Human Rights and the Rule of Law

in a Digital Age

Lecture by

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Thank you for inviting me to speak here today. It is an honour. With six hundred years of intellectual history, the University of Leuven is one of the most distinguished centres of learning in Europe, and statements that are made here may be heard throughout the global conversation on law and the humanities.

I particularly admire the work of your Metaforum, which seeks to break down the partitions between disciplines and produces visionary work on social issues, and I’ve been inspired by that example to come up with a topic today that spans a number of specialized fields.

You see, as I began constructing my speech I found myself reflecting on the differences between your years here at Leuven and my own experience at the University of Natal in the 1960s. I was a black woman in apartheid South Africa, and the year after I entered university, the African National Congress, Nelson Mandela’s party,
was banned. There were student protests, and an atmosphere of enormous political agitation. But then you at the University of Leuven are a very diverse and international student body, and I expect many of you, too, have experienced political repression, or discrimination based on your origins.

So perhaps there isn’t much difference there. However, there is one very salient difference between us that may not immediately occur to you. You are digital natives. And I am a digital immigrant. You grew up using computers, and probably no student in this room can recall a world without cell-phones. I am still a little clumsy in the digital world, because I am a bit of an outsider. So from this slightly awkward vantage point, I may see things about the online environment that you, as digital natives, do not.

No medium in human history has ever been so intimate or so ubiquitous as the Internet. It is present, at our fingertips, whenever
we call. A smartphone is like Aladdin's lamp: you pull it out of your pocket and rub it, and wherever you are, lo and behold! the genie appears — your search engine. This is a very powerful form of communication indeed, and I think it has had fundamental impact on our behaviour, as well as our relationships. It introduces an immediately extra-geographic dimension to our lives, as if all of us were somehow dual citizens of our country and this other, online place.

But before I delve into the impact and implications of the Internet, I need first to explain the broad outlines of who I am, where I stand within the human rights framework of the United Nations, and what that human rights framework means to the world.

1. MISSION / THE RULE OF LAW "OFF-LINE"
My job description as the UN High Commissioner for Human Rights is to protect and promote the rights and freedoms that everyone in the world is entitled to enjoy. This is a profound task.

The Universal Declaration of Human Rights, which was adopted in 1948 by the UN General Assembly, was the first really global expression of the idea that all human beings are born free and equal in dignity and rights. Every one of the 193 countries of the United Nations has agreed to uphold the Universal Declaration of Human Rights — has agreed, in effect, that it is subject to these norms. This universal acceptance remains one of the greatest achievements in human history.

It is secured with a number of very detailed engagements, which form the body of international human rights law. Twelve years after the Universal Declaration was written, the UN General Assembly added two more detailed treaties — the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.
Since then, the member states of the United Nations have continued to add treaties that extend the architecture of our international human rights system to a number of important specific topics. They include racial discrimination; discrimination against women; torture; the rights of the child; the rights of migrant workers and their families; the rights of persons with disabilities; and protection from enforced disappearance.

The countries of the United Nations have also set up a range of institutions to enforce those treaties in practise. These include treaty bodies to monitor implementation by signatory States and hold them accountable for their performance; and panels experts who investigate human rights complaints by individuals.

Regional human rights tribunals have been established in Europe, the Americas and Africa. In 1998, the International Criminal
Court in The Hague was set up. I myself served as a judge on the International Criminal Court, and before that on the International Criminal Tribunal for Rwanda, which was set up following the genocide in 1994.

These international tribunals send a strong message that the rule of law extends to the powerful, as well as to the powerless — that victims of gross human rights violations everywhere may seek justice and redress, even beyond the borders of their own countries. I count this, also, as an immense achievement.

Another cornerstone in this architecture — which may seem complex, but which is also very flexible and resilient — is the establishment of the Human Rights Council, which was set up in 2006. The Council has addressed a range of often sensitive human rights issues, such as corruption — which is highly destructive of human rights, whether they are economic, social or political rights — and the rights of lesbians, gays, bisexuals, transgender individuals.
In addition, the Human Rights Council sets up international commissions of inquiry, and it names independent experts to monitor and document human rights violations. It has also created a remarkable mechanism for regular scrutiny of the human rights records of states. Every four years, every government in the United Nations must submit a detailed report on the human rights situation in its country, including women's and children’s rights, minority rights, the death penalty and so on. Other governments take charge of assessing and challenging these submissions, and I can assure you that this is an often very powerful process, quite unthinkable even a decade ago.

