Human Rights in Peace Agreements & the Role of the Office of the High Commissioner for Human Rights

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Ministers of Foreign Affairs;

Distinguished Ambassadors, Excellencies;

Ladies & gentlemen;

It is a privilege to address this joint Swiss-Norwegian seminar on the very topical issue of the role of human rights in peace agreements. Switzerland and Norway have a long and distinguished history of peacemaking, of mediation, of rendering good offices, directed at ending conflict and ushering in durable peace in countries of desperate need. As the addresses of Ministers Calmy-Rey and Jonas have eloquently highlighted, both Switzerland and Norway have gathered in this endeavour a great deal of empirical experience in what is an often thankless but absolutely vital task, experience which has greatly enriched today's discussions. I welcome also the careful and thoughtful report that we have before us today : "Negotiating Justice? Human Rights and Peace Agreements" by the International Council on Human Rights Policy. In particular, the comparative empirical research does much to advance our understanding of the real-life impact of well-rehearsed conceptual discussions.

The United Nations, for its part, has also gathered a wealth of experience in responding to the conflicts that have devastated diverse parts of the world and given rise to much suffering. Some of the UN's interventions in engineering and facilitating

peace agreements have undisputedly laid the foundation for long-term progress; others have been more disputed, with some difficult lessons being learnt.

I am pleased to have this opportunity to offer some insights into the human rights dimension of these experiences. I argue, first, for a human rights understanding of peace agreements, second, a location of peace agreements within the wider dynamic of human rights, development and security, and third offer in support the empirical experience of my office, the Office of the High Commissioner of Human Rights.

Human rights play into peace agreements at a variety of levels : some functions are broadly accepted, other aspects are more controversial. At the most basic level, peace agreements serve the fundamental purpose of ending ongoing violations of human rights on a massive scale – there can scarcely be an area of human conduct more destructive of the whole range of human rights, from civil and political through to economic, social and cultural, than armed conflict. Ending an ongoing state of such violations, as a peace agreement seeks by definition to do, is thus a human rights objective par excellence.

In my view, this fundamental, reactive purpose of peace agreements – to end a pattern of systemic, ongoing human rights violations offers us the key to the flip side of peace agreements : the second purpose is to look forward and to create the foundation of a society moving towards a state of durable protection and promotion of the rights of all persons, a society based on the rule of law, a society that has come to terms with its past and has settled on a broad, common consensus for the future development of the country. In this forward looking sense, then, a peace agreement stands as a quasi- constitutional instrument concerning the future evolution of a country and its people.

It is at this forward looking point that fundamental human rights principles, including the rejection of impunity, bite immediately and directly. I need not rehearse the somewhat weary theoretical debate as to whether, conceptually, peace is a prerequisite for justice, justice is a prerequisite for peace or there is a composite trade-off. Many continue to argue that undue concentration on human rights jeopardises the possibility of either concluding a peace agreement in the first place, or of a peace agreement that has been concluded proving durable.

To the contrary, I suggest that human rights are central to and indispensable for both peace and justice; neither of these goals, let alone both, can be achieved in the absence of a human rights approach. In my view, a peace agreement procured through the bargaining away of the fundamental human rights entitlements of affected persons results in an impoverished "peace" that might better be labelled an absence of raging conflict. Such an agreement cannot provide a durable architecture for the (re)-construction of an inclusive society, based on the rule of law. Rather, history has unfortunately shown that such agreements have proven to be mere ceasefires, at best having provided an opportunity for a shift in the "rapports de force".

I argue that there is an underlying systemic reason for this, which lies in the profound interconnection and inter-relationship between human rights, security and development. At the highest level, the co-dependent equilibrium has come to be recognised. The Secretary-General, in his reform report *In Larger Freedom*, made clear these fundamental linkages. Heads of State, for their part, underlined this same relationship in the World Summit Outcome Document. This recognition has not just stayed at the level of policy, but has been translated into structural changes to the UN architecture that may have practical and far-reaching consequences. The Commission on Human Rights has been upgraded to a Human Rights Council, and could become a principal organ of the UN. A Peacebuilding Commission has been established to translate these understandings of the underlying inter-relationships into concrete best practices. This recognition of the fundamental role of human rights alongside development and security brings us to the answer of the question before us – rather than being an optional feature to be added to peace agreements as and when circumstances should so permit, human rights should and must be integral to such agreements.

