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The following is the full text of the speech delivered by Supreme Court of Canada Justice Rosalie Silberman Abella to the The Empire Club of Toronto. The speech was entitled "THE WORLD IS NOT UNFOLDING AS IT SHOULD: INTERNATIONAL JUSTICE IN CRISIS."

I picked this topic weeks ago, before Tunisia and Egypt magnetized our attention. Since then, I've spent countless hours devouring TV and newspaper coverage, and I find that I'm transfixed, I'm inspired, and I'm slightly terrified.

I am a lawyer. That means I believe in law and justice. And, like most Canadians, I also care deeply about human rights. The events of the past few weeks have been like a Polaroid picture of international law, justice and human rights: with time, the picture comes into clearer focus. And with clarity, my deepest fears are increasingly confirmed. What do I mean? I mean that increasingly I have come to see international human rights law as having a dysfunctional relationship with justice. The rhetoric is beautiful, but it's all dressed up with no place to go. . .

It was not always so. After 1945, the global community demonstrated an enormous capacity for constructing legal systems and institutions to enhance and advance international human rights law.

Through the UN Charter, the "peoples of the United Nations" determined to "reaffirm" faith in "fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." It was created for the purpose of achieving international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all. But the human rights revolution that started after — and because of — WWII, seems to have too few disciples in the countries that need it most.

Compare this state of affairs with the revolution in international trade law. Like international law generally, international economic law has witnessed an institutional proliferation of organs, like the OECD, the ILO, the United Nations Commission on International Trade Law ("UNCITRAL"), and, of course, the IMF, the World Bank and GATT.

Then in 1994, the Marrakesh Agreement established the WTO, which came into being on January 1, 1995, dramatically extending the reach of trade regulation and creating a comprehensive international legal and institutional framework for international trade.

After only 15 years in operation, the WTO is, in essence, international law's child prodigy. Like the UN, the WTO struggles with reconciling the interests of the most powerful states and the least, as is obvious from the tumultuous (and ongoing) multi-year saga of the Doha Development Round of negotiations. Yet despite occasional criticism, the WTO, and its dispute settlement mechanism in particular, are regarded as legitimate, effective and influential in international relations.

So you can see that international trade law has, like international human rights law, constructed a complex network of institutions and norms to regulate state conduct. But unlike international human rights law, states comply with international trade law and, in the event of non-compliance, an effective dispute settlement mechanism is available to resolve disputes. In other words, what states have been unable to achieve in sixty-five years of international human rights law, is up and running after only fifteen years of international trade regulation.

I find this dissonance stark and unsettling.

If we examine international trade and international human rights law in parallel, we can make a number of discouraging observations: First, unlike the UN, the WTO is extremely difficult to join. That means that the global community feels that obtaining membership in a trade organization should be more onerous than obtaining membership in an organization responsible for saving humanity from inhumanity. Second, the global community agrees that the products of one state should be treated the same as products from every other state, but cannot agree that individuals have rights as individuals, not as citizens of particular states. And third, the global community agrees on the principles underlying international trade law: non-discrimination and most favoured nation. In contrast, the global community cannot agree on the principles underlying international law generally, so sovereignty and human rights continue to conflict.

There was so much cheering when we thought the global community had finally resolved the rancorous, longstanding debate about humanitarian intervention through the General Assembly's unanimous endorsement of the Canadian - sponsored doctrine of the Responsibility to Protect ("R2P") in 2005. It seemed at last, that we had seen a triumph of human rights over sovereignty.

But just a year and a half ago, at the end of July 2009, the United Nations General Assembly debated Responsibility to Protect for the first time since unanimously endorsing the doctrine in 2005, and the whole thing seemed to unravel before our eyes.

What's wrong with this picture, and what does it tell us about our global priorities?

