

**Human Rights in a Temporal Perspective:
From the "Age of Human Rights" to an Era of Uncertainty
by Professor Danilo Türk**

The Anna Lindh Lecture 2012

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Distinguished

Governor, Mrs Margareta Pålsson,
Vice - Chancellor of Lund University, Professor Per Ericsson,
Chairman of the Board of Trustees of the Raoul Wallenberg Institute, Lennart Svensäter,
Ambassador Hans Corell, Former Chairman of the Board of Trustees,
Ambassador Bogdan Benko,
Director Marie Tuma,
Distinguished professors,
Dear students,
Ladies and gentlemen,

It is a great honour to offer the Anna Lindh Memorial Lecture, here in the solemn environment of the Aula Magna of the University in Lund, at the invitation of the Raoul Wallenberg Institute.

All of us who knew Anna Lindh have greatly admired her political acumen, her honesty and commitment to humanity, and her warm personality. I fondly remember many of the meetings at the Headquarters of the United Nations in New York, where Anna Lindh participated tirelessly and with unique energy. Whether she spoke about development, human rights, environment or the situation in the Middle East, she was always convincing and impressive. In all those discussions she expressed a strong human commitment and her contributions greatly energized all political debates. She was giving us all a sense of importance of our work as diplomats and international civil servants.

Her message to all of us, her appeal to bring a strong human touch to international affairs continues to resonate and inspire. It is therefore natural that an immediate thought about the political legacy of Anna Lindh invites a reflection on the international action in the field of human rights. What has been the road travelled so far? Where does the world stand today? Has the era, sometimes described as the "age of human rights", i.e. the period between mid - seventies and the end of the cold war, left durable achievements and what should be the priorities for the future?

Questions like these seem an obvious choice of the theme of a lecture in the memory of Anna Lindh. In addition they have a deep meaning for me personally. I became active in human rights work as a student about forty years ago, back in 1972, through correspondence with Amnesty International, at that time a

relatively new organization concerned about human rights of prisoners of conscience in many countries of the world, including in former Yugoslavia. Later on I became active in the international non-governmental work and, through the non-governmental channel, in the United Nations.

So, in February 1975 I travelled - a young NGO activist among many other young NGO activists - to Geneva, to take part at the NGO work related to the UN Commission on Human Rights, which was in session at the time. I still vividly remember the long windowless corridor from the "Porte No. 6" in the old Palace of the League of Nations to "Batiment E", the ultra modern UN building, and several glass doors which opened automatically as I approached them. This gave the place an awesome image, reminiscent of scenes from James Bond movies. I understood that something important was awaiting me at the end of that long corridor. Finally I reached the new UN building and its Conference Room XVII where the Commission was holding its meetings. The place was lively. It looked more like an active international bazaar than a diplomatic conference. NGO representatives and academics mixed with conservatively dressed diplomats in a host of intensive discussions in the conference room and in the adjacent "Serpent Bar". The atmosphere was filled with excitement. The Commission had just decided to appoint a special rapporteur to study violations of human rights in Chile and the ensuing adjournment of the meeting produced a situation both inspiring and chaotic.

The NGO world saw this decision as an important step forward. The international attention to the violations of human rights was strengthened significantly. The UN had thus started its action to counter violations of human rights in places other than Southern Africa and the Middle East, the hitherto main geographical regions of concern. For the NGOs, it was only a question of time when the international attention would turn to other Latin American military dictatorships and to the countries of Eastern Europe under the Communist rule. The expectations of the international NGO Community proved to be well founded. In the same year, 1975, the Helsinki Final Act on Security and Cooperation in Europe included legally modest, yet politically powerful provisions on human rights. The new American administration, elected in 1976, put human rights at the center of its foreign policy in Europe. In the following year a group of European intellectuals signed a document titled "Charter 77", an appeal for the implementation of human rights provisions of the Helsinki Final Act. The years that followed changed the political landscape of Europe and the world. They proved the transformational power of human rights. The age of human rights had dawned.

The developments of the late 1970s and 1980s have often been described as "the age of human rights". This is fully justified, given the magnitude of social and political change in large parts of the world and the fact that much - if not most of that change was inspired by human rights and often led by human rights activists. Human rights became a powerful and internationally highly relevant political idea. Political actors who strived for change had to make use of human rights as a tool in political battle if they wished to succeed. Obviously, not all the slogans were meant seriously and, as it often happened in history, positive mobilizing ideas were sometimes abandoned after the desired political change had been achieved. Nevertheless, the power of human rights was strongly reconfirmed.

