occupying the same chairs in the same room. Until you have a healthy rotation, both of states, members of



the council, office holders, the various ambassadors who are there – people come and go and it makes a huge difference – I think it will take time before the Human Rights Council develops its own footprint. Let's put it this way: It's more like the former commission than unlike.

It does have a few features that carry at least the possibility of a pretty dramatic change. The Universal Periodic Review, even if in and of itself it doesn't do miracles in portraying the deficiencies of each individual state, is a fundamental transformation in the culture of individual state scrutiny – and that has been the albatross of the commission. The commission failed because it could not reinvent itself into a body that could try to be an implementer of norms. It was very good at articulating and developing norms, but the minute it started having country rapporteurs and fingering individual countries, it totally collapsed. The council has that capacity, in part through the Universal Periodic Review, of getting states to come and sit at the table and put a spotlight on at least their grossest, most obvious human rights shortcomings in a public environment. This I think will payoff, that in the long run it will be business as usual to look at what countries do on the ground. But it will take time before that becomes part of the culture of the council.

**DS: One of the successes of the human rights movement over the last 50 years is that all states now feel at least some obligation to defend their human rights records and speak in the vocabulary of human rights. At the same time, part and parcel with that, we see states becoming more adept at using the language and vocabulary of rights, seeing through the passage of legal instruments designed to ensure we strive for human rights, but we see there is very little change on the ground in terms of abuses that are taking place. What can the international community and NGOs do that's not already being done to call people to account for this duplicity: states cloaking themselves in the language of human rights, the language of democracy, but of course the practice is often anything but?**



LA: I think the one thing that we have done smartly is create these kind of irreversible institutions that force states in the right direction – a lot of them yelling and screaming about all these mechanisms of personal criminal accountability. In a sense it's a miracle that the tribunals were formed and then the ICC was in place, but now that it's in place, its tools can be used to advance human rights compliance in a small way in that environment. I think we have to continue, as the norms are well in place to develop the institutions. I think we need to advocate for human rights regional institutions, in Asia for instance where it's very absent, because after that's in place – with a little bit of luck, led by people with a spine – it can actually start producing results.

I think we have to face head-on the current climate of disrespect for the human rights discourse that comes from this perception of double standards, politicization, human rights being essentially the vehicle of the promotion of Western interests. That becomes very facile but very popular language in developing countries. It has a lot of resonance. It plays on national pride, suspicion of Western intentions. So I think this is absolutely critical. And that's why I tell my friends in the European countries, until some of you start ratifying the Convention on the Rights of Migrant Workers, you can't credibly lecture others about their shortcomings. Can't you see how not credible it is?

And frankly, the Durban review conference I think is another albatross, another minefield that can be very easily manipulated to derail all the important human rights efforts by essentially hijacking the agenda and the rhetoric and re-characterizing things in a very negative way. I think on all these issues, when the Western countries express enormous skepticism about the Durban review process and the danger that it could be transformed into an anti-Semitic rally and so on – it's true, it's not an illegitimate concern, there's historical precedent to express that concern – the danger is that to others it looks like a very convenient pretext for the Western world not to look at the one human rights issue in which they are profoundly deficient, which is racism and which matters a lot to the rest of the world. In a sense it fosters the cynicism that funny enough, when you talk about issues where their shortcomings are very



obvious – migration, racism – the Western world all of a sudden finds all kinds of good reasons not to be a player or not to be engaged.

I think the burden is on the Western countries. It's easy to say that they've already done enough, they are the good guys to start with – that's not enough because they have more capacity. And if they're serious about the promotion of the entire agenda, they're going to have to do a lot of the tough things themselves.

**DS: You have also talked about the benefit that increased recognition by the Western powers of economic, social and cultural rights could have for the advancement of human rights in general. We often repeat homilies about the indivisibility and interdependence of all rights, but of course in practice there has been a marginalization of economic, social and cultural rights and a privileging of civil and political rights. You've also noted in the past that when you consider the links between security, human rights and development, drawing those distinctions between the two treaties just simply doesn't make sense anymore. Do you think the emerging paradigm of human security is something that would allow us to move out of this legacy of categorization of rights into two large camps?**

LA: This is in part something that I will address in my talk tonight, not with a lot of answers, but at least highlighting again these difficulties. I think it's no better expressed than in the field of gender equality. If you look at the position of women worldwide who are to varying degrees in positions of inequality virtually everywhere, even in very advanced liberal democracies in which their participation in public life is increasing they still have a disproportionate share of poverty and ill health and so on. If you look at that, it seems to me that the impact of economic and social rights on gender inequality is dramatically more severe than the impact of violations of civil and political rights.



I think it's important to use maybe the timing of the 60th anniversary of the Universal Declaration of Human Rights (UDHR) to try to reintegrate these efforts again, for a lot of reasons. First, I think the advancement of economic and social rights in any country would be a good thing on their own merits, but furthermore, this will also go to addressing directly this question of double standards, hypocrisy and the pursuit of a purely culturally Western-driven vision of human rights.

It will also have the advantage of, if the West were to seriously engage in these issues, calling the bluff of the developing world. Either they're serious that they're interested in social and economic rights or it's just a pretext for doing nothing, so why not really engage there? But it's very contrary to the Western economic market model. It may be that the rattling of the U.S. financial markets, the pretty severe tsunami that seems to be hitting them, will posit that proposition in terms that will be more accessible to discussions in the United States.

**DS: I want to talk about an issue that isn't always thought of as a classical human rights problem in the traditional sense. It's the question of corruption. Many manuscripts have been starting to try to make the case that, for example, rampant corruption can result in denial of rights to health and education on the social and economic rights front. Looking at civil and political rights, if we look at West Africa for example, we've seen that many of the issues that gave rise to the phenomenally brutal conflicts that took place in Liberia and Sierra Leone rest squarely in the area of governance, and here we're talking about mismanagement and corruption. Do you see corruption as being within the mandate of OHCHR, that it's sufficiently bound up with violations of both civil and political, and economic, social and cultural rights that we could start to address it as a traditional human rights issue? What can the U.N. system be doing that's not already being done to address the question?**



LA: I have to say that the few times when it bubbled up during my tenure, I was not very keen to embrace it. I felt even by the time I left the Office of the High Commissioner, we could barely deal with the pretty classic human rights issues. In some we had almost walked away because of lack of resources and capacity. I thought we were very understaffed on the issue of migration, which is a huge battle within the United Nations, because within the United Nations the conventional wisdom is that migration is essentially an economic and political issue and not a human rights issue. I profoundly disagree with that vision, but the tackling of the migration debate in the United Nations was always to be based on a win-win situation – that it's good for the country of origin and it's good for the other, and it's all an economic model which then conveniently leaves behind those who are a burden to the system, people who are undocumented or uneducated or sick.

I think to advance a strong human rights discourse on an issue as important as migration – which I think is one of the most important issues of our time in terms of the flow of population movements which will be exacerbated by climate change and scarcity of food and water – it is necessary for the high commissioner's office to try to develop that expertise.

There are other areas. The high commissioner for human rights is virtually absent in the U.N. system on issues of elections. They have become clinical, technical issues run by elections experts, but democratic rights, the right to vote, the right to representation – anchoring that in a sophisticated human rights promotion discourse is really important. The Millennium Development Goals – it was constantly a battle to inject a human rights framework to the pursuit of the alleviation of poverty, to make sure that from a human rights perspective you should always favor those at the bottom first. It's not just raising an average, it's making sure that the most vulnerable, the traditionally neglected are not the ones again further marginalized. All that is very hard.

So getting into corruption as a deficiency of governments and so on for me would not have been a priority in human rights circles, just because I thought

our plate was so full with things that were much more mainstream and easily articulated human rights violations for which we were still quite deficient.

