

# Human Rights: From San Francisco to The Hague

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## I. Introduction

Ladies and Gentlemen, Dear Colleagues and Friends,

I am profoundly honored to have been asked to deliver this lecture in the newly established lecture series honoring Professor Dr. *Karl Doebring*. It is also a very great pleasure for me to be back at your Institute, which I have always viewed as my International Law Mecca. Starting already during the tenure of Professors *Mosler* and *Bernhardt*, I was privileged to be invited from time to time to participate in various Institute activities. My service on your *Kuratorium* and the Board of *Bernhardt's* Encyclopedia of Public International Law, as well as the colloquia, to which I had the pleasure of being invited over the years, made me a better international lawyer. The honorary degree conferred on me in 1986 by the Heidelberg Law Faculty on the occasion of its 600<sup>th</sup> anniversary while *Karl Doebring* was its Dean, continues to have a very special meaning for me. And my long friendship with the directors of the Institute of my day – Professors *Bernhardt*, *Frowein* and *Doebring* – greatly enriched my professional and personal life.

*Karl Doebring* was a valued friend, a distinguished scholar, an excellent teacher and, above all, a person of principle. Despite our very different personal backgrounds and life experiences, our long friendship was no doubt due to a shared commitment to those values, as he put it, “in which freedom of the individual is a concept that is accepted in practice, rather than being

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merely a notion to which lip service is paid ...”. And, even more significant, we shared a strong commitment to individual freedom and to the belief that “scholarship is not an end in itself. It ... is intended to benefit mankind.” It is therefore not all that surprising that we wrote a book together, joined also by *Juliane Kokott*. Professor *Kokott* was the perfect partner in that threesome since she had been *Doehring’s* and my student. [See *J. Kokott/K. Doehring/T. Buergenthal*, *Grundzüge des Völkerrechts*, 3<sup>rd</sup> ed. 2003.] That has enabled both of us to do, what all good professors do, to claim full credit for her many professional achievements.

In 1989, while teaching at the Emory University Law School in Atlanta, Georgia, I received an invitation to come to the George Washington University Law School in Washington, DC as a visiting professor for one semester. When Emory asked me whom I would recommend to take my place during my absence, I suggested Professor *Doehring* without first checking with him whether he would be interested in this temporary assignment. Once Emory authorized me to contact *Doehring*, I called him, not without some concern, fearing that his very brief teaching experience at an American law school, his limited experience with the Socratic teaching method and his age – he was already 70 years old at the time – would prompt him to turn down the invitation. I should have known him better: He accepted on the spot, his voice ringing with enthusiasm. I learned later that he proved to be a great success at Emory. He adjusted easily to the Socratic teaching method and its inquisitorial style. The fact that he enjoyed interacting with students without invoking professorial superiority also proved effective in an American law school classroom. In short, he was a very special person whose friendship I appreciated very much. I miss him.

*Karl Doehring’s* title to his insightful memoir “Von der Weimarer Republik zur Europäischen Union” influenced the title of my lecture, “Human Rights: From San Francisco to The Hague”, and allows me to trace the evolution of modern international human rights law from its source – the Charter of the United Nations (UN) – to the International Criminal Court (ICC). Here I do not propose to analyze the vast body of contemporary international human rights law. My focus, instead, is on providing a panoramic overview of the contemporary international human rights system. In doing so, I plan to discuss the significance of the system and its weaknesses, concluding with some proposals to strengthen it.

## II. The UN Human Rights System

The birthplace of contemporary international human rights law is the San Francisco Conference where the United Nations Charter was drafted. The Charter, in a handful of provisions of an instrument consisting of 111 articles – Arts. 1 (3), 13 (1) (b), 55 (c), 56, 62 (2) and 68 – laid the foundation for what has evolved into the contemporary international human rights system. Of these provisions, the most important is Art. 1, para. 3, which declares that one of the purposes of the UN is the achievement of “international co-operation ... in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. To achieve this purpose, the Charter provides in Art. 55 that the “United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”. Art. 56, in turn, imposes comparable obligations on all UN Member States by requiring them to “pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Art. 55”.