The wave of change has had important repercussions in the international institutions of the time, including the United Nations, where activities in the field of human rights gained new dynamism. For the UN, human rights had been one of its central ideas from the beginning. It is worth recalling that the UN Charter begins with the words "We the peoples..." and not, as was the case with the League of Nations, UN's predecessor, with a solemn reference to "The High Contracting Parties". The Universal Declaration of Human Rights, adopted in 1948, represented a stellar moment in the Organization's history. It articulated, with unprecedented moral authority and with far reaching normative effects, the set of basic human rights, which continue to be, as stated in the Declaration "...a common standard of achievement for all peoples and all nations..."

In addition, the Universal Declaration, in its Article 28, provided that:

"Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

This provision contains two messages of fundamental importance for all subsequent work in the field of human rights. First, the idea of full realization of human rights. It does not suffice to recognize or only formally enact human rights. The objective is their full realization, which requires constant action, sometimes in the form of legally defined protection and often in other ways - through the strengthening of awareness or through assistance to those whose rights are violated or ignored.

Second, the Universal Declaration called for development of a social and international order, which would enable full realization of human rights. This is a far-reaching objective, a tall order indeed, which, already at the first glance, implies a multitude of tasks - political, legal, economic and social. It also succinctly explains what a good society is: the one with a social order in which human rights can be fully realized.

Today we still admire the level of optimism and ambition of the authors of the Universal Declaration of Human Rights. Looking at its Article 28 in retrospect it is also easier to understand the importance of building the legal structures for the needed social and international order, the importance of political and legislative imagination and formulation of legal and institutional instruments specifically designed to bring the actual reality closer to the objective of "full realization of human rights".

In retrospect again, the construction of normative, institutional and practical elements had to overcome a variety of difficult constraints. UN activities following the adoption of the Universal Declaration of Human Rights were seriously constrained by the cold war. However, that obstacle did not completely paralyze the human rights segment of the organization. Much useful legislative work was done in the 1950s and 1960s. That work included two International Covenants on Human Rights, which were adopted in 1966 and entered into force ten years later, in 1976, at the dawn of the age of human rights. The first Optional Protocol to the Covenant on Civil and Political Rights provided for individual complaints and, over time, gave rise to a significant body of human rights jurisprudence. There were other international treaties designed to prevent and combat racial discrimination, to foster equality of women and men, to protect the rights of the child and others. A number of UN declarations containing provisions of "soft law" developed the normative landscape further. All that represented a significant legal and political basis for human rights activities that followed.

Many among these activities for the promotion of human rights were based on the patterns of legally defined implementation of international standards - state reporting, individual complaints, general comments guiding the interpretation of human rights law, new standard setting and the like. But some of the new activities, developed in the 1970s and 80s, in the age of human rights, were quite innovative - and imaginative. Let me mention just a few:

The Human Rights Commission's Working Group on Enforced and Involuntary Disappearances established a search system to trace missing persons in every corner of the globe and requested the relevant governments to cooperate with the UN in the process. The abhorrent practice of "disappearances", which had been among the most widespread violations of human rights, in particular in some countries in Latin America, was countered by an organized international action in which the UN played a significant role.

Reporting about the introduction of the state of emergency in different countries of the world was another innovation that provided a welcome insight into situations in which human rights became threatened as a result of emergency laws and regulations. This facilitated an early attention to situations particularly threatening human rights.

A number of country - specific rapporteurs was appointed by the Commission on Human Rights. They focused on violations of human rights in specific countries and provided a credible basis of information and analysis that allowed international action to crystallize around their findings. The recent changes in Myanmar remind us of the contribution made to this positive development by the highly committed special rapporteurs on the situation of human rights in that country. The international efforts have persisted for almost three decades and have contributed significantly to the recent and very encouraging changes. However, it should be mentioned - in passing - that progress in Myanmar achieved so far is neither complete nor irreversible and that international attention should continue.

Thematic rapporteurs and working groups - dealing with such issues as the protection of the independence of the judiciary, the abolition of practices of administrative detention, the application of minimum standard rules on treatment of prisoners, the situation of conscientious objectors to military service - have helped to improve the respect for and implementation of human rights standards. Some among the thematic rapporteurs like the ones addressing the horrors of torture and of arbitrary executions have raised critically important issues of human rights in the most sensitive political situations and made them a subject of systematic international concern.