**DS: Is there any office within the U.N. system that is actually addressing it? For example, you raise the issue of the Millennium Development Goals, and in many of these countries, rampant corruption and misuse of funds from natural resources are in fact some of the reasons that the Millennium Development Goals are so difficult to attain.**

LA: There is the office of drugs and crime, UNODC.

**DS: But they aren't particularly looking at it as a human rights issue.**

LA: Are they looking at anything as a human rights issue? UNDP [United Nations Development Programme] is a massive development program and has been for years interested in governance. Now in the United Nations the darling issue has moved from governance to rule of law. Everybody's in the rule of law business, even DPKO [Department of Peacekeeping Operations]. I tried to the best of my limited abilities, with virtually no success, to explain that the blueprint for rule of law is in the human rights instruments. It's all there. That's the kind of legal infrastructure for the promotion of the rule of law. It's fundamentally a human rights issue. There's a lot of money going for these projects, so there's a lot of interest.

**DS: You mentioned earlier the 60th anniversary of the UDHR. In the 60 years since that was adopted, the human rights movement has often found itself embroiled in a series of ongoing and persistent debates: peace versus justice; economic, social and cultural rights versus civil and political rights; development versus democracy. Given that most countries have signed on to many of the human rights treaties, with some famous exceptions such as the United States, what do you make of the fact that these debates continue decade after decade? Does the persistence of the debates call into question the universality itself, or is it just evidence of the persistence of politics?**



LA: Well, all I can say about universality of rights is, if you take currently the major international human rights instruments, they are pretty comprehensive. We're not fully there, but the field is very nicely occupied with instruments that for the most part are very good. In all my travels, I have yet to meet one person on earth who if given the chance would voluntarily renounce any of these rights. When people talk to me about cultural specificity and "you don't understand our culture or our religion," I say, "Well, bring me someone in your country who doesn't want to be free from government oppression, who doesn't want freedom of speech, freedom of religion, equality."

I think the universal framework is correct. It probably needs some further refinements, some further applications, some doctrinal subtleties added to it, but essentially I've never been shown anything profoundly wrong with it. But there are shortcomings in implementation and there are tensions. The other issue now that is being manipulated to a point that is sickening is a fabricated conflict between freedom of expression and freedom of religion. Human rights is a body of laws and values that feeds itself in the political realm and vice versa. There's no better political manipulation than to hijack a human rights issue and appropriate it. I think to a large extent the false debate alleging tensions between freedom of expression and freedom of religion is very much symptomatic of that, that human rights and politics kind of feed on each other. I think that is what's always going to be with us.

**DS: You may be tired of people asking, but what's next?**

LA: I don't know. I really don't know. I will probably do something at some stage. See, I can't even answer intelligently half of these questions. I need more time to think, get some distance. I'm very happy for at least a few more months of getting an opportunity to travel a bit, speak to students, visit faculties.

**DS: Do you have any parting advice for students who may be considering a career either in international policy and politics or international human rights?**

LA: It's very difficult. In my case, things have happened to me so randomly that it's difficult to say, do what I did – which is I just sat there and waited for the phone to ring and something else came up. There was nothing very deliberate in my own career. But I think in all the work I've done, it seems to me that you have constantly to maintain the right mix of values, passions, commitment on the one hand and skills on the other. There's nothing more dangerous in my view than do-gooders who have very little skill but feel passionately about issues. At the same time, it's a pretty short life to be only a technocrat, particularly in the legal business where there's so much promise to do a lot of good with that. So I think particularly those who want to work on human rights issues and so on, I think you have to nurture your passionate commitment to it and, unfortunately I hate to say it, you have to do the hard work also that solicitors have to do on a day-to-day basis if you really want to make a difference.

# WELCOME AND INTRODUCTION

**By Dee Aker**

**Interim Executive Director**

**Joan B. Kroc Institute for Peace & Justice**

Good evening. Welcome to the Joan B. Kroc Institute for Peace & Justice (IPJ) and the Distinguished Lecture Series at the School of Peace Studies at the University of San Diego (USD). We're pleased to have you join us this evening for an exceptional event. My name is Dee Aker and I'm the interim director of the Institute for Peace & Justice.

Joining me in welcoming you are Father William Headley, dean of the Joan B. Kroc School of Peace Studies, Diana Kutlow, senior program officer of our Distinguished Lecture Series, and our wonderful USD community, including our newest deans, Mary Boyd from the College of Arts and Sciences and David Pyke from the School of Business. We are also here with our 2008 Women PeaceMakers from Bangladesh, the Democratic Republic of the Congo, Peru and South Africa. There are so many people in this audience tonight who deserve recognition; they've come from around the world because this is also the beginning of our working conference, "Crafting Human Security in an Insecure World."<sup>2</sup>

This is also a very special year. This is the year of the 60th anniversary of the Universal Declaration of Human Rights, and this particular lecture kicks off a year of looking at the importance of that. Our first speaker is one of the great human rights and justice advocates of our time, literally of any time.

Human security is much more than a right – it's a basic requirement for human development. The Institute for Peace & Justice is electric with the wisdom and passion both in this room and with what's coming up to spark us onward, and we have the right person tonight to integrate security, development and human rights discussions for us.

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<sup>2</sup> The Distinguished Lecture with Louise Arbour was the opening address for the 2008 Women PeaceMakers Conference. For more information on the conference and to view the final report, please see [http://www.sandiego.edu/peacestudies/ipj/programs/women\\_peace\\_makers/conferences/CraftingHumanSecurityinanInsecureWorld.php](http://www.sandiego.edu/peacestudies/ipj/programs/women_peace_makers/conferences/CraftingHumanSecurityinanInsecureWorld.php).



Louise Arbour's career is one of commitment and action on this front. Hers is a model for simultaneously humbling and inspiring all of us working in peacebuilding, and that includes everyone here – our students, our faculty, our staff and all the people who've joined us. Teaching law, leading the Canadian Civil Liberties Association, she then joined the High Court of Justice, the Supreme Court of Ontario, just 15 years after receiving a law degree. She moved on to the Court of Appeals for Ontario in 1990. Many in this audience who are working for gender justice appreciate the challenge she took on in 1995, when as president of a commission of inquiry she headed an investigation on the prison for women in Ontario, exposing the abuses there.

A year later, she became the chief prosecutor of war crimes before the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia. She was recommended by just the right person, none other than the first chief prosecutor, Justice Richard Goldstone, a member of our IPJ International Council, whom many of you know from his residency here.<sup>3</sup>

The Honorable Louise Arbour again showed her mettle when in 1999 she indicted [Serbian] President Slobodan Milošević – a strong, controversial move that proved to be exactly right, both as a statement about making people accountable and also pushing a peace process. A year later she returned to Canada, newly appointed to the Supreme Court. Following the tragic death of Sergio Vieira de Mello in 2003, she was appointed as the U.N. High Commissioner for Human Rights in 2004. She just finished her four-year term.

Once again she has shown the world tenacity and ethical courage and a commitment to human rights for all. This has not always made her popular. States and individuals have had their backs up over decisions and statements exposing those who wanted to be treated with less stringent, less balanced responses. They protested and grumbled and threatened. Certainly when she stated that those in positions of command and control could be subject to personal criminal responsibility for their actions in the Israeli-Lebanon conflict,

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<sup>3</sup> Justice Richard Goldstone was eminent leader-in-residence at the institute in Fall 2005.

there were some wide, worried eyes. The same was true when she criticized democracies along with regimes of tyrants. And while it happened far less, about one out of seven times, some countries we know and love were exposed.

