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International Human Rights Law; The Roadmap to Honour Human Dignity

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Back in September 1979, at the UN General Assembly in New York, the late Pope John Paul II delivered a remarkable speech about human rights. In essence, it was a paen of praise for the Universal Declaration of Human Rights.

He described the Declaration as paid for by millions of our brothers and sisters, at the cost of their suffering and sacrifice, that the cost must not have been paid in vain, and that it is the ignoring of the Universal Declaration that leads to destruction.

Through these words and the rest of that speech, the Pope reaffirmed the central role of human rights as reflected in treaties and systems for the honouring of human dignity and the well-being of our societies.

He brought the very same message to Europe when he visited the Council of Europe on 8 October 1988, describing the adoption of the European Convention on Human Rights as a strengthening of the union of member states around, and I quote, "the most noble principles and values of the European tradition".

What the Pope was describing, and what we can see today, was and is, indeed, an astonishing achievement.

The Convention turns much of the Universal Declaration into binding law, and does so smartly, in effect recognising rights and responsibilities, and expressing rights in a manner that is rarely absolute, but regarding the limitation of which there is very careful framing.

The international oversight body, the European Court of Human Rights, has distinguished itself over the decades for its careful and compelling jurisprudence.

Overall, the Convention and the Court, through their design and practice, have delivered a model of human rights protection that secures the primary role of the state.

This essential dimension is, for instance, honoured by principles such as subsidiarity, exhaustion of national remedies, and the margin of appreciation.

Dear friends,

This European human rights architecture has served us very well indeed.

My own country, Ireland, has been transformed by judgments of the European Court of Human Rights. In fact, strong arguments can be made that the Court and the Convention have been the primary drivers for Ireland's social transformation into the confident and outward-looking society that it is today.

Moving then to a broader framework, I also, of course, have seen the extraordinary impact of human rights across societies during my own career.

Back in 1993, I was recruited to the United Nations as a human rights lawyer and deployed to war-torn Bosnia-Herzegovina. I received no real guidance and I and my colleagues floundered as to our role. We would veer from irrelevant work like seeking to understand the judicial system, to getting our monitoring cues from the morning bulletin of CNN.

Over time, myself and my colleagues found our feet and literally discovered the immediate relevance and value of international human rights law in the conflict zone. For instance, law provided a legitimate base for interventions with states and initiatives by the UN Security Council; It contributed enormously for the building of criminal cases to go before the eventual international court; It came to play an important role in framing and giving content to the Dayton Peace Agreement.

Soon after leaving Bosnia-Herzegovina, I became immersed as an NGO representative in the negotiation that would lead to the establishment of the International Criminal Court. In other words, I had a ringside seat in the fashioning of a powerful conflict-related international legal tool.

After that, in 1998, I established the United Nations Human Rights Program in Sierra Leone during its dreadful war. And I saw there that there was a direct correlation between attention to our human rights advocacy and the incidence of atrocities. The better the attention, the lower the incidence, and we tracked those patterns over at least a two-year period.

I also saw how individual lives were saved, for instance, following the condemning to death of a group of army officers in court-martial proceedings. The executions were imminent, and I supported defence lawyers to seek interim measures from the UN Human Rights Committee. The Committee acted swiftly. Lives were saved. The President excluded some of the condemned from the killings, and explicitly said it was out of respect for the United Nations.

Many years later, I worked in Northern Ireland as head of its human rights commission, and I saw how that commission, an institution anticipated, envisaged in the Belfast Good Friday Agreement, how that institution played such an important role in the consolidation of peace.

And today, right across my engagement with Council of Europe member states, I see more evidence of the impact, the transformative impact of human rights law.

In the first place, in so many locations, I saw it in the negative.

I see it in all the violations that do not occur because of an attention to human rights and an embedding of those rights in laws and constitutions.

I see it in the ever more widespread, albeit not comprehensive, compliance testing of law and practice against human rights obligations.

And to take one further example, I see the extraordinary role and impact of the work of human rights civil society right across the Council of Europe, often in very challenging contexts that require great courage, but nevertheless make an enormous difference for human well-being.