Our generation has had the most sophisticated development of international laws, treaties, and conventions the international community has ever known, all stating that human rights abuses will not be tolerated. We've had the European Convention for Human Rights, (1953), The International Covenant on Civil and Political Rights (1966) The International Covenant on Economic, Social and Cultural Rights (1966), The Convention Against Torture, The International Convention on the Elimination of All Forms of Racial Discrimination (1966), The Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention on the Rights of the Child (1955), and the Convention on the Rights of Persons with Disabilities (2006), among many others.

But we've also had the genocide in Rwanda; the massacres in Bosnia and the Congo; the violent expropriations, judicial constructive dismissals and brazen immorality in Zimbabwe; the assassination of law enforcers in Colombia and Indonesia; the repression in Chechnya; the slavery and child soldiers in Sudan; the cultural annihilation of women, Hindus and ancient Buddhist temples by the Taliban; the attempted genocide of the Kurds in Iraq; the rampant racism tolerated at the U.N. World Congress Against Racism and Intolerance in Durban; China; Myanmar; Pakistan; the world's shocking lassitude in confronting AIDS in Africa; the disgraceful chapter in global insensitivity as the world formulated a strategy of astonishingly glacial and anemic proportions in Darfur; the nuclear roguery of North Korea; and the sheer roguery — and stoning — in Iran.

What's going on, and what do we need to think about to fix it? And fix it we must, because unless we pay attention to intolerance, the world's fastest growth industry, we risk losing the civilizing sinews that flexed the world's muscles after World War II. We changed the world's institutions and laws then because they had lost their legitimacy and integrity. We may be there again, not so much because our human rights laws need changing, but because a good argument can be made that our existing global institutions, and especially the UN's deliberative role, are playing fast and loose with their legitimacy and our integrity.

I make these observations not because I have any particular solutions to propose, because I don't, but because I want to hear a serious conversation among people more expert than me, people who care deeply about the moral choices we make as a global community, about how to fix a status quo in which some of the worst criticisms are directed at western democracies — what I would call low-hanging fruit — while the worst abusers barely glance over their shoulders, too busy doing now whatever they want to their own citizens, to care about history's judgment later. So we have many laws to protect humanity from injustice, but not enough enforcement to turn those laws into justice.

Let's start with the term "Rule of Law", the Holy Grail of "rights discourse" today. I confess that I've always been somewhat confused by why we use this phrase as an organizing principle. I think most people don't really know what it means. Universal principles to which we are expected to be loyal, shouldn't be shackled with semantic ambiguity. Moreover, this generation has seen the Rule of Law impose apartheid, segregation and genocidal discrimination. And in the last few weeks we heard the term endorsed, and without irony, by the Presidents of Russia and Egypt. It frankly makes me wonder why we cling so tenaciously to the moniker.

So what are we really talking about? We're talking, I think, about some universal goals — accountable government, protection against rule by whim, and about our belief in law as an instrument of procedural and substantive justice. If I'm right that that's what we're really talking about when we talk about a just Rule of Law, doesn't that mean that what we're talking about is what we've come to see as the indispensable instruments of democracy: due process; an independent bar and judiciary; protection for women and minorities; a free press; and rights of association, religion, dissent and expression? Those are core democratic values, and when we trumpet those values, we trumpet the instruments of justice. And justice is what laws are supposed to promote.

Who can seriously argue that a society that has those values, and protects its citizens accordingly, isn't a healthier society than a repressive one whose greatest tolerance is for intolerance?

And I think we need to emphasize that when we talk about democracy, we're not just talking about elections. To say democracy is only about elections is like saying you don't need the whole building if you have the door. Elections tell democracy it's welcome to come in, but elections are only the entrance. Without a home, democracy can't settle down. It needs an edifice of rules and rights and respect to grow up healthy and secure.

So why aren't we out there promoting those democratic values and instruments, instead of promoting a euphemism no one really understands like the "Rule of Law". Shouldn't we say what we mean? And I think what we mean is the Rule of Justice, not just the Rule of Law.

Democratic values, while no guarantee, are still the best aspirational goals in my view, because without democracy there are no rights, without rights there is no tolerance, without tolerance there is no justice, and without justice, there is no hope.

