



World Chronicle

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for Human Rights

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Warren Hoge, New York Times

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The Way Forward for Human Rights

The UN High Commissioner for Human Rights is charged with one of the noblest and most formidable challenges imaginable: promoting and protecting all human rights for all people.

What progress, if any, is being made on the global human rights agenda? How is the threat of terrorism -- and the need to fight it -- affecting the struggle to protect human rights everywhere? How should war crimes and possible genocide in places like Darfur be prosecuted?

These are just some of the questions discussed in this episode of World Chronicle with Louise Arbour, the United Nations High Commissioner for Human Rights.

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ANNOUNCER: From the United Nations in New York, an unedited interview programme on global issues. This is **World Chronicle**. And here is the host of today's **World Chronicle**.

WILLIAMS: Hello, I am Mary Alice Williams and this is **World Chronicle**. Promoting and protecting all human rights for all people – a tall order or an impossible job? Is the threat of

terrorism -- and the need to fight it -- pushing human rights to the margins of the global agenda? These are some of the issues we'll be talking about today with the UN High Commissioner for Human Rights, Louise Arbour.

Welcome to World Chronicle...

Commissioner, you have been quoted as saying "the vision and promise of the Universal Declaration of Human Rights has been coming under strain". Is that a diplomatic way of saying human rights are in trouble around the globe?

ARBOUR: I think we are in a state of flux I think, about where to go. Not only because of the recent counter terrorism initiatives - I think has put a lot of strain on the very classic civil and political rights; the rights that are associated with law enforcement, arrest, detention, and so on - but also because I think these new initiatives have set back the agenda related to social and economic rights – which also needs a lot of attention.

WILLIAMS: Joining us in the studio today are Raghida Dergham, senior diplomatic correspondent for Al Hayat of London, and Warren Hoge of The New York Times.

Warren...

HOGGE: In the world of today, you as a United Nations official would be trying to pressure, enforce, suggest, human rights standards. In some societies where western ideas of human rights may conflict with their cultural ideas, their religious ideas, I'm thinking in particular...the rights of women. How do you do that? Do you nudge? Do you cajole? Do you order? How do you persuade people that your notion or a general notion of the rights of women for instance, must be observed in societies where sometimes by religious fiat, sometimes by government strictures they are not observed?

ARBOUR: I think if you express rights in very general terms, they are universally accepted. It's when you move from the general to the particular that you run into cultural specificity, and then it's at the level of implementation of rights... not so much the definition of rights that I think you run into a lot of serious difficulties. I believe that the only way you can promote and protect human rights is to be very attuned to the exact situation in which a particular country finds itself. It's not particularly helpful to compare one with another. But it's very helpful to compare a country against itself, on its own record as to whether it's progressing or regressing on the protection of rights. I think that's more helpful.

DERGHAM: I would like to take you back to something you said madame. You just spoke about counter-terrorism and the measures you feel are putting strains on civil liberties,

civil rights. What are you doing about it and with whom? How are you taking up the issues with governments whom you feel probably are stepping on civil rights in the name of fighting terrorism?

ARBOUR: Well I think there maybe two ways of looking at it. The first one I think is to stand firm on the protection and reaffirmation of norms. In my view, the Torture Convention for instance, has been very well understood to express an absolute, non-derogable prohibition against torture. And we should not entertain a lot of discourse as to whether this is still the state of the play in international law and international relations. So I think at one level, we have to be very clear as to what the parameters of international law obligations are. Now when we see infringement, first we have to find out, then denounce, and seek redress.

WILLIAMS: Where are you exactly right now? Are you in touch with certain governments? Are you taking up the issue? Are you putting out your voice? What do you need to have done and what are you exactly doing about it?

ARBOUR: Well again, at the normative level, my office has been involved from the beginning with the counter-terrorism committee set up by the Security Council to examine what kind of legal infrastructure various states are putting in place. Not surprisingly, we press hard for measures that are always compliant with international human rights requirements. But then at the more practical level, there are a lot of UN related mechanisms. There is a special rapporteur on torture, there's a committee that is the guardian of the Torture Convention, so there are lots of avenues, in which state conduct can be scrutinized. And I of course, oversee that.