The Charter confers general jurisdiction on the UN General Assembly (UNGA) to deal with human rights matters. [Art. 3 (1) (b).] In exercising this authority, the UNGA is required to “initiate studies and make recommendations” that promote “international co-operation ... in the economic, social and cultural ... fields” and advance “human rights and fundamental freedoms for all ...”. The task assigned to the Economic and Social Council (ECOSOC) was to assist the UNGA by adopting recommendations “promoting respect for, and observance of, human rights”. [Arts. 62 (2) and 68.] In 2006, these ECOSOC powers were transferred to a new body, the UN Human Rights Council (HRC). Also replaced was the UN Human Rights Commission, which had been established in 1946 and performed some very useful functions over the years. (See UNGA Res.60/251 of 15 March 2006.) The UN High Commissioner for Human Rights (OHCHR), a position established in 1993, is the principal human rights official of the United Nations, whose function is to promote and coordinate the UN’s overall human rights policies, to serve as its worldwide human rights advocate, and to translate UN human rights policies into action.

This reorganization of the institutional structure of the UN’s Charter-based human rights system was prompted by two considerations. One had to do with the contention of some Member States that the previous structure had become highly politicized and negatively affected the human rights efforts of the UN. The other was motivated by a desire to confer a higher

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institutional status and greater visibility on the role of human rights within the UN system in order to strengthen it. It is too early to say whether these expectations have been realized, although the politicization claim can again be heard. That should not surprise, considering that the UN is a political body comprised of a membership with diverse political objectives and contrasting views regarding human rights.

Although the drafters of the UN Charter listed the promotion of human rights among the purposes of the UN, the relevant Charter provisions indicate that UN Member States assumed relatively vague and not very burdensome obligations in the field of human rights. Moreover, the powers the Charter confers on the Organization to promote human rights are also weak. This is rather surprising, considering that the Charter was drafted not long after World War Two and the Holocaust. It can no doubt be attributed to the fact that the five major powers assembled in San Francisco were unwilling, due to their own human rights problems, to support the inclusion in the Charter of any stronger human rights obligations. Over the years, however, the UN was gradually able to interpret that language so as to allow it to develop a vast body of international human rights law, to establish UN Charter-based human rights institutions, among them the Human Rights Council and the Office of the High Commissioner for Human Rights, and to adopt many treaties that define the meaning of international human rights.

The major normative contribution of the United Nations to international human rights consists of a pioneering group of UN human rights treaties which proclaim the basic principles of contemporary international human rights law. This body of law consists of the Universal Declaration of Human Rights and the two International Covenants on Human Rights, which together constitute the International Bill of Rights. It proclaims civil and political rights as well as economic, social and cultural rights. Although the Universal Declaration is not a treaty, many of its provisions can today be deemed to have become law. Supplementing the Bill of Rights are the following major UN treaties: the Racial Convention, the Convention on the Elimination of Discrimination against Women, the Torture Convention, and the Convention on the Rights of the Child. Also belonging to this important group of treaties is the Genocide Convention. It was adopted on December 9, 1948, one day before the proclamation of the Universal Declaration by the UNGA. Each of these treaties, except for the Genocide Convention, operates with its own treaty body or Committee. Although the Covenant on Economic, Social and Cultural Rights did not originally pro-

vide for a Committee, one was established for it in 1985. [ECOSOC Res. 1985/17 of 28 May 1985.]

The Committees monitor compliance by the States Parties with their obligations under the aforementioned human rights treaties. Unlike most UN organs and sub-organs, the Committees are supposed to be composed of independent experts elected in their individual capacity and not as State representatives. Whether and to what extent Committee members are truly independent depends on the States Parties that nominate them for these positions. Some certainly are and others are not. It is clear nevertheless that the presence on these Committees of at least some truly independent experts has over the years led to more thorough reviews of State reports, forcing the States Parties to be more forthcoming in explaining their human rights practices and at times even remedying failures to comply with their treaty obligations.