What kind of rights are we talking about? Two kinds — human rights and civil liberties, both crucial mainstays of our democratic catechism.

The human rights story in North America, like many of our legal stories, started in England, with the madness of King George and the philosophies of Hobbes, Locke, and eventually John Stuart Mill, philosophies protecting individuals from having their freedoms interfered

with by governments. These were the theories which journeyed across the Atlantic Ocean and found themselves firmly planted in American soil and in the Declaration of Independence. Thus was born the essence of social justice for Americans — the belief that every American had the same right as every other American to be free from government interference. To be equal was to have this same right. No differences.

Unlike the United States, we in Canada were never concerned only with the rights of individuals. Our historical roots involved as well a constitutional appreciation that the two linguistic groups at the constitutional bargaining table, the French and the English, could remain distinct and unassimilated, and yet theoretically of equal worth and entitlement. That is, unlike the United States, whose individualism promoted assimilation, we in Canada always conceded that the right to integrate, based on differences, has as much legal and political integrity as the right to assimilate. Assimilation if necessary, but not necessarily assimilation. . .

In any event, the individualism at the core of the civil libertarian political philosophy of rights articulated in the American constitution, became America's most significant international export and the exclusive rights barometer for countries in the Western world.

Until 1945. That was when we came to the realization that having chained ourselves to the pedestal of the individual, we had been ignoring rights abuses of a fundamentally different kind, namely, the rights of individuals in different groups to retain their different identities. . . without fear of the loss of life, liberty or the pursuit of happiness.

It was the horrifying spectacle of group destruction in the Second World War which jolted us, a spectacle so far removed from what we thought were the limits of rights violations in civilized societies, that we found our entire vocabulary and remedial arsenal inadequate. We were left with no moral alternative but to acknowledge that individuals could be denied rights not in spite of, but because of their differences, and started to formulate ways to protect the rights of the group in addition to those of the individual.

We had, in short, come to see the brutal role of discrimination, and invented the term "human rights" to confront it.

Civil liberties had given us the universal right to be equally free from an intrusive state, regardless of group identity; human rights had given us the universal right to be equally free from discrimination based on group identity. We needed both.

Then, in North America, we seemed to stall as the last century was winding down. What we appeared to do, having watched the dazzling success of so many individuals in so many of the groups we had previously excluded, is conclude that the battle with discrimination had been won and that we could, as victors, remove our human rights weapons from the social battlefield. Having seen women elected, appointed, promoted and educated in droves; having seen the winds of progress blow away segregation and apartheid; having permitted parades to demonstrate gay and lesbian pride; and having constructed hundreds of ramps for persons with disabilities, many were no longer persuaded that the diversity theory of rights was any longer relevant, and sought to return to the simpler rights theory in which everyone was treated the same, and we started to dismissively call a differences-based approach reverse discrimination, or political correctness, or an insult to the goodwill of the majority and to the talents of minorities, or a violation of the merit principle.

We heard many of those who had enough, say "enough is enough", trying to set the agenda while they accused everyone else of having an "agenda", and leaving millions wondering where the human rights they were promised were, and why the evolutionary knowledge we came to call human rights appeared to be suffering such swift Orwellian obliteration.

I would argue that we were in a kind of rights distress by the last decade of the last century, the Nineties, the decade of deficit reduction, Beavis and Butthead, globalization, and Microsoft; the decade when Americans didn't ask and didn't tell; and the decade they stood by their man the President but spent over \$60,000,000 trying to find out if he'd had an extra-marital affair (something a good matrimonial lawyer could have done for half the money . . .). Everyone appeared to be taking at face value Yogi Berra's suggestion that when you come to a fork in the road, take it.

The crash of four planes changed everything.

We realized to our horror that while we were riveted on hanging chads and butterfly ballots, terrorists were next door learning how to fly commercial airplanes into buildings. In less than two hours on the morning of September 11, 2001, we went from being a Western world luxuriating in conceptual moral conflicts, to being a Western world terrorized into grappling with fatal ones.