Obviously, not all human rights activities have been meant to address violations. Some were designed to deal with age-old injustices, which require a major change in policies. The UN work for indigenous peoples is a case in point. Still others, like the activities concerning the right to development, tried to break new paths in the evolution of the doctrine and policy of human rights and to produce a new balance between civil and political rights on the one hand and economic, social and cultural rights on the other.

The age of human rights culminated in the 1980s with the demise of military governments in Latin America and, ultimately, with the collapse of Communism in the Soviet Union and Eastern Europe. In 1988, a year before the fall of the Berlin wall, the fortieth anniversary of the Universal Declaration of Human Rights was already celebrated in the spirit of victory of human rights and their transformational power.

Thus "the age of human rights" reached its summit and new visions were called for. In the wake of their victory, the international human rights NGOs launched a new guiding principle: There should be no impunity for human rights violations. This strategy was initially, in the 1980s, connected with the demise of dictatorships in Latin America. A resounding "No" to impunity for the perpetrators of human rights violations seemed a logical and, indeed, the necessary answer offered by the international human rights community. It is understandable that the very fact of ending violations of human rights raises the question of consequences: Should the victims be compensated and if so, how? Should all the perpetrators be punished and what is to be done in cases of massive violations, involving a very large number of victims and proportionately large number of perpetrators of human rights violations? How does one achieve reconciliation in societies deeply affected by human rights violations? The key answer was believed to have been found in the slogan "no to impunity" and in the underlying idea of retributive justice.

However, all the consequences of the retributive, "no to impunity" approach were initially less than fully understood. The complexities of this approach became apparent only gradually. It takes a long period of time to truly redress the injustices resulting from massive and systematic violations of human rights. At the political level it is not always clear what should come first: justice or reconciliation and how to combine the two. In abstract, one could claim that justice is a fundamental condition for reconciliation. But in most situations both have to go in parallel and require careful determination of immediate, short-term priorities, in particular the need to prevent new violations. Retributive justice has to be accompanied with activities of "restorative justice", i.e. with the restoration or creation of an atmosphere of trust and confidence in justice and its effectiveness for all members of a society.

The questions which have arisen in the wake of the victory of the age of human rights are still with us and there are no easy answers. Moreover, in one of the many bitter ironies of history new and unexpectedly dramatic challenges to human rights arose in the aftermath of the cold war, in a period when the feeling of victory of human rights was still fresh. Atrocities committed in the Balkans in the first half of the 1990s, the genocide in Rwanda and massive violations of human rights and humanitarian law in West Africa and later in the DR of Congo and in Sudan have posed new challenges to the international community - and to the human rights world. How does one ensure that there is no impunity in such situations? The challenge of how to effectively address these violations - the depth and magnitude of which had been unimaginable in the age of human rights - was compounded by the apparent lack of political will and ability of the international community to agree on meaningful responses to the man-made humanitarian disasters and massive human rights violations that marked the end of the 20th Century.

A partial answer to this challenge was found in the creation of a number of international or "mixed", international/domestic tribunals that were established to try the principal perpetrators of massive violations of humanitarian law in the area of former Yugoslavia, in Rwanda, in Sierra Leone and in Cambodia. Later on the International Criminal Court was established, which represented a large step forward in the building of international architecture for global justice and protection of human rights. I am very pleased to see Hans Corell with us tonight. His contribution to the creation of the ICC and to the development of various international and mixed tribunals has been truly historic. The international courts and tribunals have already accomplished much and need to be supported - politically, financially, through NGO advocacy and, very importantly, through the media. Victims of massive violations of human rights committed in contemporary armed conflict need to know that there is hope that justice will be done, if only partially and with long delays.

The legal and institutional developments, while unable to prevent or at least contain massive and systematic violations of human rights of the past two decades, have rejected impunity and have created several institutions of justice, which can be realistically expected to have a preventive effect in the future. They have become a solid part of the architecture called for by Article 28 of the Universal Declaration of Human Rights. Kofi Annan, former UN Secretary-General who has contributed decisively to the strengthening of international justice and the rule of law, described this step succinctly:

"In the face of war crimes, crimes against humanity, and genocide, the default position of the international community is now accountability, not impunity." (K. Annan, Interventions, 2012, p. 151)

This is an important achievement. Strengthening of accountability for human rights violations, whether committed in armed conflicts or in the time of peace, will remain a vital priority for human rights. Justice and reconciliation are among the key elements of the human rights agenda for the 21st century. So is the need to strengthen protection of civil and political rights in all parts of the world, to ensure that there is no sliding back and that there is progress where progress needs to take place.

