

**Presentation to the Canadian Club of Toronto
by Louise Arbour, United Nations High Commissioner for Human Rights
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'Human Rights and the Politics of Fear'

I am very pleased to be with you today and honoured to have been selected the Club's 'Distinguished Canadian of 2004'. I am told that I was chosen in recognition of my 'long and distinguished work in the field of human rights'. Although I am quite flattered by the second adjective, I am not quite sure how I should feel about the tribute to my long work. For one thing, it doesn't feel very long, and there still seems to be so much to do. Almost a year after having taken my functions as United Nations High Commissioner for Human Rights, I can assure you that I see every day the enormity of the work that we, the international community, and that I, as High Commissioner, face to ensure the implementation of all human rights, for all people, everywhere. I therefore take this accolade as a great encouragement and I am very grateful for your support and friendship.

As a judge in Canada and as the Prosecutor for the international tribunals for former Yugoslavia (ICTY) and Rwanda (ICTR), I gained valuable insight into what underpins the most spontaneous acts of humanity, generosity and compassion, and also what lies behind acts of gross disrespect and contempt for the most fundamental aspects of human dignity, acts that lead to crime and the worst violations of human rights. Fear is often at the source of these actions that are at both extremes of the spectrum of human interaction.

Except for its climate, Canada is not a country of extremes. It is therefore somewhat sheltered from the rise of fear as the driving force behind the development of public policies. Globally, insecurity is fuelled by terrorism, the proliferation and relentlessness of armed conflicts and the persistence of extreme poverty and deprivation in a visible world of comfort and consumerism. The tsunami and its aftermath also reminded us that the most devastating threats to security do not only arise from human action.

There is much to learn about fear from our collective response to the tsunami disaster and to that given to other global crises, such as the conflicts in Darfur, Haiti, the DRC, and Colombia, which leave comparable numbers of victims in their wake. Put another way, there is much to learn from our reaction to 'awesome acts of God' in contrast to our response to 'unconscionable acts of man'. Fear of natural disasters seems to be a 'good fear', one that leads to generosity and compassion towards those who have suffered from their dreadful consequences. Fear of other people, on the other hand, including fear of terrorism, crime, armed conflict and extreme poverty, seems to be of an 'unspeakable' type, a dark fear which leads to wilful indifference or futile pity towards victims, or, worse, a search for protection through unbridled repression.

Fear is at once the best and the worst of advisors. It triggers an appropriate sense of alertness, but may produce a premature, irrational response. In the face of terrorism, the politics of fear call for a total surrender of liberty in favour of security, secrecy,

randomness, racial profiling, involuntary renditions, and the use of torture. In an armed conflict, fear often gives rise to an escalation of militarism, repression, indoctrination, and the use of child soldiers. In the face of extreme poverty, the politics of fear can have a two-pronged perverse effect: it provides an inappropriate survival tool for the poor, one that leads to radicalism, gangsterism, and religious extremism; and it can also provide an inappropriate tool for the self-preservation of the rich as well, one that leads to exclusion, “gated” mentality and escapism through consumerism. These consequences of the politics of fear globally translate into racism and xenophobia, which are nothing else than ‘fear of the other’. The politics of fear feeds upon itself, and leads to more fear.

The international human rights framework, like the Canadian Charter of Rights and Freedoms, stands as a counterweight to the politics of fear. It provides the only reasoned and legitimate alternative to irrational reactions triggered by fear. A response to insecurity based on human rights is both more balanced and rational, and presents the singular advantage of dismantling, rather than perpetrating, the root causes of insecurity. The United Nations Secretary-General, Kofi Annan, in his recent report ‘In Larger Freedom’, in which he proposes nothing short of ‘reinventing the United Nations’, said:

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. ... It would be a mistake to treat human rights as though there were a trade-off to be made between human rights and such goals as security or development. We only weaken our hand in fighting the horrors of extreme poverty or terrorism if, in our efforts to do so, we deny the very human rights that these scourges take away from citizens. Strategies based on the protection of human rights are vital for both our moral standing and the practical effectiveness of our actions.

Human rights is therefore not a luxury that can be enjoyed after development and security are fully secured. Rather, it is a precondition to both, an antidote to the politics of fear which perpetuates both underdevelopment and insecurity. Human rights provide a framework for resolving disputes, even those engaging our most fundamental values and beliefs, that relies on rationality, impartiality and reason, rather than force, intransigence and intolerance. As the preamble of the Universal Declaration makes clear, only human rights protected by the rule of law prevent individuals to be ‘compelled to have recourse, as a last resort, to rebellion against tyranny and oppression’. Human rights ensure the surrender of hostility to dignity and liberty.

Canada aims to export certain ideals, as well as our emphasis on the rule of law, due process and good governance. Canada does not define itself by what it fears, but rather by whom it welcomes. This openness is entrenched in our popular culture, as well as in the way others perceive us. Gilles Vigneault, the great Quebec poet and singer, has put in verses this national characteristic of openness to others in his famous song ‘Mon pays’. Please allow me to recite a small verse, in French, which I will then attempt to translate:

De mon grand pays solitaire

Je crie avant que de me taire
A tous les hommes de la terre
Ma maison c'est votre maison
Entre mes quatre murs de glace
Je mets mon temps et mon espace
A préparer le feu, la place
Pour les humains de l'horizon
Et les humains sont de ma race

*From my solitary country
I cry out before I am silent
to everyone on earth
my house is your house
inside my four walls of ice
I put my time and my space
to prepare the fire, the place
for the humans on the horizon
and the humans are of my race*

'Mon pays', Gilles Vigneault (1965)

In these magnificent words, Vigneault expresses the essence of the openness to others and the absence of fear.