I think that what irrevocably shocked us about the horror of September 11 was how massively it violated our assumptions that our expectations about justice were universally shared, at least to the extent that they would be respected in North America. Whether these expectations were reasonable isn't the issue. They were genuine. We felt safe. We no longer do.

And we're right not to.

The human rights abuses occurring in some parts of the world are putting the rest of the world in danger because intolerance, in its hegemonic insularity, seeks to impose its intolerant truth on others. Yet for some reason we're incredibly reluctant to call to account the

intolerant countries who abuse their citizens, and instead hide behind silencing concepts like cultural relativism, domestic sovereignty, or root causes.

These are concepts that excuse intolerance. Silence in the face of intolerance means that intolerance wins.

What has happened to the miraculous regeneration and luminous moral vision that brought us the Universal Declaration of Human Rights, the Genocide Convention and the Nuremberg Trials, those phoenixes that rose from the ashes of Auschwitz and roared their outrage.

The world was supposed to have learned three indelible lessons from the concentration camps of Europe:

1. Indifference is injustice's incubator;
2. It's not just what you stand for, it's what you stand up for; and
3. We must never forget how the world looks to those who are vulnerable.

All this because, as Robert Jackson said in his opening address at the Nuremberg trials,

"The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated. To me, this is not just theory."

I am the child of survivors. My parents spent four years in concentration camps. Their 2-1/2 year old son, my brother, and my father's parents and three younger brothers, were all killed at Treblinka.

My father was the only person in his family to survive the war. He was 35 when the war ended; my mother was 28. As I reached each of those ages, I tried to imagine how they felt when they faced an unknown future as survivors of an unimaginable past. And as each of our two sons reached the age my brother had been when he was killed, I tried to imagine my parents' pain in losing a two and a half year old child. I couldn't.

After the war my parents went to Germany where my father, a lawyer, taught himself English. The Americans hired him as a defence counsel for Displaced Persons in the Allied Zone in Southwest Germany. In an act that seems to me to be almost incomprehensible in its breathtaking optimism, my parents transcended the inhumanity they had experienced and decided to have more children. I was born in Stuttgart in 1946 a few months after the Nuremberg Trials started, and came to Canada with my family in 1950, a few months after the trials ended.

I never asked my parents if they took any comfort from the Nuremberg trials which were going on for four of the five years we were in Germany until we got permission to come to Canada in 1950. I have no idea if they got any consolation from the conviction of dozens of the worst offenders. But of this I'm sure — they would have preferred by far, that the sense of outrage that inspired the Allies to establish the Military Tribunal of Nuremberg had been aroused many years earlier, before the events that led to the Nuremberg Tribunal ever took place. They would have preferred, I'm sure, that world reaction to the 1933 Reichstag Fire Decree suspending whole portions of the Weimar Constitution; to the expulsion of Jewish lawyers and judges from their professions that same year; to the 1935 Nuremberg laws prohibiting social contact with Jews; or to the brutal rampage of Kristallnacht in 1938 — they would have preferred that world reaction to any one of these events, let alone all of them, would have been, at the very least, public censure.

But there was no such world reaction. By the time World War II started on September 3, 1939, the day my parents got married, it was too late.

And so, the vitriolic language and venal rights abuses, unrestrained by anyone, turned into the ultimate rights abuse: genocide. And millions died.

Lawyers like me, I think, have a tendency to take some comfort, properly so, in the possibility of subsequent judicial reckoning such as occurred at Nuremberg. But is subsequent justice really an adequate substitute for justice?

I don't for one moment want to suggest that the Nuremberg trials weren't important. Of course they were. They were a crucial and heroic attempt to hold the unimaginably guilty to judicial account and they showed the world the banality of evil and the evil of indifference.

But 65 years later, we still haven't learned the most important justice lesson of all — to try to prevent the abuses in the first place. All over the world, in the name of religion, national interest, economic exigency, or sheer arrogance, men, women and children are being murdered, abused, imprisoned, tortured, and exploited. With impunity.