The Covenant on Civil and Political Rights, the Torture Convention and the Racial Convention authorize their Committees to deal with interstate communications and individual petitions charging violations by the States Parties of their obligations under these treaties. The Racial Convention and Torture Convention also permit the States Parties to refer their disputes for adjudication to the International Court of Justice, if they are not settled by negotiations or arbitration. The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women provide only for a reporting system that is administered by their respective Committees. Over the years, the UN has adopted many other human rights treaties and declarations. Most of them deal with specialized human rights topics that in one way or another supplement or amplify subjects already addressed in one of the previously identified UN human rights treaties. Taken together, the UN has thus been able to promulgate a vast body of treaty-based human rights law that has laid the foundation upon which contemporary international human rights law is based.

### III. Regional Human Rights Systems

“The human rights revolution,” as my teacher and friend, Professor *Louis Sohn*, described the growth of international human rights law, did not stop with the UN system. It led to the establishment of regional human rights systems. First among these was the European system. It was created by the European Convention on Human Rights, which was adopted in 1950 by the Council of Europe and entered into force in 1953. The impetus for this sys-

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tem was due in large measure to the disappointment of Western Europe with the slow pace of the UN's human rights efforts and its felt need for a strong human rights mechanism to counterbalance the perceived threat posed by the Soviet Union.

The American Convention on Human Rights gave birth to the second regional human rights system in existence today. Drafted under the auspices of the Organization of American States, the Convention entered into force in 1978. It was designed to strengthen a very weak pre-existing Organization of American States (OAS) human rights mechanism that proved incapable of preventing the serious violations of human rights being committed in different parts of the Americas, mainly by rightwing authoritarian regimes. It was also designed to counter the perceived threat of communism in the Americas that *Castro* Cuba posed.

The third regional human rights system was established by the African Charter on Human and Peoples' Rights, an African Union (AU) treaty, which entered into force in 1986. It has lagged behind the European and American systems in terms of its effectiveness. That should not surprise, given the serious and enduring political, economic and social problems that Africa has faced over the years.

The principal difference between the UN human rights system and the regional systems is the much weaker enforcement mechanism of the UN system, which lacks specialized judicial tribunals to apply and interpret the provisions of its human rights treaties. This weakness is attributable to the fact that many UN member states oppose effective UN enforcement of their human rights obligations.

The European and American Conventions each initially provided for a Commission and a Court. The main function of these Commissions was to pass on the admissibility of human rights complaints, whereas the adjudication of complaints was left to their respective Courts. Until 2008, when the African Court was established, the African human rights system functioned with only a Commission. A reform of the European system in the late 1990s resulted in the abolition of its Commission and the transfer to the European Court of the powers previously exercised by the Commission. The inter-American human rights system continues to operate with both a Commission and a Court. Past attempts to abolish the American Commission have failed, in part at least, because it performs some human rights functions under the OAS Charter that apply to those American states that have not ratified the American Convention. The Commission is also empowered to undertake country-wide human rights investigations of OAS member states that are alleged to be committing large-scale human rights violations. The

contentious jurisdiction of the newly established African Court resembles that of the other two regional tribunals. Its advisory powers are, however, more extensive in that the Court may not only deal with advisory opinion requests from states and AU organs but, under certain circumstances, also from African Non-Governmental Organizations (NGOs).