Overall, we can conclude that human rights has become an essential core of our rule of law democracies.

All of this said, of course, we have to acknowledge that it does so in very problematic and volatile times.

Today, it has become commonplace to describe the world as being immersed in a change of era. The philosopher Paul Preciado describes this world in transition as experiencing what he calls a *dysphoria mundi*. There are multiple drivers of the current dysphoria, the current volatility. Let me mention just five.

The first is the COVID pandemic, which has had an impact on our societies that we have still to fully assess. We only have the most rudimentary understanding of the extent of avoidable deaths, of damage down to older people and children, the incidence of depression and suicide, the human cost of slow vaccine production and distribution, the impact on GDP, the diminishment of fundamental freedoms, and so on.

The arrival of COVID and its aftermath coincide with my second driver, which is the explosion of engagement with artificial intelligence.

Digitalisation and artificial intelligence bring enormous benefit, obviously, but at the same time, they have led to a multiplication of disinformation and the subjection of vast numbers of people into separate information systems, in which it becomes increasingly difficult to discern the truth. We also see a transfer of unimaginable power and wealth to Silicon Valley, in fact, to less than 10 companies. These companies, in their turn, commodify life and measure worth in terms of economic profit. Of course, we also see how technology is increasingly at risk of substituting for human agency.

The third of my five drivers of volatility is the climate crisis.

We are arguably past the tipping point now of global warming, in terms of human capacity to cope. Scientists say that a rise of just two degrees centigrade will lead to temperatures not experienced for over two million years.

As we confront the climate crisis, we do so in the context of yet another driver, and that is how very deeply unequal our societies are. Today, the world's 10 wealthiest men, and they are men, own more than the bottom 3.1 billion people. And according to the World Bank, inequality is on the rise, in part because of the impact of COVID.

Last of my five, our world is suffused with violence. Just think of Ukraine, of Gaza, of Sudan. Recall also that experts tell us that today we are closer than ever to the catastrophe of nuclear war.

Dear friends,

These five and other related drivers are corroding many societies. They are fuelling a decline in democracy and a rise of authoritarianism.

I see the impact of this across my work.

I see it in the way Ukraine has become the object of great power politics, and how some would discard everything we know about building sustainable peace in the interest of transactional outcomes.

This is the context of my own current efforts to get human rights integrated into pathways of peace for Ukraine.

Returning to the impact of today's volatility, I also see it in the decline of multilateralism and the sidelining of the United Nations and of its vital work for peace, development and human rights.

Right now, I see it in the extraordinary attacks on the International Criminal Court.

I see in the resurgence of sovereignty and a diminished respect for law, including international law. This is, for instance, how I see some of the actions to seal borders against those seeking an asylum, an issue to which I will return in just a moment.

Very worryingly, I see it in the oppression in some countries of civil society and of independent media, of the disempowering of groups that operate as the lifeblood of democratic and rights-respecting states. This, by the way, is a deeply under-acknowledged crisis, and it is compounded by the widespread reduction of international aid budgets.

Inevitably, just about everywhere I turn, I see a collapse of trust, of trust between citizens and state, of person to person, of young and old, or in the form of regional and international solidarity.

So, what are we to do? How can we navigate through these dark times towards the new era? How can we ensure that this upcoming new era puts human dignity and human well-being at its heart?

For me, the answer is clear. We must revert to human rights law, to the only credible roadmap for the honouring of the human dignity of everyone.

In the words of the French polemicist Stéphane Hessel, we should wake up, we should get furious. As he put it, "Indignez-vous", in defence of the irreplaceable achievement that is human rights. Igniting this indignation and allowing human rights laws fully to play its role is the great challenge of today. Very worryingly, it is far from certain that it can be achieved.

For years now, there has been a negative discourse about human rights, even from some who mean well for our societies.

Claims that there are better ways to protect us and achieve progress.