So, Lesson #1 not yet learned, Indifference is Injustice's Incubator.

The gap between the values the international community articulates and the values it enforces is so wide, that almost any country that wants to, can push its abuses through it. No national abuser seems to worry whether there will be a "Nuremberg" trial later, because usually there isn't, and in any event, by the time there is, all the damage that was sought to be done, has already been done.

What has kept the global community from liberating the Universal Declaration of Human Rights and the Genocide Convention from the inhibiting politics and parochialism to which they are tethered, so that they can be free to help create, once again, a civilized world confident and willing to provide a future of tolerance and justice.

Does this raise questions about the effectiveness of the UN as a deliberative body? Frankly, it should.

We have to first acknowledge that many of the United Nations' agencies have achieved great success in a number of areas: peacekeeping, shelter and relief to refugees, UNICEF's extraordinary efforts on behalf of children, and the WHO's fights against polio, malaria and small pox, among others. The agencies have raised awareness about violence against women, the environment, and the plight of children, and the fact that much of international law works at all is often due to UN-based agencies.

But the UN was the institution the world set up to implement "Never Again". Its historical tutor was the Holocaust, yet it seems hardly to be an eager pupil. What was never supposed to happen again, has. Again and again.

Over ninety years ago, we created the League of Nations to prevent another world war. It failed and we replaced it with the United Nations. The UN had 4 objectives: to protect future generations from war, to protect human rights, to foster universal justice, and to promote social progress. Its assigned responsibility was to establish norms of international behavior. Since then, 40 million people have died as a result of conflicts in the world. Shouldn't that make us wonder whether we've come to the point where we need to discuss whether the UN is where the League of Nations was when the UN took over? I waited in vain to hear what the UN had to say about the protests in Iran, Tunisia and Egypt. Isn't that magisterial silence a thunderous answer to those who say things would be a lot worse without the UN. Worse how? I know it's all we have, but does that mean it's the best we can do?

In a world so often seeming to be on the verge of spinning out of control, can we afford to be complacent about the absence of multi-lateral leadership making sure the compass stays pointed in the most rights-oriented direction?

Nations debate; people die. Nations dissemble; people die. Nations defy; people die.

Lesson #2, not yet learned: It's not just what you stand for, it's what you stand up for.

A concluding story.

I've already told you that after the war my parents went to Germany and that my father was hired as a lawyer by the Americans. A few years ago my mother gave me some of his papers from Europe when I was preparing a speech for the opening of Pier 21, where we had landed in 1950.

The letters were from American lawyers, prosecutors and judges he worked with in the U.S. Zone in Stuttgart. They were warm, compassionate, and encouraging letters either recommending, appointing, or qualifying my father for various legal roles in the system the Americans had set up in Germany after the war. These people not only restored him, they gave him back his belief that justice was possible.

One of the most powerful documents I found was written by my father when he was head of the Displaced Persons Camp in Stuttgart where we lived. It was his introduction of Eleanor Roosevelt when she came to visit our D.P. Camp in 1948. He said:

"We welcome you, Mrs. Roosevelt, as the representative of a great nation, whose victorious army liberated the remnants of European Jewry from death and so highly contributed to their moral and physical rehabilitation. We shall never forget that aid rendered by both the American people and army. We are not in a position of showing you many assets. The best we are able to produce are these few children. They alone are our fortune and our sole hope for the future."

As one of those children, I am here to tell you that the gift of justice is the gift that just keeps on giving.

Lesson #3. We must never forget how the world looks to those who are vulnerable.

My life started in a country where there had been no democracy, no rights, no justice. It created an unquenchable thirst in me for all three. My father died a month before I finished law school, but not before he had taught me that democracies and their laws represent the best possibility of justice. And that those of us lucky enough to be alive and free have a particular duty to our children to do everything possible to make the world safer for them than it was for their grandparents, so that all children, regardless of race, religion or gender, can wear their identities with pride, in dignity and in peace.