The standing of individuals within the three regional systems evolved differently over the years. As originally established, the European system limited the standing of individuals in two respects. Unlike States Parties, individuals had no standing to file a claim with the European Commission charging a state with a violation of their Convention rights unless the state in question had also recognized the right of individual petition. Individuals also had no standing to bring a case to the Court. That right was reserved to the Commission and the States Parties. In order for an individual's case to reach the Court, the State Party alleged to have violated the individual's Convention rights had to have recognized the jurisdiction of the Court. Protocol 11 to the European Convention dramatically changed the position of the individual. Not only did the Protocol abolish the Commission, it also conferred on individuals themselves the right to directly access the Court, an important first. These important changes initially resulted in an avalanche of cases reaching the European Court, many more by far than it could reasonably handle. At one point, the Court found itself with a backlog of significantly more than one hundred thousand cases. The adoption of Protocol 14 has helped to ameliorate this situation by dramatically restructuring the manner in which the Court deals with admissibility decisions.

Unlike most human rights treaties and mechanisms, the American Convention has since its inception provided for the right of individual petition to the Commission without first requiring a separate state declaration recognizing that right. By contrast, such a declaration is necessary for interstate complaints. Individuals, however, do not have the right under the American Convention to access the Court directly. That right is reserved to the Commission and to those States Parties that have recognized the Court's jurisdiction. But although individuals have no standing to bring cases to the American Court, an amendment of its Rules of Procedure now allows them to participate in proceedings before the Court in their own cases.

The African Charter restricts the right of its Commission to hear individual communications to "special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights." [African Charter, art. 58 (1).] This means that the jurisdiction of the African Commission is limited to those individual petitions that charge numerous or massive violations of individual Charter rights. Over time, however, the Af-

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rican Commission has been able to circumvent this requirement and deal with individual violations as such. The contentious jurisdiction of the African Court resembles that of the inter-American Court in that it permits African states and the African Commission to refer cases to its Court. Individuals have no standing to do so.

The European and American Conventions proclaim civil and political rights that resemble those that the International Covenant on Civil and Political Rights protects. The African Charter proclaims not only economic and social rights as well as civil and political rights, but also so-called peoples' rights and duties. With reference to duties, Art. 27(1) of the Charter declares that "every individual shall have duties towards his family and society, [to] the State and other legally recognized communities and the international community." The European and Inter-American Courts have over the years produced a vast body of jurisprudence applying and interpreting the human rights that their respective treaties proclaim. Because the African Court was established much later than its European and inter-American counterparts, it has thus far dealt with fewer cases.

#### **IV. Economic, Social and Cultural Rights**

International efforts to safeguard economic, social and cultural rights have evolved differently from those dealing with the protection of civil and political rights. Although the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted by the UNGA on the same day, namely on December 16, 1966, the difference in the categories of these rights has played a distinct role in their evolution. The principal reason for the adoption of two Covenants rather than a single instrument proclaiming both types of rights was due in large measure to the contention of some Western countries, especially the United States, that economic, social and cultural rights were not real rights but rather legislative entitlements. The Soviet Union and some other states argued that these rights were no less rights than civil and political rights, and that they were indispensable for the full enjoyment of civil and political rights. This disagreement was resolved with the adoption of two separate Covenants. The acceptance of this solution was also driven by the recognition that the enforcement of these two categories of rights would require different measures of implementation.

As a general proposition, the difference between these two categories of rights, when it comes to their implementation, is due to the fact that civil



and political rights tend as a rule to be capable of direct application by courts, whereas economic, social and cultural rights will usually require the enactment of some legislative measures to achieve that result. This is reflected in the very different language the two Covenants use to describe the respective implementation obligations states assume when ratifying one or the other of these Covenants. Thus, for example, the Covenant on Civil and Political Rights declares that “Each State Party to the present Covenant undertakes to *respect* and to *ensure* to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant...” [Art. 2(1). Emphasis added]. The comparable language of the Covenant on Economic, Social and Cultural Rights reads as follows: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, *with a view to achieving progressively* the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” [Art. 2 (1). Emphasis added]. The Civil and Political Covenant thus requires states to give effect to their Covenant obligations more or less upon the ratification of the treaty, whereas states ratifying the Covenant on Economic, Social and Cultural Rights may do so progressively rather than immediately.