I think that regardless of our country of origin, we know that her assertion that nobody is safe when leaders who have the capacity to do massive damage to a population are guaranteed impunity is the reality we must confront when seeking human security and human rights for all. Louise Arbour is a determined advocate for the adoption of international human rights standards and she speaks for many victims around the world. Our distinguished lecturer is a beacon for peace with justice, to upholding human rights and having accountability. Please welcome the Honorable Louise Arbour.





*Integrating Security,  
Development and  
Human Rights*

*The Honorable Louise Arbour*



Thank you very much indeed, ladies and gentlemen. I am truly delighted to be here and I'm very honored to be invited to deliver this very prestigious lecture. I should maybe at the outset put a few caveats. As has just been indicated, I finished my mandate as United Nations High Commissioner for Human Rights at the end of June of this year, and I was delighted that for the first time in my professional life, I was regaining fully my freedom of expression, both as a judge and as a human rights advocate. I have fought all my life for the broadest possible scope of freedom of expression, but I've always been working in environments in which by the nature of my work, my own freedom of expression was somewhat curtailed. So as of the first of July, I was enchanted to have regained my freedom of expression.

This lecture tonight is one of the very few public engagements I've undertaken since leaving my post. I have to confess to you that despite all this exhilaration, I can't really think of anything outrageous to say. I thought I would be saying enormously outrageous things, but when I look at my prepared remarks they don't seem particularly outrageous.



I should also tell you a little story that was told to me very early in my academic career and has led me to accept speaking engagements only when they're followed by question-and-answer periods, just on the off chance that I'm a bit off topic. This anecdote will explain to you why I've been petrified most of my professional life about that prospect.

One of my colleagues when I started teaching law was interested in human rights issues. This is way before the days of easy e-mail communication. He was contacted by telephone from a very far away country and was invited to come and speak at a conference. The conference was going to take place in a totally irresistible location, the Maldives or some exotic place, and he was very keen to go. The phone connection was not very good, and he said, "Yes, yes, I'll come. So, what are you expecting of me?"

And they said, "We'd like you to speak for 20 to 30 minutes on breastfeeding."

So he thought, well, human rights is a broad topic and the Maldives is a country I'm very keen to visit. I can do that. So he said, "Yes, all right."

He was a bit petrified and prepared himself extensively. When he arrived at the conference, he was told it was a panel and the panelists were introduced. Then when it came to his turn, the presenter said, "Now, Professor So-and-So will address you on press freedom."

I have prepared a few remarks on the general topic of human security. I hope that I'm on the right page, but if not you'll just have to bear with me and then in the question-and-answer period I may get back on topic.

Let me also say that even though I've been here essentially just in the course of today, I already feel very much at home. I've been extremely well-received and I've had brief but intense opportunities to meet some of the women engaged in the Women PeaceMakers Program, some members of the faculty, and I feel very much at home. I hope this is a beginning of a relationship that we will be able to pursue in the future.



I also feel very much at home because you have invited in the past many of my old friends and colleagues – in fact, I was surprised when I looked at the list to see so many names of old friends and colleagues, including of course Mary Robinson, Jan Egeland, Gareth Evans, Lloyd Axworthy, Shirin Ebadi and, as Dee mentioned, I'm particularly pleased to follow once again in the footsteps of Richard Goldstone. So let me now turn to my prepared remarks not on breastfeeding but on human security.

In light of my very recent departure as U.N. High Commissioner for Human Rights, I seize opportunities like this one to try to distance myself from the day-to-day operations of that office and reflect in very broad terms about the effective pursuit of human security, particularly within the U.N. system. So let me try to clarify one thing at the outset because I find that there is often a lot of confusion that takes place when we talk about human rights and security.

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*“... it's important to assert at the outset that security is a fundamental human right and that the obligation of states to offer basic security to people under their jurisdiction and control arises from their obligation to promote and protect the right to life and security of the person.”*

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Fundamental rights and freedoms are very often described as opposed or contrary to the pursuit of security interests. For instance, in the law enforcement world you often hear that human rights impose constraints on the pursuit of security objectives. In the most outrageous form of that viewpoint it is argued, for instance, that the prohibition against the use of torture – which as you know is a fundamental human right that is enshrined in the Convention against Torture and is a norm of customary international law – stands in the way of the effective pursuit of security interests.

Contrary to that position, I think it's important to assert at the outset that security is a fundamental human right and that the obligation of states to offer basic security to people under their jurisdiction and control arises from their obligation to promote and protect the right to life and security of the person. So at least when we're talking about human security, not state security, our conversation is very much about human rights.

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*“The human rights pillar ... is made of glass: fragile, invisible most of the time, decorative at best, supporting nothing and therefore requiring only the occasional buffing to make sure that if seen it would look good.”*

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Let me now turn to the way the United Nations is equipped to support states' obligations to enhance human security. In 2005, then Secretary-General Kofi Annan published his report entitled “In Larger Freedom,” which served as the blueprint for the outcome document of the 2005 World Summit. The expression “in larger freedom” comes of course from the U.N. Charter and embraces a vision of human fulfillment predicated on the fundamental ideas of dignity and equality for all members of the human family.

The secretary-general's report also asserted, to my great delight as at that time high commissioner for human rights, that the U.N. architecture rested on three pillars – security, development and human rights – and that the three pillars were interlinked. In fact, his words have been quoted very often. He said, “There can be no security without development. There can be no development without security. And there can be neither security nor development without human rights.”

As time went by I became somewhat skeptical of this architectural metaphor of the three pillars. In fact, as presently constructed, if indeed the United

Nations rests on three pillars, in my view they are of unequal structural strength. The security pillar is made of concrete: it's rough, it's strong, suitable for military-type operations. The development pillar is made of steel: durable, sustainable – to use development lingo. The human rights pillar in contrast, in my view, is made of glass: fragile, invisible most of the time, decorative at best, supporting nothing and therefore requiring only the occasional buffing to make sure that if seen it would look good.

Even though the United Nations has a long history of engagement in security and development issues, clashes occur frequently among member states about the proper course of action in these two fields: security and development. These clashes at times paralyze action in the Security Council or lead to inconsistent and inefficient fieldwork by a variety of poorly coordinated U.N. agencies who work broadly speaking on development issues. But nowhere more than in the field of human rights does the ambivalence of member states express itself. And this is so in my view for a variety of reasons.

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*“ ... despite the assertion in the Universal Declaration of Human Rights that all human rights are universal, interdependent and indivisible, in reality not all rights are championed with equal vigor, even by those states like the United States who purport to embrace a very strong human rights culture.”*

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First and foremost, the comprehensive human rights agenda that is articulated in the Universal Declaration of Human Rights, the U.N. Charter, leading human rights treaties and international customary law is a legal and political framework that imposes internal constraints on what a government can do to people, in particular to its own people. So not surprisingly, the enforcement of that framework by international actors, like a high commissioner, is quickly viewed as an infringement on state sovereignty and an interference



in the internal affairs of a state. This is particularly so in countries that very conveniently confuse the interest of the state with the interest of its current government, which in turn can be easily confused with the interest of a particular political party or in the most extreme cases with the personal interests of an entrenched head of state.

Secondly, despite the assertion in the Universal Declaration of Human Rights that all human rights are universal, interdependent and indivisible, in reality not all rights are championed with equal vigor, even by those states like the United States who purport to embrace a very strong human rights culture. Economic, social and cultural rights – the right to health, to food, to education, to shelter – are not accepted as rights but as mere aspirations to be realized as a byproduct of a healthy market and decent democracy, in contrast to civil and political rights which are often promoted by Western countries in a manner that is denounced as imperialistic and self-serving by poor, developing countries.