WILLIAMS: Do you think that the Geneva Conventions have become obsolete in the context to the war on terror?

ARBOUR: I don't think they've become obsolete. I think they also have been under strain by suggestions of interpretations that I think run contrary to what was the established understanding in many quarters. There's no question that the Geneva Convention have I think, have been pressed into action in internal armed conflict in the last maybe decade (maybe a little more than that) in a way that was less common when they were mostly applicable...and I am talking about the general framework of the Geneva Convention. Where one had the sense they were called into play originally to govern conflict between states, and now more and more, we're looking at situations where states turn again their own populations. But the Convention has the capacity, the explicit to cover this kind of activity.

WILLIAMS: What do you do in the case where you see the Geneva Conventions are not being employed?

ARBOUR: Well let me say at the outset that interestingly enough, there are some that argue - and I think it's wrong - that when the Geneva Conventions apply - that is international humanitarian law - that human rights law are no longer applicable because it is a discrete body of law that is governed by ICRC, the International Committee of the Red Cross. Now, I strongly disagree with that, I think that it doesn't supercede for instance, Conventions on the Right of the Child, or racial discrimination requirements. But it is a discrete body of law that governs the obligation imposed on parties engaged in armed conflict basically on the treatment of prisoners of war and civilians. That's the core of Geneva law. But it doesn't supercede the whole body of human rights law.

HOGGE: When someone talks to critics of the United Nations, of whom there seems to be an increasing number - at least in this country. And you say anything relatively positive about the United Nations; they very often will say well, what about that Human Rights commission in Geneva, what a joke that is. You have countries like Sudan and Libya and Cuba - gross violators of human rights - passing judgments on other countries. The High Level Panel, which you probably know is the group here, which is proposing reform for the United Nations; in their report, and I brought it along with me here, they had a line in which they said the Commission, quote, suffers from a credibility deficit that casts doubt on the overall reputation of the United Nations. What can you do about that?

ARBOUR: Well the Commission, I think, is not unaware that these kinds of comments have been made in the press, in academic circles for quite some time now. The fact that it has now been expressed very explicitly in the very high level panel report, I think is an invitation for pretty serious reform. Now, the Commission can not reform itself - i.e. structurally. It will require an intervention of state parties to the United Nations to decide whether they want to change the composition of the Commission, its method of work, its sittings and so on. Now the Commission can change and it will start sitting in Geneva very soon, the Commission can certainly modify some of its culture - if I can put it this way - it cannot itself change its membership, but it can certainly address this credibility deficit, I think, by being much more assertive in denouncing human rights violations.

HOGGE: There's no way that the rules can be changed to say... you have to show a certain record for human rights, or have to have certain credentials before you can become considered for membership on it?

ARBOUR: Well you could do that, I'm not sure myself that it's such a good idea to turn the Commission to what some have described as the club of the virtuous. First of all, it would be very difficult to identify criteria that would measure having a decent enough human rights

record to earn the right to put others on judgment. Treaty ratification...does that really tell you that some countries have ratified every human rights treaty and are not in compliance. So it's not clear whether you'd find the appropriate criteria. But even if you did, human rights by definition is inclusive. It deals with participation – like democracy is a fundamental virtue of human rights – and you have to, in my opinion, deal with the difficult cases inside the tent, so to speak, rather than establish a system by which the self declared virtuous puts the rest of the world on trial, which will then just alienate them further. So I am not sure that this formula is the correct way to go.

DERGHAM: I want once again to take you back to something you said. I see many, many interesting things and the way you are phrasing what you're saying. The Geneva Convention back to what you said a little earlier about strains on that Convention. Two elements if you would address please. When you spoke of the treatment of prisoners...especially civilian prisoners, have you, for example, attempted to find out what's going on in Guantanamo or have you tried to see after the controversy in Iraq whether there is something for you do vis-a-vis these prisoners, or did you watch from the outside?