Turning now to the manner in which the inter-American, European and African regional systems require their States Parties to give effect to the human rights they proclaim, it is clear that the implementation obligations they impose also differ whether they deal with civil and political rights or with economic, social and cultural rights. The clearest evidence of this difference is provided by the “Protocol of San Salvador,” short for the “Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.” The measures of implementation provided under this treaty differ from those of the American Convention on Human Rights, which proclaims civil and political rights. Art. 1 of the Protocol declares that the “States Parties ... undertake to adopt the necessary measures ... especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively ... the full observance of the rights recognized in this Protocol.” Contrast this language with Art. 1 of the American Convention, which provides: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.” Note that the Protocol’s measures of implementation closely resemble those of the Covenant on

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Economic, Social and Cultural Rights. What stands out in both treaties is the progressive character of the implementation obligations the States Parties assume.

The African Charter of Human and Peoples' Rights does not separate economic, social and cultural rights from civil and political rights. The reason for this approach finds expression in paragraph 8 of the Charter's preamble, which reads as follows: "Convinced that ... civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights." This approach does not formally separate the two types of rights. Instead of providing different implementation obligations for each category of rights, the Charter declares that the States Parties "shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them." (Art. 1.) This language shifts the burden to the African Commission to determine the implementation obligations the States Parties assume with regard to the different categories of rights. That is by no means an easy task.

The European Social Charter is a Council of Europe treaty like its counterpart, the European Convention on Human Rights. The Charter proclaims economic and social rights and establishes a complex implementation mechanism that differs significantly from the methods provided for in the African Charter, the Protocol of San Salvador, and the UN's Covenant on Economic, Social and Cultural Rights. This mechanism consists of a number of interrelated provisions. First there is the chapeau to Part I, which provides that "The Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realized." There follows a list of 31 so-called "rights and principles" or policy aims, such as, for example, "everyone shall have the opportunity to earn his living in an occupation freely entered upon" (Part I, Art.1) and "all workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families." (Part I, Art. 4). These so-called policy aims are "to be pursued by all appropriate means" (Part III, Art. 1(a)) and need not to be implemented immediately unless States Parties are able to do so. This undertaking is to be contrasted with the obligation, spelled out in Part III, Art.1(b), that requires the States Parties to consider themselves bound by at least six of some nine articles found in Part II of the Charter, which deal for the most part with specific labor and related rights, including the right to work or the right to benefit from social wel-

fare services. These rights, unlike the policy aims described in Part I of the Charter, are binding on the States Parties, who are free, however, to comply with them by different means, including laws and regulations, agreements between employers or employers' organizations and workers' organizations, a combination of the foregoing two methods, and other appropriate means. (Part V (1) (a-d).) These implementation obligations are more complex than those found in the Salvador Protocol and the African Charter; they are also more open ended. It is therefore hard for me to say whether they are more or less effective in achieving the implementation of the rights the Charter proclaims.

## V. International Criminal Law and Humanitarian Law

To me international humanitarian law and international criminal law constitute an integral part of the corpus of contemporary international human rights law. The difference between a violation of international human rights law and a violation of international humanitarian law depends upon whether the violation takes place in peace time or during an armed conflict; it does not depend on the nature of the act that gives rise to the violation. Similarly, as far as international criminal law is concerned, the fact that governments are liable for violations of international human rights law, whereas individuals are liable for violations of international criminal law, goes to the issue of liability and not to the nature of the act that gives rise to the liability. In short, what we have here are the same or related human rights concepts that are applicable in different situations or under different circumstances.

It follows that, when assessing the evolution of the corpus of contemporary international human rights law, it is reasonable to contend that international criminal law, international humanitarian law and international human rights law belong to one and the same branch of public international law. This does not mean that every international human right has an international humanitarian or international criminal law counterpart; neither does it mean that every international criminal law or international humanitarian law provision has an international human rights counterpart. It only means that on the whole they share an underlying common conceptual basis whose object is to protect the rights of individuals in different situations or circumstances. One way to illustrate this commonality is to note that two major acts that violate international human rights law - genocide and crimes against humanity- also violate international criminal law and international humanitarian law. That these legal doctrines may have evolved earlier or

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later in time, or that they have different historical antecedents, is irrelevant as long as it is recognized that the rights themselves share the previously described conceptual commonality. It is therefore not unreasonable to treat them as part of the corpus of contemporary international human rights law when studying the evolution of the contemporary international human rights system.