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*“... the glass pillar of the U.N. architecture is very much in the process of trying to reassert itself as a truly indispensable feature of the legitimate quest for human security.”*

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Finally, there are many more technical reasons flowing from the above. The nature and evolution of international law from first inter-state law to law that now reaches persons directly, like human rights law or international criminal law, has not fully matured. The growth of international and regional institutions with increasing enforcement capabilities and the globalization of a culture of rights, moved by an ever-more sophisticated NGO community operating at the international level – all these are still perceived as an affront to state sovereignty. In short, the glass pillar of the U.N. architecture is very much in the process of trying to reassert itself as a truly indispensable feature of the legitimate quest for human security. And it has much to offer, but





only if its champions are prepared to acknowledge the necessary linkages between security and development and embrace a human rights vision that is truly universal, encompassing all rights equally for all people.

It's interesting in this context to explore the promise and some of the shortcomings of the emerging doctrine of responsibility to protect, which I think is a topic that has been discussed in this institute in the past and is still very much at the forefront of a lot of international discussions on the issue of human security.<sup>4</sup> As you know, the doctrine was born in the aftermath of the NATO airstrikes in Kosovo, initially as a product of the International Commission on Intervention and State Sovereignty, which introduced the concept in its 2001 report. Somewhat surprisingly, that doctrine was endorsed in very specific language – to which I will return – by the General Assembly in the outcome document of the World Summit in 2005.

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<sup>4</sup> Please see Lloyd Axworthy's lecture on "The Responsibility to Protect: Prescription for a Global Public Domain" and Gareth Evans' "Preventing Mass Atrocities: Making 'Never Again' a Reality." [http://www.sandiego.edu/peacestudies/ipj/programs/distinguished\\_lecture\\_series/](http://www.sandiego.edu/peacestudies/ipj/programs/distinguished_lecture_series/)



As endorsed in that document, the doctrine views security in a very traditional framework, which I suggest links it, again, to civil and political rights. Climate change, the food crisis, natural disasters, global epidemics such as those created by HIV/AIDS and anticipated by the avian flu – all these are posing security issues that emphasize in my opinion the importance and the relevance of economic, social and cultural rights and are not at this stage clearly conceptually embraced by this emerging doctrine of responsibility to protect.

In a nutshell, that doctrine, as articulated in the outcome document in 2005, expresses the primary responsibility of states to protect their people “from genocide, war crimes, crimes against humanity and ethnic cleansing.” It then provides, of course, that if states are unable or unwilling to discharge that responsibility, the responsibility then passes to the international community which must intervene through a serial process involving prevention, reaction and rebuilding phases under the authority of the United Nations and, in particular, of the Security Council, if and when it has to come to coercive action.

I will return to this sequencing feature in a moment, but first let me look briefly at the scope of the responsibility as stated in that document. In light of its historical linkage to the doctrine of humanitarian intervention, which posited an often unwelcomed right to intervene militarily to curtail a humanitarian catastrophe, the responsibility to protect was carefully articulated to stress not the right of the prospective intervener, but the responsibility of all states – primarily of course the state affected – to protect their people and to be supported in that effort and to be supplemented if they failed.

I am concerned that too much emphasis is being placed on individual state responsibility, as if to mask the less popular aspect of the doctrine – its most controversial aspect – that of the collective responsibility of all member states of the United Nations to take timely, appropriate action, not just to support a struggling state, but to overtake a defaulting one. Reduced to the responsibility of states to protect their own people, the doctrine in my view doesn't do much except to reconstruct the concept of state sovereignty



from a protective shield for state action to a bundle of responsibilities and obligations. But unaccompanied by any form of compulsory enforcement, let alone sanctions for default, this re-conceptualization doesn't yield much hope for improving the plight of those supposedly entitled to state protection.

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*“... the most significant advance in terms of real prospect for real protection is in the transformation of the right to intervene into the responsibility to do so.”*

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There is no hiding the fact that the bite of the doctrine is in the collective responsibility of the international community, acting through the United Nations, to extend directly their own protective support to those who are abandoned, or worse are targeted, by their own government. And yet again, neither the outcome document of the World Summit nor, frankly, the thorough exposé of the doctrine by the original international commission that looked at it are very explicit about the nature of that responsibility.

I must say that in my view the most significant advance in terms of real prospect for real protection is in the transformation of the right to intervene into the responsibility to do so. I think the language is very significant. I've made this point at length in a lecture I gave last year at Trinity College in Dublin, but in short, here's how the argument goes. The right to intervene in the internal affairs of another state in the face of a humanitarian crisis implies that the intervening state has a choice to intervene or not. That's what having a right means. The exercise of a right is discretionary: One may choose to intervene or not. And in fact when the intervener chooses to act, it will often be perceived to coincide with its self-interest. And when it chooses to exercise its right not to intervene, it will merely be an exercise of a rightful option. And this of course would apply to the international community as a whole: It could choose or not to extend a protective hand to people in need. That's under the doctrine of humanitarian intervention, the right to intervene.

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*“I believe that the responsibility to protect opens a truly new era in the pursuit of human security.”*

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Under the responsibility to protect doctrine, this is no longer so. There’s no longer a right, a discretion to intervene, but a responsibility, an obligation to do so, in certain defined circumstances. Now this is a monumental conceptual shift, but it’s still lacking in clarity about the exact nature of that responsibility. Is it merely a moral or a political responsibility? If so, it would still carry a considerable element of discretion in the sense that the consequences of failing to meet a mere moral obligation may not be very severe. But what if we’re talking about a legal obligation? And I believe that the responsibility to protect opens a truly new era in the pursuit of human security.

There again I think a reality check is necessary. The legal obligation to prevent genocide is expressly articulated in the Genocide Convention, which will be 60 years old a day before the anniversary of the Universal Declaration of Human Rights – that is, on December 9 of this year. It’s a norm of international customary law, but still very few efforts have been made since it was enacted 60 years ago to endorse it as such.

This brings me to a second aspect of the doctrine of responsibility to protect as articulated in the 2005 World Summit that I think we need to examine. A debate emerged relatively early as to whether the responsibility to protect was couched in terms that were too narrow. As I mentioned to you, it’s restricted to protection from genocide, war crimes, crimes against humanity and ethnic cleansing. Many argue that this was the proper approach if the doctrine was to have any real application. They claim that to the extent that it posits a role for the international community to intervene directly in the internal affairs of the state, the doctrine had to be focused on a restrictive set of the most egregious threats to life, thereby ensuring its viability and its relevance as a framework for international action.



Others questioned whether this narrow focus was not once again a mere reflection of the Western-style preference for the protection of civil and political rights over economic and social rights. In many human rights circles, questions were raised about the responsibility of states to protect their people, their populations from disease, famine, the effects of natural disasters and of extreme poverty and deprivation, particularly if those deficiencies were rooted in discrimination. On what basis was state responsibility, national or international, to be restricted to what in effect amounted to international crimes, rather than reflect the broad range of human rights obligations either voluntarily undertaken by states by treaty or imposed on them by international customary law?

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*“Security can therefore no longer be viewed as either threatened or ensured principally through the use of force. In that sense, the Security Council ... should no longer be viewed as the sole forum through which the international community can extend its protective umbrella to persons in need.”*

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The debate was not only theoretical, as I think was evidenced by the world’s reaction to the attitude of the government of Myanmar in the aftermath of Cyclone Nargis. French Foreign Minister Bernard Kouchner, who had been a very strong proponent of the previous doctrine of humanitarian intervention – in French, *le droit d’ingérence*, “the right to interfere” – invoked very early the responsibility to protect doctrine at the time of the cyclone in Burma to suggest that the international community had to reach the victims of the cyclone directly, in the face of the inertia of the Burmese government. In a classic case of making the theory fit the facts, some who had argued for giving a limited scope to the emerging doctrine were now arguing that the non-action of the government of Myanmar could be said to amount to a form of criminal negligence, thereby making it a crime against humanity that would then fit squarely within the emerging doctrine as currently articulated.