Finally, there is my Office — the Office of the High Commissioner for Human Rights. This was established by the United Nations 20 years ago, so that an independent, authoritative voice would speak out against human rights violations wherever they occur.
We bring the weight of the United Nations to the support of civil society organizations and individual human rights defenders around the world. We lend our voice to the voiceless. We have field presences in 58 countries, and we act as the secretariat of the Human Rights Council. Our staff work to promote and protect human rights through advocacy; by monitoring and documenting human rights situations; by training national and international actors: and by assisting national authorities to shape new policies and laws. We have also built a rapid response team to deploy personnel in human rights crises.

This is the world's international human rights system as it stands today. It is not just a theoretical construction — not a set of abstract institutions. Uncountable numbers of people have gained independence; have secured freedom from torture or unlawful imprisonment; and have been protected from prejudice and harm because of the work of these bodies.
They have not abolished abuse. They have not eradicated poverty. But in an imperfect world, they have changed lives. To me, they provide strong hope that we can act together to prevent violations of rights wherever they occur, and to prosecute those violations if and when they do take place.

They make up a very resilient system, with a great capacity for adaptation and extension as thorny new challenges emerge. And in the remainder of my talk today I’d like to explore a set of such challenges that have begun to face us today, as a result of something I could never possibly have foreseen when I first entered the University of Natal in 1959: the Internet.

2. HUMAN RIGHTS AND THE ONLINE WORLD

The Internet has hugely altered the human rights environment. Most obviously, it has boosted freedom of expression and freedom of information. These are vital enabling rights, because they allow individuals to shape their own opinions and argue for their enjoyment
of all other rights, whether that be fair trial, or freedom of religion, or decent living conditions, or free elections.

The Internet has obliterated governments' attempts to establish monopolies over information and the news. It hugely increases pressure for transparency and accountability. It connects citizens to a wide range of resources, notably education. It improves access to economic opportunities and even to healthcare.

I cannot emphasize enough that — as part of their obligation to respect the rights to freedom of opinion and expression — all States have a duty to facilitate access to the Internet, including websites that may contain content that is critical of their decisions.

(i) FREEDOM OF EXPRESSION AND 'HATE SPEECH'

Still, there are exceptions to this legal obligation under international human rights that States must ensure the free flow of
information. Unlike, say, the law regarding genocide, torture, slavery and crimes against humanity, the right to freedom of expression is not absolute.

I mentioned earlier that I was for many years a judge on the International Criminal Tribunal for Rwanda. We heard one case in which several individuals working in media organizations directly and publicly incited murder, with extremely offensive speech. What ensued was the genocide of 1994.

It is because of cases like these that the International Covenant on Civil and Political Rights, which guarantees the right to freedom of opinion and expression, actually requires the prohibition of “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” — what is often termed "hate speech".
This does not mean that States may ban speech that they think is offensive to their belief systems, or critical of their government. Scrutiny, debate and even harsh criticism of opinions and institutions, including religious ones, is absolutely intrinsic to the right to freedom of expression. And human rights law protects individuals and groups, not governments or beliefs.

My Office has helped to create a detailed body of guidance on this question of hate speech, involving experts from all over around the world who agreed on six defining thresholds for speech that constitutes "incitement to discrimination, hostility or violence".

They include context; the speaker's standing; intent to advocate or incite; content; scope or extent; and imminence. The law must be clear, to enable people to regulate their conduct accordingly. The restrictions must be necessary and proportionate — which means among other things that the State must carefully assess whether there is a direct and immediate connection between the restricted speech and the threat. And there must be effective safeguards, including
oversight by an independent and impartial body. This clarity, precision, and fairness are all essential elements of the rule of law.

Well, as a digital immigrant, I simply fail to see why hate speech should be tolerated online. I am not a very dedicated explorer of the Internet's outer reaches, but I myself have come across statements, and images, online that are simply unacceptable, and I think it is entirely possible to argue that some of these forms of speech directly incite violence and human rights abuse.

(ii) EXPOSURE, SURVEILLANCE AND PRIVACY ISSUES

Let me turn to another tremendously positive aspect of the Internet: its exposure of abuse to the light of day. Human rights defenders can use cell-phone cameras to document abuse. We can even deploy geo-spatial technology to track attacks against civilians, or movements of families displaced from their homes.
These images can be shared to alert the conscience of mankind. They can be used to prosecute the persecutors, and to name and shame those who permit abuse. The Internet can facilitate public protest: we need only think of the unexpected awakening that we call the Arab Spring, which was carried by the dynamic and irrepressible surge of social media.