## VI. Concluding Observations

Over the years, as we have seen, the international community has created a large body of international human rights law and established many international and regional institutions to apply it. Probably no other branch of international law has grown as rapidly as contemporary international human rights law and has had such a significant impact on public international law generally. Here I think, for example, of the reversal of the longstanding principle that human rights matters fall exclusively within the domestic jurisdiction of states. Various immunities enjoyed by governmental officials in the past, among them heads of state, from being charged with the commission of serious violations of international human rights, such as genocide and crimes against humanity, are no longer recognized. International human rights courts and human rights treaties have also extensively clarified or expanded the meaning of different public international law principles, among them universal jurisdiction, exhaustion of domestic remedies, the nature of non-extraditable offenses, and many others.

To understand the judicial evolution of contemporary international human rights law, it is important not only to look at the jurisprudence of regional human rights courts, but also to the relevant practice of international tribunals that apply international criminal law and international humanitarian law. Equally important are the judgments and advisory opinions of the ICC that deal with human rights issues. A good example is provided by the ICJ's genocide judgment in the *Bosnia and Herzegovina v. Serbia* case. And then there is the vast caselaw of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda to which, in due course, the jurisprudence of the ICC will have to be added.

The caselaw of the European, American and African human rights systems, continuously defines and refines regional and international human rights law. This is also true to some extent for the quasi-judicial practice of the UN treaty bodies and the judicial decisions of those national courts of the States Parties that apply this jurisprudence. Various specialized agencies

of the UN, notably United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labor Organization (ILO), have adopted human rights related treaties relevant to their spheres of competence. The administrative tribunals of these organizations and of other specialized agencies frequently apply those treaties, thereby producing more international human rights jurisprudence. Noteworthy, too, is the fact that the constitutions of some African and Commonwealth Caribbean countries contain human rights provisions copied from the International Bill of Rights and the European Convention on Human Rights, enabling their courts to benefit from the growing body international human rights law and jurisprudence.

Most important, in my view, has been the increasing domestic application of international human rights law. This is true mainly, but not only, in countries that are parties to universal and regional human rights treaties. International human rights issues appear increasingly on the agendas of diplomatic conferences. Bilateral and multilateral trade agreements nowadays contain international human rights provisions. More and more governments are establishing human rights departments in their foreign ministries to better focus on international human rights developments. So-called human rights ombudsman offices now exist in various countries. Some national parliaments have created human rights committees or sub-committees to keep up with international human rights developments. Governments are adding human rights officers to their embassy staffs in order to provide their foreign ministries with first-hand reports on the human rights conditions in the countries to which they are accredited. International human rights law is thus having an ever more important impact on the behavior of governments in their relations with their own populations as well as with the international community in general. Human beings around the world are becoming increasingly more aware of the human rights to which they are entitled under international law and how to enforce them.

But despite the very considerable progress the international community has made in promoting the worldwide protection of human rights, the system continues to display significant weaknesses when it comes to the enforcement of these rights. Let me start with the fact that the human rights system established under the UN Charter – what I call the UN Charter system – was primarily designed to deal with large-scale human rights violations, whereas the three regional human rights systems were basically created to act on individual human rights violations. It is true, of course, that by dealing with large-scale human rights violations, the UN Charter system can also have some impact on the protection of individual human rights,

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whereas in certain situations the regional human rights systems may over time also be able to prevent some large-scale human rights violations. But neither of these systems can deal effectively with both massive and individual human rights violations.