I don't think it's necessary, frankly, to solve here this doctrinal debate. If anything it illustrates again the inter-linkages of development, human rights and security, between freedom from fear and freedom from want. Many of the conflicts that have flared, in particular in Africa, in the past decade are rooted in a multitude of human rights deficits and generate the widest variety of human rights violations. It ranges from arbitrary arrest to forced evictions to the particular vulnerability of women and marginalized groups everywhere. Security can therefore no longer be viewed as either threatened or ensured principally through the use of force. In that sense, the preeminence of the Security Council, the *primus inter pares* of international institutions, should no longer be viewed as the sole forum through which the international community can extend its protective umbrella to persons in need.

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*“... if we were to apply an intelligent institutional design to match the different phases of the doctrine - prevention, reaction, rebuilding - existing institutional candidates emerge and present shortcomings are readily exposed.”*

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The 2005 outcome document envisages a crucial role for the United Nations in the application of the responsibility to protect doctrine. In fact, if we were to apply an intelligent institutional design to match the different phases of the doctrine – prevention, reaction, rebuilding – existing institutional candidates emerge and present shortcomings are readily exposed.

First, the Human Rights Council should be the preeminent forum for early warning and prevention. This new intergovernmental body was mandated by the General Assembly in 2005, in the same World Summit, to promote universal respect for the protection of all human rights and fundamental freedoms for all. The council in my view should therefore monitor and respond to both acute and chronic human rights situations through its regular and special sessions,



as well as through its new procedure of Universal Periodic Review, under which the human rights record and performance of all countries, starting with the council's own members, will be considered at regular intervals.

Now, this blueprint for action by the Human Rights Council has yet to translate itself fully into the current reality. As you know the Human Rights Council was created effectively in 2006, after the demise of its predecessor, the much-maligned Commission on Human Rights. The Human Rights Council is still a political body and it behaves very much as such. It consists of 47 member states of the United Nations, elected by the General Assembly, and the 47 seats are allocated under the immutable principle of equitable geographic distribution, as a result of which 26 of the 47 seats are reserved for Africa and Asia.

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*“I would dare suggest that the membership of the United States in the Human Rights Council would go a long way to enhance the relevance of the council and could assist in moving it in the right direction.”*

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Although it was contemplated at the time of its creation that states would compete for a seat on the Human Rights Council and that they would have to make pledges and commitments as part of their campaign for election, and although it was hoped that members of the council would vote in their individual capacity – with their conscience so to speak – in reality the elections are rarely competitive within each regional group, and the members of the Human Rights Council tend to vote along group interests. Whether regional or geopolitical, these interests rarely coincide with the optimum human rights approach to the issue at hand.

I think for the time being it's safe to say that we have an institution that could serve an important prevention and early-warning role in the cases of serious threats to human security, but the institution that's mandated to do so has yet to





live up to its full potential. And I would dare suggest that the membership of the United States in the Human Rights Council would go a long way to enhance the relevance of the council and could assist in moving it in the right direction.

Let me turn to the second U.N. institution prominently featured in the responsibility to protect doctrine. The reaction component of the responsibility to protect norm fits very squarely within the range of diplomatic, dissuasive and coercive measures that the Security Council is empowered to deploy, assuming that the situation has reached the point of constituting a threat to international peace and security.

Once again there are serious impediments to the Security Council discharging effectively that function, one of which is of course the existence of the veto power of the five permanent members of the Security Council. You may

remember that a major part of the secretary-general's reform initiative, which led to this 2005 World Summit document, was the reform of the Security Council. That part of the secretary-general's effort was unsuccessful, but it generated useful ideas about ways to enhance the legitimacy and effectiveness of the Security Council in the area of human security.

Some of these ideas have been re-articulated very well in a recent article in *Foreign Affairs*, the September/October issue, by Morton Abramowitz and Thomas Pickering. Without going back to the thorny issue of the membership or composition of the Security Council and the issue of whether or not an increase in permanent membership should or should not be accompanied by a veto right, changes could be made without having to amend the U.N. Charter, simply by developing a consensus among the current permanent five members about the appropriate use of their veto power. And in the same way, the authors argue that even a relatively modest contribution by the permanent five members of the Security Council to peacekeeping operations, which they currently do not do, would go a long way to enhance the credibility and effectiveness of peacekeeping operations, particularly in cases of emergency.

All these discussions, which I think should be encouraged as political solutions, are more within our reach than formal institutional reform. Here again, however, a change of culture consistent with our collective responsibility to respond to humanitarian crises is not on the immediate horizon.

Now, third, there's a dual set of institutions in the United Nations equipped to handle the responsibility for different aspects of the rebuilding phase of the responsibility to protect doctrine. You'll recall it has a prevention, reaction and rebuilding phase. The Peacebuilding Commission, another new institution that the U.N. reform process in 2005 created, has the mandate to facilitate post-conflict recovery, and it should be ideally suited to identify the institutional reconstruction and economic development aspects of the responsibility to protect norm in the longer term.



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*“... let me stress that the sequencing of action from prevention to reaction to rebuilding is much more an intellectual construct than a likely scenario in reality. The reality of conflict management doesn't always lend itself to a convenient, chronological unfolding of responses.”*

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Multilateral justice mechanisms are also available to the international community to address the punishment component of reconstruction. As the international commission had noted, a major new element in the international community's protection armory is international criminal justice, which has been and can be activated when domestic systems fail or collapse, through which perpetrators can be both deterred or/and held to account.

Having said all that, let me stress that the sequencing of action from prevention to reaction to rebuilding is much more an intellectual construct than a likely scenario in reality. The reality of conflict management doesn't always lend itself to a convenient, chronological unfolding of responses. For instance, advocates of responsibility to protect often stress correctly that the doctrine is not only, not even mostly, about military intervention. Much of it they say is about prevention. Well, this is a very confused response. Military intervention is a tool expected to be used very much as a last resort, but in my view, it could be an appropriate tool even in the prevention phase of the doctrine. For instance, in the face of an impending genocide or crimes against humanity of some magnitude, everything else failing or being unlikely to succeed, prevention could require military action.

And in the so-called reaction phase – that is, when the crimes the doctrine seeks to prevent are actually being committed – the necessity to punish cannot be pushed back to the reconstruction phase. The call for accountability and the hope of personal criminal responsibility serving some specific deterrence

function – all this calls for the earliest possible investigation and prosecution of war criminals. This of course triggers the unresolved debate about the alleged conflicting purposes of peace and justice initiatives, and many will argue that punishment should be deferred always to the reconstruction phase of the doctrine and should not interfere with the protective reaction efforts.

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*“Whether it will make a much needed contribution to increasing human security, and therefore to peace and equitable progress, depends much more on U.N. member states’ political will than on any further theoretical refinements of the doctrine.”*

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I disagree, as I believe justice serves a protection function, and that in the sequencing of response to conflict, justice delayed is still justice denied. Again, it’s unnecessary to resolve this debate here, but it’s important to understand the breadth of this emerging doctrine and to think it through as we now seek to operationalize it.

The responsibility to protect norm is part and parcel of a new vision of human security that the World Summit leaders agreed to in 2005. Whether it will make a much needed contribution to increasing human security, and therefore to peace and equitable progress, depends much more on U.N. member states’ political will than on any further theoretical refinements of the doctrine. But it depends also on building within the United Nations an institutional infrastructure capable of effectively implementing the doctrine’s prescriptions. And for that, the full participation of the United States will be critical not only within the Security Council, where it occupies with four others a privileged position, but also within the Human Rights Council, where by choice it occupies currently no seat. And for the U.S. to make the contribution that it can, should and must make to a more secure and a more just world, it will have to re-embrace the fundamental tenets of the Universal Declaration of Human Rights.