In recent times, the narrative has been given voice in political discourse. Here in Europe, this has been most evident in, but not exclusively, in debate around the management of migration. More specifically, around a reduction in human rights protection for all, or at least for some irregular migrants.

This was, as you know, the focus of the recent process that led Council of Europe member states to adopt the Chisinau Declaration. As the issues addressed at Chisinau remain open and under continued attention, I would wish today to share some general observations.

First, I continue to urge everyone to be assiduously evidence-based. The facts cited to justify change must be impeccable. In that regard, I am concerned about numerous inaccuracies currently in circulation in Europe. For instance, any lazy correlation of irregular migrants and criminals is unacceptable.

And the claim that it is currently next to impossible to expel those criminals with a migrant background is not supported by statistics.

I am no less concerned with the claim that the entry into our states of instrumentalised migrants undermines national security. Instrumentalisation is a deplorable fact, but our societies are well able to receive and consider the asylum claims of the victims of such protection.

What is more, national security is at its best when it embraces human security. A society that upholds human rights and the rule of law for everyone.

Another fact-related consideration has to do with any assumption that adjusting the law or practice of the European Convention on Human Rights and the European Court of Human Rights would somehow axiomatically change practice on the ground. For instance, that it would impact irregular migratory flows. Assumptions such as this are unconvincing.

But second, I urge states and commentators to be deeply respectful of law. Above all, in the current context, I have in mind the principle of *non-refoulement*. This absolute entitlement can be found in law and practice globally. Beyond treaties and jurisprudence, it has at least the status of customary international law. Attempts to interfere with it would be unacceptable.

No less essential is the need to respect the universality of human rights. That they are held co-equally by everyone by virtue of our humanity. Any discourse that creates a hierarchy of rights holders on the basis of their being more or less deserving is deeply problematic.

One further legal consideration is to ensure that all discourse and proposals do nothing to diminish the independence of the European Court of Human Rights, or indeed of any other court.

The principle of independence is essential to our rule of law states.

My third and final plea to those who would weaken human rights protections is to consider wide implications. For instance, today it is mainly about migrants. They are the focus of our current attention. But once the precedent is established, who next? Which unpopular minority group might next be subject to efforts to reduce their human rights protections? The Roma? The trans community? Who else?

Also keep in mind that the world is watching. Any European weakening of human rights protection will be seized on by those who would do away with human rights entirely.

As the proverb says, beware, or at least do not forget, that we shall reap what we sow.

Dear friends,

today is not the first time I have expressed many of the views you have heard from me.

I have experienced many forms of pushback. One of the most common is the view that we must yield some human rights ground in order to stop populists in their track, to stop the migration to them of electoral votes.

While I appreciate the concerns, I question the logic.

I am convinced that our peoples are not against strong human rights protections, and surveys and research repeatedly affirm this. Their concerns have to do with very important but other considerations, such as senses of alienation and of disadvantage. These senses are amplified through

clever political messaging as well as disinformation. Such phenomena must be addressed if we care about the well-being of our people, but the way is not to damage the human rights system.

Friends, the defence of the system of human rights, of course, draws on many actors. Among these, I count highly on human rights legal academics, such as many of you. I encourage you to keep informing the public discourse with your analysis and advocacy. I urge your institutions to become ever more deeply invested in human rights research and learning. I applaud the work of university human rights centres, and I hope that they will become ever more central to the core values and priorities of our academies.

By way of conclusion, my call today is for us to avoid the temptation and the risk of in any way weakening our global and regional human rights patrimony.

Instead, we should seize the moment to reaffirm our unwavering commitment. Our pledge should be to deliver human rights better in the service of everyone. And in standing up for everyone, we must never lose a focus on the most marginalised and vulnerable, on the weakest members of our societies.

From our leaders, we should expect principled, systematic, even brave defence of human rights and its institutions.

From all of us, we need a realisation of how the human rights roadmap can guide us safely to the upcoming new era.

Suffice for me to recall here those words of Hessel and encourage us all to get and to stay indignant. Indignant in standing up for universal human rights in general, and for the European Convention in particular.

Thank you.