This leads us then to crystallise the content of human rights in such agreements and here I offer two guiding principles – first, impunity must be replaced by accountability, and second, a rule of law free of discrimination must be respected. I turn first to impunity. Impunity for past gross or systematic violations of international human rights and humanitarian law is antithetic to the most basic principles of human rights and to the international human rights treaties giving effect to them.

This fundamental notion has been affirmed repeatedly by UN human rights treaty bodies and regional human rights courts, as well as national courts drawing on these same standards. Impunity denies the rights of victims and their families to remedy, to redress and to truth. It is complicit in a denial of responsibility and it lays the foundations for revisionism that infect collective memories and historical truth. It follows that blanket amnesties seeking to anchor such impunity in law cannot stand. The emergence of international criminal law moreover postulates that those most responsible for grave, systematic human rights violations attract personal criminal responsibility, rather than immunities or pardons. The dramatic developments over the last week resulting in the detention of Charles Taylor under warrant of the Special Court for Sierra Leone after being provided refuge in Nigeria is a powerful and welcome affirmation of this basic principle. How, then, can it be appropriate for a peace agreement to contravene these basic principles of international law, by condoning, acquiescing or tolerating an impunity for past abuses? Both in policy and in law, such a conclusion is intolerable.

Empirical experience also teaches just how fundamental the issue of impunity is to a truly durable peace and the subsequent development to which a society is duly entitled. In West Africa, as I have mentioned, a page of conflict is about to be turned, as Charles Taylor is belatedly poised to face justice. In the territories of the former Yugoslavia, there will remain a sense of failure to achieve true closure to the horrors of the conflicts of the 1990s, as long as the indicted leaders of ethnic cleansing remain at large, and while some have died before being held to account. In Darfur, Uganda and the Democratic Republic of the Congo, the international community is insisting – through the vehicle of the International Criminal Court – that those most responsible for unspeakable atrocities be brought to justice. While these are but some of the most prominent examples of international mechanisms being brought to bear, the foremost rejection of impunity will occur through credible and supported national procedures and processes. While giving effect to the same principles, these will be tailored to fit particular local circumstances.

Mechanisms of truth commissions play important roles in identifying the true course of past, shining an often courageous light into the darkest passages of a country's history and identifying the true responsibilities of the perpetrators of the most brutal crimes. Such an accounting is fundamental to a country's capacity to construct a just

society based on rule of law. Independent national courts, aided as appropriate by the international community, are well placed to undertake the painstaking evidentiary assessment of determining the facts and responsibilities for crimes committed. Programs of reparation recognise the human rights violations suffered and offer a measure of compensation for the losses suffered. Systemic investigations into the culpability of military and civil law enforcement personnel provide the opportunity for regeneration of law enforcement institutions to serve rather than oppress the peoples of the country. All such processes, as they take place in combination, operate to (re-)construct at once both a legal system and a society based on respect for human rights, justice and law.

It follows that at the core of the reconstruction of a society under law must be institutional recognition of this practical reality that lasting peace is incompatible with impunity. As we have seen, in practice, the failure to combat impunity opens the door to new violations by the same perpetrators and encourages others to believe that they too will go unpunished. I therefore welcome the increasing trend that peace agreements address more specifically the mechanisms of transitional justice, giving effect to the cardinal principle of the duty of states to punish serious crimes under international law, and the unacceptability of amnesties.

My second basic principle of human rights – that of rule of law free of discrimination – flows from the abhorrence of impunity that I have just described. As is all too well known, modern conflicts have usually had at their source forms of discrimination, sometimes deeply rooted in the society, at other times manufactured by those going to war against their own people, which dehumanise a part of society and expose them to the most flagrant violations of rights. Conflicts directed against particular racial or ethnic groups are but the most apparent signs of this phenomenom. It follows that a peace agreement putting an end to such conflict cannot tolerate or be seen to condone any such distinctions, no matter what has been actually realised on the ground. Peace agreements – to have a true chance of success – must instead resist the temptations to draw any sorts of distinctions that have the effect, whether intended or not, of solidifying or perpetuating the fractures in societies and peoples torn by conflict. A peace agreement, as is consistent with the quasi-constitutional role it often plays, presents at times the first opportunity to assert the common

humanity, mutual entitlement and equal enjoyment of all human rights, by all parts of a society.