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*“... why is the World Food Programme buying food from the Sudanese government to distribute it to the people of the Sudan? Doesn't the government of the Sudan have a direct responsibility to feed its own people, the international community intervening only if and when it is unable or unwilling to do so?”*

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On the eve of the 60th anniversary of the Universal Declaration, the fundamental concepts of universality and indivisibility of rights may be coming closer in a world in which security issues are no longer to be associated principally with the Cold War or the threat of nuclear warfare. The combination of catastrophic natural disasters, such as Hurricane Katrina or Cyclone Nargis, and the negligence, ineptitude or worse of governments, has highlighted the dramatic impact of poverty, discrimination and social exclusion within countries and between countries. The profound insecurity created by deprivation is at the heart of the unfulfilled promise of globalization. Even in sophisticated democratic societies, political play alone is unlikely to offer adequate redress. The law, and human rights law in particular, offers the blueprint for an integrated view of human security, guaranteed by individual rights and collective responsibility, and state as well as individual accountability.

The current shortcomings in the distribution of responsibility between national states and the international community in my view can be no better illustrated than was done by Jeffrey Gettleman in the August 10 edition of the *New York Times* in an article entitled, “Darfur Withers as Sudan Sells a Food Bonanza.” The journalist exposes the booming Sudanese food-export industry, while the country is the recipient of billions of pounds of free food from international donors and while the World Food Programme, which often gets donations in cash, cannot meet all its requirements for the Sudan



by buying food in the country because the government makes more money exporting it than selling it for domestic consumption.

This, one might say, begs the question, why is the World Food Programme buying food from the Sudanese government to distribute it to the people of the Sudan? Doesn't the government of the Sudan have a direct responsibility to feed its own people, the international community intervening only if and when it is unable or unwilling to do so? And why are governments like that of the Sudan willing to let the international community discharge its obligation to protect by feeding the people of Darfur, but it's not willing to let the international community discharge its broader responsibility to protect the people of Darfur from rape, killings and displacement?

The answer might lie in part in the pernicious dichotomy between civil and political rights and economic and social rights reflected in the World Summit's articulation of the doctrine of responsibility to protect. It rests also on the age-old difficulty of equating in law crimes of omission and crimes of commission. We may therefore need to articulate with better clarity the basis on which violations of economic, social and cultural rights may constitute crimes against humanity. Just as it took very serious jurisprudential efforts to ensure that rape is properly prosecuted as a crime against humanity and even in appropriate circumstances as an act of genocide, gross violations of the right to food, to health, to shelter – whether by direct action or by criminal negligence – should come to find their proper place within the emerging doctrine of responsibility to protect.

I would hope that every effort would be made both by international and domestic prosecutors to fully explore the scope of the law defining crimes against humanity, so as to give the fullest possible effect of the right to life, which is the cornerstone of both major international human rights covenants: the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Now, I suggest that this will require a holistic approach to security, first and foremost emphasizing human security over a nebulous and convenient claim of national security, and a genuine commitment to the imperatives of equality and universal entitlement to the protection of the law.

In democratic society, what we ask of our elected governments is that they design and adjust at all times laws that will ensure the proper balance between our desire to be safe and our desire to be free. As people and as communities, we essentially ask ourselves, how much of my freedom am I prepared to sacrifice to my security? In a perversion of that question, often fueled by unarticulated political interests, some people who don't think of themselves as vulnerable to abuses of power often hear the wrong question. They hear: How much of the freedom of others am I prepared to sacrifice to enhance my own security? The answer then is a lot easier, but the result is perverse.



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*“The rights of every individual are enhanced, not reduced, by the enhancement of the rights of others, and conversely, every one of our fundamental rights and freedoms is diminished by the curtailment of the rights of others.”*

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This is where enforceable laws must supplement and support democratic ideals, and this is indeed the genius – in my view – of human rights law. The rights of every individual are enhanced, not reduced, by the enhancement of the rights of others, and conversely, every one of our fundamental rights and freedoms is diminished by the curtailment of the rights of others. Ultimately both our freedom and our security are best ensured by the enhancement of the freedom and security of everyone else. In that sense, the imperatives of indivisibility and universality of rights have real, practical implications, the most important one being that rights must be enforceable and that they must be promoted and enforced by law.

As I’ve indicated earlier, whether historically alleged humanitarian interventions were clearly such or whether they were a mere disguise for the pursuit of cruder forms of self-interest, they remain a deficient tool for the enforcement of human rights. Even in dramatic and large-scale threats to the right to life, humanitarian interventions as we knew them before the articulation of the doctrine of responsibility to protect put inadequate emphasis on life as an enforceable right. In the wake of the opinion of the International Court of Justice in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, I think we are witnessing the important fleshing out of the legal obligation to prevent genocide, while we build on the political commitment to expand that responsibility to related international crimes.

Ladies and gentlemen, in conclusion and before I take your questions to get on topic, I suggest then that a legal landscape is emerging on which peace and security will be enhanced by the ascendance of an international legal order that will not supersede the political, but that will further constrain political action that imperils human security. From the articulation of the doctrine to the advocacy necessary for a broad-based political endorsement and the setting up of institutional and operational support, there is a considerable distance to go, but frankly, the biggest steps have already been taken. They were taken at least 60 years ago by the framers of the United Nations and by the framers of the Universal Declaration of Human Rights. Our task is merely to give it an air of reality. Thank you very much.



## QUESTIONS AND ANSWERS

*The audience submitted questions which were read by Dee Aker.*

**DA: Thank you so much. Given your travels, given your experience during those four years as human rights commissioner, are you optimistic or discouraged at this point? Do you find any place where you see responsibility being assumed in a way that would model a sense of possibility for us to proceed?**

LA: For what it's worth, and if it's of any encouragement to anybody, I am actually optimistic, but maybe it's just my nature and it's not based on any empirical foundation as to why I should be so disposed. First, let me back off and say that I think that women have a particular take on these kinds of issues. I think that we are not easily discouraged by the concept that as humans we have to spend a lot of time just cleaning our immediate environment and that this is not a sign of defeat. It's not because we don't get up every morning to build the cathedral that we are in a state of regression. A large part of being human consists of cleaning our nest and making it comfortable for ourselves, for our families, for our clans, for our broader community. And that is a good thing; that is in large part just what is expected of us.

So I think you become pessimistic when you set an unrealistic, very high bar for human accomplishment. To reduce conflict, which statistically we have – the number of raging conflicts has diminished – to address seriously the gross inequities that are a stain on our collective conscience, the gross inequities in the distribution of the wealth of the planet, within countries and between countries, is something we accomplish very much on a day-to-day basis. If we make a little progress on any of these issues, I think we have cause to believe that we're moving in the right direction.

**DA: Let us hope. In the fact that there are democracies as well as these regimes of tyrants that are now holding up their responsibilities, which is more distressing to you: to see a democracy not upholding these standards**



**or to see that there are these regimes that are so off track? Which is the greater challenge to us?**

LA: Well, again, it depends what it is we're measuring. If it's a sense of personal disappointment and almost betrayal, it's true that we are hugely disappointed when we see an erosion, particularly an erosion in norms of behavior. Frankly, I think what has happened in recent years in the United States where the government was expressing ambivalence vis a vis the use of torture, or what amounted to torture, was causing enormous distress in the human rights community. They felt that if we can't even maintain the terrain, the gains that have been made over the past 60 years on agreeing on norms, how can we possibly, seriously, believe that we will increase our capacity to enforce these norms? And how can the United States continue to occupy the strong leadership and advocacy role that it has occupied for such a long time if it is so easily discredited by those who are just looking for a pretext not to follow the path?