An important source of encouragement regarding the progress of human rights in the beginning of the 21st century lies in the institutional structures, which have been built so far. The UN High Commissioner for Human Rights, established in 1994, strengthened the UN action. The Human Rights Council, which replaced the politically exhausted Commission on Human Rights in 2005, brought new energy and started the practice of a universal periodic review of human rights situations in all UN member states. Regional human rights mechanisms, in particular those of the Council of Europe, were strengthened over the past decades and their regional scope has been broadened.

These are important elements of progress. However, the objectives of Article 28 of the Universal Declaration still appear distant. An impassioned review of the entire human rights landscape today might even suggest that **while there have been many significant improvements, the times are more uncertain now than forty years ago.** Let me illustrate:

Economic growth of the past decades, where it has taken place, has not resulted in a proportionate improvement for human rights. The economic and social situation in most countries of the global South remains disturbing. Furthermore, the economic recession of the past few years has created new forms of poverty, exclusion, and inequality in many developed countries of the North. Economic inequality has become a major global problem described as a problem of wealth and income extremes. According to a recent report by Oxfam, the richest one per cent of the world's population has increased its income by 60 per cent in the last twenty years, creating a situation of extreme wealth that Oxfam defines as "economically inefficient, politically corrosive and socially divisive". In other words, a situation of inequality is being created which is likely to have negative repercussions on human rights in general. Moreover, inequality of women in many parts of the world and precarious situations of other vulnerable segments of society and social groups add to the uncertainty.

Specific challenges to human rights exist in multiethnic societies. Multiculturalism, now a recognized fact in many parts of the world, has made the question of balance between, on the one hand, individual's human rights and, on the other hand, the respect of collective identities, more important than before. Policy making, which should satisfactorily define this balance in the specific multicultural situations, is often lagging behind.

Terrorism continues to pose serious threats to human rights and calls for effective measures of counterterrorism. However, the measures of counterterrorism require careful scrutiny in order to avoid the trap of violations of human rights committed in the name of security.

These examples of the human rights questions of today illustrate the thought that we actually live in an era of uncertainty. Obviously, contextualization of human rights issues and setting of policy priorities is a continuous process and ideas about future human rights action need to be proposed and tested all along. Today I wish to propose, for your reflection, two suggestions, which should be, in my opinion at least, among the key priorities for the future.

First: Economic and social rights are human rights: In the globalized world of today, economic and social rights must be recognized and treated as human rights;

Second: We need a "Global Rule of Law Report" as an instrument of strengthening the needed protection of human rights.

Let me elaborate briefly.

Economic and social rights were included in the International Bill of Rights at the earliest stage, in the Universal Declaration of Human Rights. Obviously, the nature of their realization has depended on the general level of development of a given society, on the availability of the necessary resources and on the political orientation of the state concerned. However, with time certain basic principles related to the realization of these rights gained in authority. The most important agent in this context has been the International Covenant of Economic, Social and Cultural Rights and its expert committee, which by now has more than 160 state parties and which emphasized the corresponding obligations of states - both obligations of conduct and obligations of result. States are required to take steps towards the full realization of economic, social and cultural rights.

"Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant." Furthermore, states have to ensure that these rights will be exercised without discrimination. On the other hand, any deliberately retrogressive measures in that regard would require "the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum of available resources." (All quotes from the General Comment of the CESCR No 3 on the nature of States Parties Obligations, adopted on 14 December, 1990).

These normative requirements are of great importance today, at the time when "retrogressive measures" are often considered a matter of economic necessity. At present, most of the developed countries give an absolute priority to financial considerations, often at the expense of economic and social rights. The European Union's social model is under serious stress.

While the situation in the developed world is deteriorating, the situation in the developing world remains deeply disturbing. Economic and social improvements of the past decades have been uneven. While millions of people have been lifted from poverty in some countries, improvement has remained elusive to most. Globalization was not "lifting all boats" as its enthusiasts believed. Benefits of economic growth have remained elusive for many while the systemic problems of kleptocracy, corruption and abuse of economic power deepened the deprivation - affecting, above all, the realization of economic, social and cultural rights - and adding to social and political instability

The uprising in the Arab world, which started last year and which is continuing in an unpredictable direction, is an important indicator of a more general problem. Economic and social situations do matter to human rights. The Arab uprising has been motivated at least as much by the quest for work and a decent standard of living - both of these values being enshrined in the Universal Declaration of Human Rights - as by the desire to put an end to arbitrary arrest and torture and to get rid of ossified and corrupt dictatorships. Economic and social rights have been put on the human rights agenda forcefully by the people concerned.