Moreover, many human rights treaties promulgated under UN auspices are basically designed to deal with violations of individual human rights, although they can under certain circumstances also be applied to massive human rights violations. But the real weakness of the UN treaty system results from the failure of many UN Member States to ratify these conventions. Also, unlike the existing regional human rights systems, most UN treaties do not provide for judicial tribunals whose decisions are legally binding. But since the regional human rights systems apply to date only in Europe, the Americas and Africa, the vastly more numerous inhabitants of Asia and other parts of the world do not enjoy that very important protection.

A majority of the world's inhabitants thus lives in countries where they are effectively protected neither by regional human rights law nor by UN human rights treaty law. The contemporary international human rights system thus fails to protect individual victims of human rights violations in those parts of the world where such protection is most needed.

I therefore believe that a serious effort should be made to promote the establishment of additional regional human rights systems in different parts of the world. They might be modelled on the institutional structure of the existing regional systems and set forth the rights proclaimed in the UN Covenants. Such systems would provide more effective individual human rights protection than is currently the case. At this time, Asia might well be a good candidate for one or more sub-regional systems; the Asian continent is too large and politically and culturally too diverse for just one system. Single regional system would probably be more appropriate for other parts of the world.

The protection of human rights would also be significantly strengthened if a number of regional international criminal tribunals were to be established to deal with serious transnational crimes not within the jurisdiction of the ICC, including for example, human trafficking, various forms of slavery, drug trafficking, piracy, arms trafficking and some forms of terrorism. Although these types of crimes constitute serious violations of the human rights of those they victimize, many smaller states are often unable to deal effectively with such crimes due to limited resources, poorly trained police forces, corruption, and powerful criminal gangs operating across national borders. This leaves the perpetrators of these crimes free to commit them

with impunity. Here regional criminal courts would be able to perform a valuable human rights service.

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After hearing my lecture you might well ask “what is the value of all that human rights law?,” considering what is happening in Syria, for example, where thousands of innocent human beings are dying every day. We stare at the bodies of babies being pulled out from under the rubble of bombed out buildings and we exclaim “that carnage must stop,” even though our saying it will not stop this tragedy. And then we ask, “Where is the UN?” even though we know that the UN cannot help because the Security Council is divided and will remain divided when dealing with horrors like Syria.

You will therefore ask why I bother to talk about the international human rights system when it does not stop what is happening in Syria today, or what is likely to happen again and again elsewhere in the world? We must not give up on the international human rights system because, in my opinion, it can prevent some serious violations of human rights and because it may over time be able to create conditions and institutions that will be able to prevent massive human rights violations on a scale that the UN is not able or willing to prevent today.

I also believe that saving one life or some lives is important in itself. For that very reason, I reject the notion that just because the system cannot save vast numbers of lives, it is not worth bothering with. That view is unacceptable to me because, if we are not willing to bother about the loss of some lives, we will invariably create conditions that will make it easier to accept the loss of increasingly larger numbers of lives.

Finally, I am convinced that the ICC will over time be able to have a significant impact on the international human rights system. This is not to suggest that the ICC will necessarily be able to prevent or punish all or even most massive violations of human rights. But it will be able to make inroads on lesser violations of human rights, including smaller genocides, crimes against humanity and war crimes. I know that it sounds terrible to speak of smaller genocides, but such a distinction needs to be made in order to realistically assess the future role of the ICC. I tend to believe that the Security Council is more likely to refer lesser crimes to the ICC, but that it is unlikely to do so with massive crimes, such as are being committed in Syria today because these types of cases will invariably divide the Security Council. Of course, states which have accepted the ICC’s jurisdiction will be able to take some cases to the ICC. How realistic would such a scenario be? Is it likely that a state committing these massive crimes will have accepted the Court’s jurisdiction? And how realistic is it that states would be willing to file such

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cases even if no jurisdictional or other obstacles existed? Would the ICC prosecutor prove effective in such cases? I don't know the answers to these questions. Only time will tell. But I for one am not willing to give up hope.

Thank you.

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