But at the end of the day I find it very difficult to make comparisons: Are human rights violations more severe in one country than another? The answer is probably yes, but I don't think it particularly helps. For instance, I've never been a great champion of the idea of a kind of ranking of human rights performance. If we ask ourselves, are human rights more respected today in Mauritania or in Sweden, I don't think it's going to do any good to either the people of Sweden or Mauritania to answer the question. In my view, the only relevant question is to ask every state, very clearly, are you today in a state of regression, stagnation or progress vis a vis your own capacity and your own history and human rights record? That's a relevant question, and that's a question where I think on that kind of test, it's quite surprising who would occupy the first place.

**DA: This question is regarding human security. In order to achieve some of the goals that you presented tonight, do we need a more legal approach – for example, a strengthening of international criminal law – or a more political approach – for example, conscience-building, consensus-building among political actors?**

LA: I like lawyers better than politicians. I firmly believe that there is no universal point-of-view. We all have a point-of-view. I come from the law. I believe in the law. I believe that we have not even begun to exploit fully what the law has to offer in international work. Now, having said that, we can only hope and pray for the emergence of a more admirable political class. I don't want to disparage any politicians anywhere, but I think the law offers us guarantees that are longer term than the political convenience of the moment. The law leads to the building of institutions – nothing happens without people, but nothing lasts without institutions, as the saying goes. If I only had so much energy, I think I would stay within the promotion of legal instruments.

**DA: In line with your newfound freedom of expression, do you believe that Myanmar, or Burma – in terms of its horrifying tragedy – was a missed opportunity to assert the requirements of intervention, when aid and aid workers were continually turned away with the charge that aid was for another reason? How did you perceive that? What was supposed to happen with that obligation as a basis of human rights?**

LA: I think as the playing field currently exists, both the legal landscape and the emergence of a political consensus, I don't think that any kind of forced foreign intervention was a realistic option, disappointing as it is to say it. Frankly, I think in that particular climate the best tools were still political ones, including trying to persuade China to exercise a more proactive role as an emerging and very important international power force in its own backyard. And in the case of Myanmar, on certain international initiatives China may have played a more positive role than it got credit for, possibly because it wasn't really seeking any particular credit. But I think in the case of Myanmar, regional pressure (the ASEAN countries<sup>5</sup> were very involved) and trying to mobilize the potential for the positive role of China was as much as we could expect at that time.

**DA: Do you have any comments, again with this newfound freedom, to make about the legitimacy regarding the humanitarian issue of**

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<sup>5</sup> Association of Southeast Asian Nations.



*Arbour discusses her lecture with IPJ WorldLink Interns Jay Bartell and Sierra Parker*

**Guantánamo Bay, a prison containment center being on foreign soil, outside the U.S., and not under the same laws apparently as the U.S. in terms of human rights?**

LA: The very first concern that I had about the existence of Guantánamo Bay to a large extent has been addressed, and that was – both in retrospect and at the time – the clear intention of the U.S. government to avoid the judicial oversight that is part of its democratic machinery. There’s more to a democracy than electoral politics, and I think that we know that the strength of a great democracy like America is the linkages between the branches of government, between the legislative, the executive and the judicial branch. A great distress for me at the time, again coming at it very much from a legal point-of-view, was this blatant attempt to shelter completely the actions of the executive from the imperative of judicial oversight.

This has been addressed in large part through litigation. The courts have started to re-occupy the place the government was trying to deny them in the management of one of the most difficult legal, security-related issues of our time. In that sense, I feel a lot better that the courts are back in the picture very seriously. It doesn't mean I've agreed with every decision rendered by the court, but that's not the point. The point is to have judicial scrutiny.

Now, at the end of the day, I think that Guantánamo, the mere existence of that institution, has now become a metaphor for American exceptionalism, double standards, the lack of moral standing that the United States is perceived to have when it tries to continue its advocacy on human rights issues. So I think the existence of a facility in which there is, in my opinion, arbitrary, prolonged detention without much hope that any of these cases will be tried anywhere, never mind in this country, has caused tremendous damage to the United States internationally and domestically.

**DA: Staying on that political line, what message would you give to a new U.S. president regarding human rights and the damage that U.S. foreign policy has done in terms of representation in the international community?**

LA: This is very presumptuous of me to start giving advice to an incoming president. There are many things. If I were asked to do a little prescription for what the U.S. could do, as I mentioned in my remarks, I think the United States has to rejoin the international community on the international scene. So I would hope that we will see the United States compete for election in the Human Rights Council. It's inconceivable to have that metaphorical empty chair. I very much hope that we will see the United States – and that, frankly, is quite a modest expectation; I don't think it's a very big deal. I'm much more ambitious than that.

I'd like the United States to re-sign the Rome Statute creating the International Criminal Court. I really believe that American people coalesce around the idea that tyrants should be taken down, should be made to account, should be



disempowered. I really believe that that's a standardly accepted view, but it's not possible for the United States to promote that idea while at the same time making itself unanswerable to foreigners, to the idea that nobody can look at us.

**DA: How can private security actors be held accountable – under whose legal framework?**

LA: I have a sense that this will be litigated and we'll find legal answers to that. But it would seem to me that it has to be a fundamental principle that the state cannot abdicate its responsibility by delegating to non-state actors what is essentially its own responsibility. You cannot privatize warfare and say that the Geneva Conventions do not apply because the actors are all non-state actors. I think that the courts will pierce this veil of delegation of responsibility between the public sector and the private sector in the general area of the laws of war, and that the responsibility will be revisited back where it belongs, which is on the state.

**DA: Seeing as this is part of a working conference on the role of women peacemakers, violence against women and security issues, what is your perspective on the gender dimension? Can you speak a bit more on the role women are playing?**

LA: Well, maybe I'll just take a little longer on this one, to back up one step. When I became a member of the judiciary in Canada – well, first of all it was in the previous century so that's a long time ago – but it was still at a time when there were serious questions about the numbers and the considerable absence of women in the courts. As we started invading the judicial system, there were lots of interesting discussions on the question, what difference should it make? If a judge is there to apply the law – you know the image of the blindfold – what difference should it make if you're a woman or a man, a member of the minority group? You're not supposed to decide a case on the basis of your personal preference, so why are you so exercised by the idea that we should have more women on the bench?



There were lots of debates and discussions and some studies about whether women judges speak in a different voice. And that debate was somewhat divisive to a certain extent, even amongst feminists and all those who were promoting more participation of women in judicial decision making. So there were many who certainly, based on the work of Carol Gilligan who wrote the book *In a Different Voice*, argued that women have a different moral outlook, have a different sense of moral community. Others were very skeptical and said, even if women through their upbringing had a different moral outlook, three years of law school will take away any moral outlook – it's the great equalizer: You come out of this, you don't have any moral views. No, I'm exaggerating.

But the same debate, not as passionately articulated maybe, is simmering on the question of whether women really have something special to contribute to the rebuilding of communities, to post-conflict management. And frankly, without disclosing what position I took on the judicial issue, I really believe that women worldwide have a unique, very particular relationship to violence in all its forms. We are collectively the unfortunate recipient of the larger part of violence in all its forms, including the most invidious, home-based, family-related violence. So I think women have a particular understanding of violence in all its forms.

I believe women have also a particular take on the resolution of disputes. Again, there are lots of debates as to whether women are better at seeking a consensus. But at the end of the day it's a matter of right. We have a right to participate in our own governments and we have to build institutions domestically and internationally that are the mirror of the communities in which we work. That's what diversity is about, including I think the participation of adult women in their own governance, including in the reconstruction of a country and the search for peace.