It follows that peace agreements must resist the call for favourable treatment of certain classes or groups of people, whether their claim to such entitlement is rooted in the armed conflict or elsewhere. Such distinctions are inimical to and discourage the emergence of any form of true rule of law, of equality of all persons before the law and the courts. However, peace agreements may have to lay the foundations of subsequent minority rights protection provisions in constitutional reform. Although it may be premature to do so in the peace agreement itself, nothing in the process or the outcome should serve as an impediment to this ulterior formal protection of minority rights. I recognise that imposing these standards may complicate and delay the completion of an agreement. But the process itself is as impartial as its outcome. Strong human rights advocacy throughout the process moves the dialogue in the right direction. This is surely better than sponsoring an agreement that cannot serve as the foundation for a just society recognised as such under international standards.

It is one thing to set these principles out; quite another to bring them to application in an extraordinary variety of national contexts, with all the historical, cultural, legal and social particularities that define the diversity of nations. Human rights approaches come to bear at the pre-negotiation stage, the negotiation and conclusion phase and at the implementation point of peace agreements. It as at this sharp end of the problem that there is crucial room for the involvement and influence of international organisations, including the Office of the High Commissioner for Human Rights. We are engaged in peace processes in a wide variety of ways, including:

- Monitoring respect for human rights at all phases of conflict and post-conflict evolution
- Providing advisory services based on human rights principles, including direct engagement with State authorities and other parties with the object of ending conflict and building a new society based upon respect for human rights
- Advising on compatibility of proposed institutional structures, law and policy with international human rights norms
- Engaging directly transitional justice processes

- Undertaking advocacy for victims of conflict and impunity, in particular, and related human rights violations, in general
- Offering sustained commitment to UN peace negotiations and presences
- Making available and accessible international best practice to States emerging from conflict

Allow me at this point to describe in greater detail the role in peace dynamics of my Office in three countries at different stages of this process – these are Nepal, Sri Lanka and Bosnia-Herzegovina.

Nepal

As is well known, Nepal's ten-year armed conflict has yet to see a sustained peace process, and tragically it has been waged since the beginning of this year with greater intensity than ever before. The Communist Party of Nepal (Maoist) has conducted its so-called "People's War" with great brutality, and the government security forces have committed grave violations of human rights and international humanitarian law in their response. As elsewhere, these abuses have deepened the conflict and made its resolution more difficult.

In 2003, OHCHR assigned a senior human rights adviser to the UN Country Team, at a time when a mutual ceasefire was in effect and the last direct negotiations were taking place. The adviser worked closely with the National Human Rights Commission (NHRC) in the drafting of a Human Rights Accord, to be monitored by the NHRC with UN advisers. There were strong hopes that the Accord would be signed by both parties, up to the time when the ceasefire broke down and negotiations ended in August 2003.

Gross violations by both sides resumed, and were the subject of international concern at the Commission on Human Rights in 2004 and 2005. The Commission on Human Rights in 2005 met in the context not only of this concern, but also of suspension of many fundamental rights and widespread arbitrary detention after King Gyanendra assumed direct executive power and declared a state of emergency. In April 2005, the Government entered into an agreement with me to accept the opening of an office of OHCHR in Nepal to monitor human rights and international humanitarian law.