All this has important implications for the international community as a whole. Economic and social improvement is not only one of many desiderata. It is an important human priority and a matter of human rights. States should devise appropriate policy responses and international institutions should help. It is preferable to address these issues now than to let them degenerate into further political upheaval and new forms of authoritarian rule. Let me repeat: economic and social rights are human rights and have to be treated as such.

My second proposal for reflection relates to **the need to strengthen the rule of law.**

Human rights not only define the fate of the individual, they also determine the quality of the state in which the individual lives. The state has a variety of duties vis a vis the individual. Some of them require the state to refrain from interfering in the individual's freedom as defined by standards of human rights. Some other duties constitute the responsibility of the state to protect the individual against the abuse of human rights whether committed by state agents or others. It is precisely at this point where the attention of human rights activists must be placed today. The forms of abuse of the rights of individuals evolve and so does the role of state as protector of human rights. The state must ensure the rule of law. It is necessary to ensure that the rule of law is constantly upheld and that new challenges that emerge are met in a timely and effective manner.

Cultivation of the rule of law is a continuous process that requires constant vigilance and action. Obviously, this must take place primarily at the national level and within those international organizations such as the Council of Europe which place the rule of law among their basic principles.

At the level of the UN the situation is more complex. Nonetheless, the UN has made significant efforts to strengthen the rule of law at the national and international levels. According to the official UN web site, over 40 UN programs, funds, agencies and other UN entities are engaged in a wide variety of rule of law programmes in more than 110 member states. As a fundamental principle of the UN Charter architecture, the principle of the rule of law has special importance for the discharge of the responsibilities of the UN's principal organs. According to a recent analysis by the Security Council Report, an independent research organization, a general understanding about the importance of accountability as a tool in the discharging of the Security Council's primary responsibility for the maintenance of international peace and security

already exists. However, it still needs to be fully internalized by the Security Council and its members. The General assembly has taken up the principle of the rule of law on several occasions in the past decade and in September 2012 adopted an important declaration on the rule of law at the national and international levels. All these efforts by the UN need to be praised and supported.

At the same time, the global picture offers some disturbing news. Studies done by the World Bank and the World Economic Forum indicate the weakening of states, including a number of developed countries, in areas such as regulatory quality, government effectiveness and accountability and, most disturbing, less than satisfactory effectiveness of fighting corruption. At the first glance it seems that such features of the weakening of states do not relate to human rights. However, shortcomings in these areas weaken the position of the individual in a society and eventually affect his or her human rights, for example the right to an effective legal remedy or the right to take part in the conduct of public affairs in a meaningful way. If extended over a period of time, they also reduce a country's competitiveness and weaken the economic base for the realization of economic and social rights such as the right to work and the right to social security.

The rule of law is critical for the full realization of human rights. There is nothing particularly new in this understanding. What is new is the realization that today human rights require a much higher quality of rule of law than ever before - and in many countries a higher quality than currently available. This is why the efforts of the Council of Europe, the UN General Assembly and the UN Secretary-General and the research institutes are so important and indeed deserve full support. The recently published Guide to Politicians on the issues of the rule of law prepared by the Raoul Wallenberg Institute and the Hague Institute for the Internationalisation of Law is a welcome innovation, which merits wider discussion and action within states.

Let me conclude with a specific suggestion relating to the tools to promote the principle of the rule of law that need to be developed at the level of the UN. I hope that one day in a not too distant future, the ongoing UN work will enable the production of an annual UN report, a "Global Rule of Law Report" similar to the existing Human Development Report. A Global Rule of Law Report could analyze progress made in the UN member states in the areas of regulatory quality, the functioning of the judiciary, the accountability of public administration, the effectiveness of the institutions fighting corruption and in other key areas. An annual report could provide useful comparisons and, above all, an opportunity to review progress over a period of time. Much information exists and much work has been done already. The question now is whether there is sufficient political will and organizational capacity to bring all the existing information into a single report which is necessary to make a Global Rule of Law Report possible.

This question brings us back to Article 28 of the Universal Declaration of Human Rights and to the entitlement of every individual to an order in which human rights can be fully realized. As said before, this is a tall order. Strong efforts are needed to make real progress towards this objective. Both political energy and technical sophistication are called for. And, as usual, the key requirement is the much needed political will. One could say that a Global Rule of Law Report is not yet possible. However, people today expect bold steps forward. Decision makers have to perform better and technical tools such as UN reports can be of considerable help to them. So, let us develop new ideas and let us be ambitious in our thinking.

Thank you.