**DA: When we think about the fact the U.S. is 69th in the percentage of women serving in government, and we look at a place like Rwanda, which went through this incredible crisis, which now has a majority of women running the government, what happens in that process? Do we have to go through some kind of violent experience to step to the plate to take action?**



LA: I certainly hope not. But frankly, the old-fashioned, liberal, Western democracies don't look particularly good. I don't have the statistics on the question of participation in governance, but there are lots of younger democracies – and maybe because they came in to structure it themselves in this century – that have no difficulty imposing quotas for the participation of women in their legislative branch. We have to be careful with that. In Afghanistan, for instance, they have seats secured for women, but it's very dangerous to have women basically being just the proxies of other interests. So it's not a fully guaranteed system. But participation in governance is very much the contribution of the new world, of emerging democracies. On that front and many others, we, the more traditionally established Western countries, do have a few lessons to learn.

**DA: What is the United Nations doing to push the U.S. to ratify the women's human rights treaty signed by most other countries: CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women? Is there any pressure?**

LA: It's not just the Convention on the Elimination of All Forms of Discrimination Against Women. The United States is not a big ratifier of treaties, particularly of human rights treaties. That's the reality. It has an extremely low ratification rate. The usual answer is, well, we don't need to ratify because we're already in compliance. I hear that one not just in the U.S. but in many countries that will not ratify.

This is a debate that I think has to take place within this country. What is the United Nations going to say to persuade the American government to embark on a series of treaty ratifications? Why isn't the U.S. ratifying the new Convention on the Rights of Persons with Disabilities? Why? I think this is a quintessential American debate. It has to take place in this country. It's part of joining the international community. It's part of rejecting any sense of exceptionalism that we're different.

In many ways, particularly when it comes to military action, I think it's important to recognize that the United States has a very unique exposure. It's called to action much more than anybody else. It's very exposed. But it



doesn't mean that it has to withdraw completely from the mechanisms that all others have to embrace, whether on racial discrimination, on discrimination against women, on persons with disabilities, the Convention on the Rights of the Child. The United States has still not ratified the Convention on the Rights of the Child. How can that be? Along with what now, Somalia?

**DA: Assuming that Vice President Dick Cheney or former Secretary of Defense Donald Rumsfeld traveled abroad and are detained for crimes against humanity, would you take on the difficult task of defending them, if offered?**

LA: I thought the question was going to be, would you prosecute? But I have to say, defending has a certain attraction. First of all, it's just about the only job I've never had in the realm of international criminal justice and compared to prosecuting it tends to pay better. But I don't think it's likely that my services would be retained in that capacity.

**DA: Can you say something about the rights of immigrants, the global phenomenon of people being pressed across borders, the internally and externally displaced?**

LA: I think that the question of immigration is probably one of the most challenging for the entire world and, unfortunately, we tend to see it with very narrow geographic lenses. The word immigration on this continent, particularly in this country, evokes a particular flow of persons for particular reasons. But in Indonesia, for instance, there is an exodus of domestic workers to the Gulf countries. So the question of the movement of people, particularly for economic reasons, is a worldwide phenomenon that in my view is not being addressed sufficiently in human rights terms. It's being addressed, certainly in a U.N. forum, always as an economic and a political issue – but mostly as an economic issue, where the message is supposed to be that it's a win-win situation: It's good for the country of origin, remittances, it's good for the countries who have shortages of workforce. But I think we haven't really seriously addressed it as a human rights issue.



For instance, and this is not just the United States, there's not a single Western country that has ratified the Convention on the Rights of Migrant Workers and Members of Their Families. Now, how can the Western world lecture developing countries about their human rights obligations when it is not prepared to take on the responsibilities in the few areas that really hurt them, that are hard to sell to their populations, that are sometimes unpopular issues?

On questions of migration, racism, all of a sudden you see a retrenchment by Western countries – by Europe, by North America – and I think it has to be looked at in human rights terms, including the fact that undocumented, illegal immigrants have rights. They may not have the full-fledged rights that come with citizenship in the same way that landed immigrants or immigrants who are in a country irregularly may have, or the same full-fledged series of entitlements that come from nationality and citizenship, but they have some rights. They have the right to life. Is anyone suggesting that we should kill them all? But this refusal to look at the position of people who are outside their country of nationality or origin as rights holders is not acceptable.

**DA: In Uganda the Lord's Resistance Army (LRA) victimizes its subjects and yet the leaders of the rebellion fear to come to an agreement due to fear of the International Criminal Court and the potential for their arrest now. And so, the subjects on whom the Lord's Resistance Army prey are still victimized. How can the Human Rights Council help or how can something change this case?**

LA: On that I would question the premise of the question, which is that the leaders of the LRA refuse to negotiate a ceasefire or a longer term peace agreement because they're afraid of the International Criminal Court. Where have they been in the last 20 years? They weren't at the table, and there were no indictments against them. In fact, I think the ICC withheld for some time its indictments in the hope that the peace process would advance. So, frankly, one has to ask, is this just a pretext for not making a deal that they don't want to make in the first place or is this a genuine concern? And if it is a genuine concern, well, there are not a lot of options. The option that they would like



doesn't exist anymore, which is not to be held accountable for anything. That one is no longer feasible. So if what they're saying is that they would rather be tried for crimes against humanity in Uganda, that is an option. It's not one that's up to them; it's up to the ICC. So there are options. But the one that they would like, which is never to have to account for their 20-year murderous rampage, fortunately that one is not an option anymore – thank God.

**DA: What can young people do to make human rights a fundamental pillar of the United Nations and the international community?**

LA: There are times when I wonder how challenging this must all look, because young people today are confronted with so much more information and so many at least theoretical options, but how to materialize these options in reality is a little more difficult. I think we can't be of every good fight. There are times when I look at what I've done and I think, I feel very badly because I've never been seriously engaged on issues related to the environment. Well, that's true, but I was really busy. You can't let yourself feel inadequate because you can't save the planet in all its aspects.

I think you have to pick your fights and really commit. Then you have to show solidarity with the others who are picking the other good fights. You have to be a good citizen; there's an obligation to inform yourself. But as to what kind of work plan you should have, I can't say. I can't even figure out how young people figure out what these options are for them.

Again, as a general position I'd say: Pick one. Don't feel badly you can't do them all. Make sure that others do them all, particularly your elected leaders. Believe in solidarity. You have to belong to a group that is moving with you toward this better world.



## RELATED RESOURCES

**2005 World Summit.** [www.un.org/summit2005](http://www.un.org/summit2005)

**Abramowitz, Morton and Thomas Pickering.** “Making Intervention Work.” *Foreign Affairs*. September/October 2008.

**Convention on Civil and Political Rights.** [www.hrweb.org/legal/cpr.html](http://www.hrweb.org/legal/cpr.html)

**Convention on Economic, Social and Cultural Rights.**  
[www.hrweb.org/legal/escr.html](http://www.hrweb.org/legal/escr.html)

**Convention on the Rights of Migrant Workers and Members of Their Families.**  
[www.migrantsrights.org/Int\\_Conv\\_Prot\\_Rights\\_MigWorkers\\_Fam\\_1999\\_En.htm](http://www.migrantsrights.org/Int_Conv_Prot_Rights_MigWorkers_Fam_1999_En.htm)

**Gettleman, Jeffrey.** “Sudan: Living on handouts and exporting food.” *New York Times*. 10 August 2008.

**Human Rights Council.** [www2.ohchr.org/english/bodies/hrcouncil](http://www2.ohchr.org/english/bodies/hrcouncil)

**“In Larger Freedom.”** Report of the Secretary-General of the United Nations. September 2005. [www.un.org/largerfreedom/](http://www.un.org/largerfreedom/)

**International Crisis Group.** [www.crisisgroup.org](http://www.crisisgroup.org)



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