Nearly a year after the signing of the agreement, OHCHR-Nepal is credited by most observers with having had some mitigating effect on both State and Maoist abuses. Regrettably, no peace process has been initiated: although the Maoists maintained a unilateral ceasefire for four months from early September to early January, this was not reciprocated by the Government nor further extended by the Maoists, despite pleas from Secretary-General Kofi Annan and others. In November the CPN (Maoist) and the Alliance of seven parliamentary parties reached an understanding in which the Maoists made commitments to multi-party democracy, human rights and the rule of law; the Secretary-General welcomed the understanding and encouraged the Maoists to fulfil their commitments to human rights. When full-scale conflict resumed in January, I called publicly for both State and Maoists to respect international humanitarian and human rights law. Although there are signs that both parties have been somewhat responsive to the scrutiny and reporting of my Office, civilians are again the victims of conflict which is increasingly affecting urban areas, and democratic rights are again being violated and further threatened. The Secretary-General has repeatedly expressed his readiness to assist in any manner that would help bring about a peaceful resolution of the conflict, but no negotiation involving all parties is under way.

The Agreement with the Government under which OHCHR-Nepal operates mandates it to "engage with all relevant actors, including non-state actors, for the purpose of ensuring the observance of relevant international human rights and humanitarian law." The Office thus engages the Maoists, at the leadership level and increasingly at district and regional level, to insist that the wide gap between the stated commitments of the leadership and the actions of their cadres must be closed. While the Office has of course no political mandate and this dialogue is confined to the purpose set out in the Agreement, I believe that dialogue with non-state actors which increases their understanding of the requirements of the international community for those seeking legitimacy is an investment in a future process as well as serving to reduce the number of victims in the present. While the signature of any joint Human Rights Accord cannot currently be envisaged, the Government is fully bound by its treaty commitments and has accepted international monitoring by my Office; I have therefore called on the Maoists to go beyond general commitments and declare publicly their acceptance of all that international humanitarian and

human rights law requires, and to explain to their cadres their responsibility to respect them in practice.

Sri Lanka

My Office has engaged with Sri Lanka at a similar point in its attempt to move away from conflict. Despite its early promise, the peace process in Sri Lanka between the government and the Liberation Tigers of Tamil Eelam has remained finely balanced over the past three years. While a ceasefire has remained in force, human rights abuses have continued including child recruitment by the LTTE, political killings by the LTTE and other armed factions and, most recently, alleged extrajudicial executions and disappearances by state security forces. More than 300,000 people remain displaced and unable to return to their homes. I was deeply disturbed by the spike in violence in December and January, and am pleased that the two parties have now resumed talks with support from the Royal Norwegian and Swiss Governments. I hope the next round of talks, set to take place in Geneva later in April, will help to strengthen the protection of human rights within the ceasefire.

While the United Nations has no peace mediation role in Sri Lanka, my Office has been able to play a creative role in support to the UN Country Team in promoting the human rights agenda within the peace process. The ceasefire agreement, which is monitored by a Nordic mission, contains some human rights related provisions. The parties also agreed during early rounds of talks to a human rights roadmap, which included a strengthened role for the national Human Rights Commission and human rights training for the government and the LTTE. Separately, the parties also agreed to an Action Plan for War-Affected Children which comprised an integrated set of commitments to end child recruitment, release and reintegrate child soldiers, and advance education and employment opportunities for young people. Talks broke down in mid-2003, unfortunately, and plans for a joint declaration of human rights and humanitarian principles did not progress.

A high-level needs assessment identified human rights as a cross-cutting priority for post-conflict reconstruction and peace-building. As a result, my Office deployed a senior human rights advisor to support the UN Country Team on strategies to protect human rights and build the human rights capacity of national institutions and civil society as part of the UN's peace-building work in support of the peace process. He has worked especially closely with the Human Rights Commission of Sri Lanka to bolster its capacity to monitor and respond to conflict-related violations. He has helped to develop new systems for monitoring child rights violations, including child recruitment. He has also engaged closely with the government and LTTE in advocacy and sensitisation on ongoing human rights concerns. My Office has also

supported the engagement of key thematic Special Procedures, notably the Special Rapporteur on extrajudicial, summary and arbitrary killings who was able to investigate political killings in a country visit in December 2005.