ARBOUR: Well on Guantanamo specifically, several of the human rights mechanisms as they are called, have pressed the case, and I believe, have requested access. I think the special rapporteur on torture for instance. So they are initiatives that are taken. I personally have not sought a visit for instance.

DERGHAM: Why not?

ARBOUR: Because at this point, I think that it is important that the various mechanisms be allowed to run their course and to explore, within the scope of their own activities, what they can uncover and what they can do. Let me say in general terms...

DERGHAM: ...and on Iraq as well.

ARBOUR: Yes, I will come back to Iraq. I think it's very important in Guantanamo, I've said this many times, the most distressing feature of what was happening in Guantanamo Bay was the early position of the administration, that it had structured this detention center so it would escape the scrutiny of American courts. When that got reversed, I felt that I could certainly take some distance because first of all, I have faith in the American judiciary, which I am sure is not a big surprise for people who know my background. But I believe that as long as you have a professional, sophisticated system of judicial review, the system in its totality is now fully engaged and I think one can take some distance and let it run its course. Now, I watch it, but that to me was a turning point – is that the American courts have ceased themselves of the issues and we should just expect that due process will unfold. Now with

regard to Iraq, as you know my predecessor was the victim of this terrible attack on the United Nations in August of 2003. Since then, the UN itself has had a very small presence in Iraq itself, which doesn't mean it hasn't had substantial engagement on issues related to Iraq. In that context we've always had a human rights officer in Amman, and we have done that kind of work towards re-insertion in that country.

DERGHAM: But that does not fall in line with what you said a little earlier about the Geneva Convention as being upheld...even the Secretary-General has expressed fear during one phase in Iraq and for example, Palestinian occupied territories, that there has been excesses and use of force to the extent that humanitarian international laws have been violated. Don't you feel this is any of your business that to interfere immediately and directly as a Commissioner?

ARBOUR: Well, first of all, there are some initiatives that one can take not in the public domain and if I have taken them, then obviously they were private initiatives, such as writing and expressing concern either ahead of a planned activity or afterwards as a form of engagement. There's also, I think in a lot of these issues – we have a lot of partners – so, for instance DICRC, which has a much broader access to detention centers for instance. So, there are lots of ways that one can remain involved, but there also comes a point where the so called moral voice of the High Commissioner has to be activated.

WILLIAMS: This is World Chronicle and our guest is the United Nations High Commissioner for Human Rights, Louise Arbour. Let me direct your attention to the Sudan for a moment. The recent UN Commissioner of Inquiry for Darfur found that grave crimes had been committed there, and this is a quote, maybe no less serious or heinous than genocide. Why is there a perception at least in the US, that the UN can't do anything about that? Does it have to be called genocide in order for international law to take effect?

ARBOUR: Well first, again, we have to be extremely precise about what the Commission of Inquiries found or did not find. It was mandated by the Security Council to examine whether genocide or other crimes had been committed, who the perpetrators were and what mechanisms of accountability should be put in place. On the question of genocide, the Commission found that on the basis of the three months that they had to inquire – and obviously some limits on their capacity – they found that there was no government policy to pursue genocide. Now, they left open – quite correctly in my view – the possibility that some of the perpetrators – some of those who commanded or orchestrated or participated in the Commission of these massive crimes – which they described as crimes of humanity, some of them personally may have been animated by the genocidal intent to exterminate, ethnic, racial,

religious or national group. So it has not precluded the possibility that should, for instance, the International Criminal Court be seized of the Sudan dossier, which the Commission recommended it should. Then some people may end up being charged and be convicted of acts of genocide. So, I think that it's important to keep in mind that that's the case. Now, is the United Nations doing nothing? I don't think that that's a fair depiction but one again has to understand what is the United Nations? And in a case like Sudan, the engine for action is the Security Council.

HOGUE: You were the Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia and Rwanda. Now we're seeing increasing instances of recommendations that things should be sent to international criminal courts. This is not a new idea; we did this after World War II but it's a revived idea. Is it the right idea? Are these the courts that can bring justice in situations like these?