A similar imagery was used by the celebrated American film-maker Michael Moore in his depiction of Canadian reality. In 'Bowling for Columbine', he paints, in his usual colourful manner, an American society riveted by fear, in which both private actions and broader policies are tainted by a culture of fear. Many will recall Moore's portrayal of Canada as a country where people, even in large cities like Toronto, do not lock their doors. Whether it is literally true that Canadians do not lock their doors, it acts as a powerful metaphor of the absence of fear as a societal indicator of Canadian identity, a metaphor which echoes the one used by Vigneault.

This self-perception, and image abroad, of an open Canadian society not built on nor susceptible to the politics of fear is reflected in our Charter of Rights and Freedoms. I believe that the genius of the Charter is that although it is fundamentally a document asserting individual rights and freedoms, its implementation invariably brings to the forefront of public awareness the existence of the rights and aspirations of others, usually those who claim to be ill-treated by a majoritarian democratic process. Human rights are fundamentally a recognition of the rights of others.

When we are asked to decide how much of our liberty we are willing to abandon for our security, we are asked, in reality, how much of the liberty of others we are willing to sacrifice for our own security. How many of my compatriots am I willing to allow to be transferred to countries where they will likely be tortured in order for me to feel secure? How many foreigners am I willing to allow to be detained indefinitely without charges if that is what it takes for me to feel secure? Obviously, we never hear the

question to be: am I willing to subject myself to arbitrary detention or to the risk of torture so that my neighbour feels safer?

The traditional paradigm that it is better to let ten guilty persons go free than to punish one innocent has been put into question in the fight against terrorism, as my former colleague at the Supreme Court of Canada, Justice Ian Binnie, rightly noted recently. He made the useful comparison between the “ten to one” metaphor and the following observation of Lord Justice Brooke in a recent case in the United Kingdom¹:

But unless one is willing to adopt a purist approach, saying that it is better that this country should be destroyed, together with the ideals it stands for, than that a single terrorist should be detained without due process, it seems to me inevitable that the judiciary must be willing ... to put an appropriate degree of trust in the willingness and capacity of Ministers and Parliament, who are publicly accountable for their decisions, to satisfy themselves about the integrity and professionalism of the security service. [my emphasis]

In my respectful view, this carries the fundamental misconception that a human rights approach, purist or otherwise, is adverse to security concerns. Human rights do not impede the protection of national security; they are, at least in democratic societies, at the heart of national identity. Hence, in my view, a country is as much at risk of destruction, and so are the ideals it stands for, by the collapse of its human rights norms, and of the rule of law that acts as their guardian, than it is by the explosion of bombs on its territory. The most profound insecurity does not emanate from foreign threats, but from internal temptations to let erode the foundations upon which national identity is built. This fear may not be as immediate and palpable as that triggered by a bomb, but it is perhaps deeper. To fight insecurity within the framework of human rights is to fight with our strongest weapon, our deepest values; it is the protection of human security in the most profound sense.

The strength of our rule of law and human rights norms can only be judged by whether they can resist the temptations to surrender to the politics of fear in times of crisis. Justice William J. Brennan, Jr., Justice of the Supreme Court of the United States from 1956 to 1990, gave a thought-provoking speech in 1987 at the Law School of Hebrew University in Jerusalem, entitled ‘The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crises’. His speech makes both chilling and inspiring reading. It is chilling in that it shows that some of the worst mistakes of history tend to be repeated over and over again, including the pattern of unnecessary suspension of human rights in times of crisis. It is inspiring however in that it postulates that prolonged situations of war or threats to national security may be used to reinforce the values and laws that forge our very identity. Justice Brennan ended his speech as follows:

. . . The struggle to establish civil liberties against the backdrop of these security threats, while difficult, promises to build bulwarks of liberty that can endure the fears and frenzy of sudden danger—bulwarks to help

¹*A, X and Y & Others v. Secretary of State for the Home Department*, [2003] 1 All E.R. 816 (C.A.), since reversed by the House of Lords, *A and Others v. Secretary of State for the Home Department*, [2004] UKHL 56 (2004).

guarantee that a nation fighting for its survival does not sacrifice those national values that make the fight worthwhile . . . For in this crucible of danger lies the opportunity to forge a worldwide jurisprudence of civil liberties that can withstand the turbulences of war and crisis. In this way, adversity may yet be the handmaiden liberty.

Are we not living in such a time of opportunity? With the continuing threat of terrorism, and indeed with persistent armed conflicts and the ever more perverse effects of extreme poverty, as we experience this prolonged exposure to real and perceived threats to our security, we are also faced with an extraordinary opportunity to forge a worldwide jurisprudence capable of protecting fundamental human rights in the face of danger. Judges, in particular, everywhere in the world, hold in their hands the chance to make adversity the servant of liberty and dignity.

The contribution that Canada has made, and seeks to make, on the international scene, should reflect our understanding that answers to insecurity should be searched for within the existing human rights legal framework. Canada does not lock its doors to 'others', and in that, perhaps ironically, it holds one of the keys for sustainable peace and security.