Bosnia-Herzergovina

Moving from the pre-agreement to the implementation phase, OHCHR's experience in Bosnia-Herzegovina has been quite an education. The Dayton peace agreement must be unique in including the most exhaustive list of human rights conventions, giving the European Convention priority over all other law, but then institutionalising ethnic cleavage thus making the implementation of that broad array of human rights a daunting task. The agreement was vital; it stopped the conflict, but it was also a constitution, one negotiated with those who orchestrated the conflict, and as a consequence, not surprisingly, the rights of those most adversely affected by the conflict, including the rights of women, were not taken into consideration and their rights have had to be fought for ever since. But this is the advantage of that exhaustive list of rights: my Office has been able to rely on **law** to hold the numerous governmental bodies, and at times, the international community, accountable and to create mechanisms for redress. I would stress in particular our role in creating the State level Gender Law, of crafting an approach to trafficking in human beings which is based on the rights of the victims, and, of course, the main focus of our work in post conflict situations - transitional justice.

Ten years after the conflict there is still much to be done in this area, to bring perpetrators to justice and to provide real support to victims and witnesses. No one can testify if the key elements of transitional justice are not met, such as rights to recognition, to restitution, to compensation and to truth. Absent these, witnesses and victims remain without homes, income, health care and security in the broadest sense of the term. The cooperation of the OHCHR field office with the UN human rights treaty bodies has had a marked impact on this area. Concluding observations of both the Committee against Torture and the Committee on Economic, Social and Cultural Rights have called on the government to enact a State law ensuring protection for the vulnerable groups and to end the discrimination that they suffer. The government has agreed to do so and my Office has agreed to assist in the process. The Government will also take into consideration the report of the Representative of the UN Secretary-General on the human rights on internally

displaced persons, whose visit was facilitated by the field office and whose findings were relied upon in a Constitutional Court case challenging the use of nationalist flags and symbols. Without that remarkable list of human rights obligations in the peace agreement, my Office would have been struggling; with that list, a great deal has been achieved.

West Africa.

West Africa also provides a three-fold series of further examples of my Office's roles in implementing - in a fashion protective of human rights – peace agreements that have been concluded, not always, I might add, via a fully human rights-consistent manner in their actual terms. With the signature of the peace agreements in Côte d'Ivoire, my Office worked closely with the UN's Department for Peacekeeping Operations to guarantee the various rights endorsed in the Agreement. In Linas–Marcoussi, we supported the establishment of an independent national commission on human rights and international commissions of inquiry. We participated in inter-agency needs assessment missions to determine the need for establishment of a peace-keeping mission and the situation in the ground. With the establishment of a peace keeping mission, my Office assists the human rights component of the mission in the recruitment process and the implementation of human rights provision of the Agreements.

In Sierra Leone, the Lomé Peace Agreement of July 1999, signed between the Government and the RUF/SL, contained provisions on human rights. The agreement. indicated that the parties should request the assistance of OHCHR in the implementation of these provisions. In turn, we assisted the Government in the establishment of a Truth and Reconciliation Commission. I must add here my satisfaction at a sequel to perhaps the most disturbing part of this agreement – the controversial amnesty provisions. Specifically, the decision in March 2004 of the Appeals Chamber of the Special Court for Sierra Leone to the effect that the amnesty granted under Article IX of the Lomé Peace Agreement did not bar the prosecution of an accused for international crimes committed before July 1999 before the Special Court was an important development both for that country and as a matter of key principle.

In Liberia, a Peace Agreement was signed between Government of Liberia, the Liberians United for Reconciliation and Democracy and the Movement for Democracy

in Liberia in Accra, on 18 August 2003. The Parties agreed that the basic civil and political rights enunciated in the Declaration and Principles on Human Rights adopted by the United Nations, African Union and ECOWAS should be fully guaranteed and respected within Liberia. The parties including rebel groups agreed on the need for the establishment of an Independent National Commission on Human Rights. Furthermore, the parties were encouraged to seek technical financial and material assistance from my Office, the African Commission on Human and Peoples' Rights and other relevant international organizations.

The critical place of human rights at all phases of the peace process, judiciously balanced to achieve greatest practical impact on the ground will always be a difficult and vital challenge but one which goes to the heart of our protection mandate. With the support of partners represented here today, committed to these same principles, I look forward to our future impact on peace processes and our ability to end impunity, provide redress and construct societies ruled by law and protective of the human rights if all their members.

I thank you.