ARBOUR: Well, there is no question if national courts were functioning in a lot of these cases, they would be the form of choice. I mean... criminal law by definition, historically and today is very local. That's why certainly in North America for instance; we have jurors who come from the very community where the harm has been done. Criminal law by definition is public and it has to let the community... It's the village square. When you start going to The Hague to try matters that took place in Bana Luja in Bosnia or in Kibuye in Rwanda, you're a very long way from having that kind of impact. So it's a liability in a sense, to have to go to an international court but on the other hand, we know full well that in many instances, local courts many not be neither willing nor able to take on a justice initiative of this order and magnitude. In the case of Rwanda, I think there was not a single judge or lawyer left alive after the genocide. So when you talk about what capacity was there to bring what had to be thousands of people implicated in the killing of eight hundred thousand of their fellow citizen, there's no question you have to have a massive international intervention. I think in the case of the former Yugoslavia, you may have had the physical machine in place but so tainted and so not creditable and so ethnically biased itself, that there was no functioning judicial system to take on the prosecutions.... particularly of political and military leaders. So, these international courts as I said, are not their first choice, but in a lot of cases, they're the only way to impact on the culture of impunity.

HOGUE: I was going to say...in the case of Darfur, the Commission on Genocide concluded exactly through that process of thinking. That the local courts were unable or unwilling to take up these cases; therefore, the perpetrators of ethnic cleansing or genocidal

acts or heinous acts, should be sent to the International Criminal Court. You feel rather strongly that's the right recommendation don't you?

ARBOUR: Absolutely. On both counts I must say. I was there last Fall in Darfur, myself, I visited all three Darfurs. In every place I went, I met with the judges, the prosecutors and so on, and I came away then with exactly – in my case it was more an impression – in the case of the Commission, it was better documented. Same conclusion. That the local courts, the Sudanese courts were either unwilling or unable to take it on, and their referral to the ICC in my view is the obvious choice of form. This is a court that has been set up through a treaty that is now ratified by over ninety countries and has the mechanics fully in place to take on exactly this kind of thing.

DERGHAM: So what do you do in this case when it's the United States that does not want this issue the trials of the Sudanese, going to the ICC, the International Criminal Court. Because you as you well know, that is the position of the United States. So you have the United States on one hand saying no to the International Criminal Court, you have the Sudanese saying well we'll try them and I hear you clearly on where you stand vis-à-vis Sudan and saying no, you're not equipped to try them. How do you feel about the American position and what to do about it?

ARBOUR: Well, first of all, the Americans – the American administration has shown no ambivalence in denouncing what has been happening in Darfur....

DERGHAM: Absolutely.

ARBOUR: ...in fact, has been in the leadership in pressing for a mechanism of accountability. Now their objection to the ICC is well known, and so are the reasons for it. Now in this particular case, a referral to the ICC by the Security Council I would have thought is the least objectionable form of activating a competence of the court. The Court is there, the statute has been ratified by many countries, it's likely to stay there, I cannot imagine that the United States could single handedly actually dismantle the Court completely. But I would have thought that the U.S. would view the most favourably..... activating the court through a Security Council referral, rather than what they would like the least is the Prosecutor taking on cases on his own initiatives. That I know is the case.

DERGHAM: Do you have information that this is what the U.S. would accept?

ARBOUR: I don't have any information, but I certainly would like every opportunity to make the argument to them that again, when one talks about compromise and finding an appropriate outcome, it seems to me that in a sense, it's like accepting a referral without prejudice to the U.S. overall – a dislike of this kind of institution. But if it has to be there, and if

jurisdiction is activated like I said, this I am sure, the U.S. would say, is the best way to do it as opposed to the worst way. And in that sense, I hope that others who are in direct contact with the administration would prevail in persuading the court, particularly in light of its commitment to seeing an end of impunity in Darfur, to do it that way. Any other alternative would be very slow, very costly, and I think extremely unlikely to have the same efficacy and the same immediate results.

DERGHAM: Unless my colleagues want to follow-up on that point, I would like to get into something else. About... troubles between certain big countries on the Security Council and their neighbors or countries, however you want to look at it. I want to discuss Russia and Chechnya. You went to Russia you did not go to Chechnya. Do you think you should be going? Do they have human rights that need protection by you? What are your plans?