However, it is important to recall that those same communications devices can also be used as tools to monitor, locate and target individuals who disseminate information that is critical of their governments. We must stand very firmly against this governmental surveillance, particularly in the case of vulnerable human rights defenders.

Surveillance software is also widely available to individuals, and this “cyberstalking” also has the potential to violate rights to privacy, among other rights.
A great deal of personal information is now available online, and much of it may be available for "harvesting" by corporations. Information regarding our location, interests and relationships may have been gathered by “cookies” that operate on our smartphones without our conscious knowledge. Who has access to this pool of Big Data? Who stores it, for how long and for what purpose? Do any of us truly feel we have given our informed consent to its use — both in the short term and in decades to come?

All these questions raise serious concerns related to the right to privacy. And again, this leads us to the question of the rule of law in the online environment.

(iii) CYBERCRIME, CYBER-WARFARE

Cybercrime is a growing challenge. I'm sure almost every person here today has encountered it. In many cases, criminals exploit the speed, convenience and anonymity of modern technology
to commit a range of already existing crimes, such as fraud, trafficking of persons or the sale of pornographic images of children. The horrible public bullying and shaming that seems increasingly to target vulnerable children, teenagers and adults is another, related aspect. Other phenomena involve entirely new forms of criminality evolving within the online environment: phishing, hacking, identity theft.

Virus attacks against computer data systems can target your PC, your bank's data-bank, or even vital installations such as electric grids, and the computer systems of government.

Individually — and in some cases, within the frameworks of organized partnerships — many governments are already fighting the nebulous crime organizations that operate within the online environment. This is very clearly a struggle to bring the rule of law online. But who defines what law should operate on the Internet? Who should administer and enforce it?
Another topic. As some of you may have noted, NATO has recently sought guidance regarding international law in cyber-warfare. A number of the independent experts that NATO has been working with have drawn up an advisory manual, and its proposals make it clear that something many of us wish would remain among the fantasies of science fiction could soon – and indeed, may already — be very real.

These proposals build on a body of existing law that is called "international humanitarian law" — which shares the same goals as human rights law, in that it seeks to protect the life, well-being and dignity of all individuals, but in this case focusing on the legal conduct of warfare. They propose to allow cyber attacks to target and destroy vital computer systems — except those of hospitals, dams and power-stations. They also include the notion that, despite being civilians, computer hackers who take part in online attacks could be viewed as legitimate targets.
Again, this is an attempt to tug the rule of law into the online world.

(iv) THE RULE OF LAW

The rule of law can only exist if there is a transparent legal system, with rules that are clear and well-publicized, which are enacted, applied and enforced by a fair and independent authority, in a manner that is consistent with human rights standards. Clearly it will require a great deal of thought and discussion before we devise such a system for something as complex and fast-moving as the Internet.

But what I want to do today is to alert you to this very fundamental question-mark, and to state, very clearly, that in order to protect the rights of the vulnerable — like every human environment — the Internet does require the rule of law. Moreover, when the rule of law is brought online, as I hope it will be, human rights must be a major part of that equation.
Laws to fight cybercrime should not only protect banks and military intelligence from hacker attacks. There must be laws to protect people — from scams, from bullying, from surveillance, from all kinds of potential harm.

Moreover, measures that are carried out in the context of cyber-crime and cyber-security must be undertaken in full conformity with international human rights standards — including those that apply to the freedoms of expression, information, opinion, association, privacy rights, as well as to the dissemination of hate speech, racism and xenophobia, child pornography and abuse, and to human trafficking.

In terms of cyber-warfare, we must insist that human rights norms and obligations must apply wherever a government's actions deliberately target essential human rights-related services — such as health-care facilities, educational capacities, or energy services necessary for safe
housing — and also whenever targets could endanger the right to health or the right to life.

Moreover, if governments do not take reasonable steps to protect their people against attacks by third parties, then human rights standards must also have a strong protective role to play.

As you can see, I don’t have many answers. What I have is a number of very difficult and important questions, and one conviction, which is this: whether the topic is the corporate use of data silently broadcast by our telephones, or cyber-bullying; viral attack or online human trafficking; human rights must always be at the core of future discussions about the Internet.

Human rights are one of the three pillars of the UN system, the other two being development and peace. We need to get the message
across that this is a tripod. There is no such thing as a two-legged stool, and no country or human endeavor can consider itself stable or safe if its government is not grounded in respect for human rights standards. This is just as true for the arcane struggle against cybercrime as it is for the age-old fight against hunger.

This is my challenge to you young people, you digital natives. Put your heads together, all of you, from different disciplines and different countries, and come up with ideas for how this can be done.

I look forward to hearing from you.