ARBOUR: Yes, well in fact President Putin formally invited me to visit Chechnya, which I hope to do, it is very difficult to set a time frame. At the earliest I think next Fall. This was my first visit to Russia, at their invitation, very early in my mandate and certainly my plan was to establish a working relationship. Again, not just on civil and political rights issues but also on a broad agenda of social, economic and cultural rights. So I was very busy there for three days, I spent an entire day with NGOs including some who came from Chechnya, and who work in the northern caucuses very specifically. So I had excellent discussions, lots of information, I was persuaded that making a cameo appearance in Chechnya would neither enlighten me nor help anybody on the ground at this stage. The purpose of my visit there was to engage, set up an excellent working relationship with Russia, which I think I am very confident, is well launched.

WILLIAMS: Commissioner, you've said that the UN has had virtually no presence in Iraq, since the bombing of UN headquarters in Baghdad in 2003, is the new Iraqi government in any position to protect human rights given the continuing violence?

ARBOUR: Well listen, the new government has a huge agenda, including, one expects, it will want to look back on issues of transitional justice for instance. Living in that kind of environment, I mean...we've seen how the exercise of democratic rights was challenging enough in such an insecure environment. There's an enormous amount of work to be done. But again, I think, as the Security....one has to hope that as democratic institutions are put in place, that may assist in reducing the violence and then we will have to start assisting the government in addressing these issues as best we can.

WILLIAMS: What specifically do you mean by transitional justice? Well accountability for crimes of the past. I mean there has been lots of suggestions – more than suggestions –

allegations that there is a lot of forensic work that would need to be done, to go back in recent history, to go back ten, twenty years....

WILLIAMS: You mean Saddam's regime?

ARBOUR: Yes and...

WILLIAMS: What about crimes against women during this War?

ARBOUR: Yes, and the crimes against everybody during....by transition justice I mean looking back under Saddam's regime in the transitional period. Then setting into place an appropriate justice and human rights infrastructure to do their work in the future. And we stand to assist of course. We've had lots of contact. When I say the UN was not present, I emphasize though that the UN was very engaged, and so was my own office.

HOGGE: As the UN keeps trying to think how it can exert influence in difficult times. One thing that seems to be emerging right now is that it can work with local groups and I have in mind Togo right now, where you had a president who died and then his son was installed by the military, rather than a new president emerging in a constitutional manner. And the countries of the region protested successfully, and they have had to go back now to a constitutional process. In your work, are there local human rights groups, either private or NGO or governmental, that you can work with? And is that a way you can exert influence?

ARBOUR: Absolutely. In fact I think, there is no such thing as human rights protection in a country like Togo, for instance, that can be fully engineered from Geneva. It's just not realistic. Human rights protection starts in country. The very best way to do it is through national institutions, national human rights commission, justice ministries, courts that are professional and not corrupt and so on. And then the second layer is through civil society. Local ngos, human rights defenders and so on. So my office spends a lot of time assisting local ngos, a lot of national ngos do that too – Human Rights Watch, Amnesty and so on, support local initiatives. That's the best way around.

DERGHAM: What would you do if that place was under occupation? Like the Palestinian territories? How do you deal with it then?

ARBOUR: Well, there....the work we have to do and that's true I think of anybody who does international work, is...if you are going to work in country, you have to be invited; you work on a consensual basis. Until you get a Security Council mandate to go somewhere against the will of a particular government. So you can only engage either with a Security Council mandate that requires compliance on the part of authorities who would prefer not to see you there, in my case as human rights monitors or observers. But in most places, where

we work all over the world, we are either in a peacekeeping mission or members of UN country teams assisting governments and local population.

WILLIAMS: Thank you, very much Commissioner for being with us. We've been listening to the UN High Commissioner for Human Rights, Louise Arbour. She was interviewed by Raghida Dergham of Al Hayat and Warren Hoge of the New York Times. I'm Mary Alice Williams inviting you to be with us for the next edition of **World Chronicle**.

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