

Stockholm Human Rights Award Speech

Thank you very much for this. I hope this works. Thank you very much for this extraordinary award. I follow in the footsteps of many who are friends and I am honored to be in their company as well as to receive this award. And I wish to thank the Stockholm Bar Association, the International Bar Association and ILAC for participating and for supporting this award. There is an old saying that is, that by honoring others, you honor. And that saying means that when you have institutions and people who believe in certain values, and who decide to honor others, it is a way of honoring themselves because it is a recognition that they have of the importance of these values and so in a sense there is much honor to the Stockholm Bar, the IBA and ILAC for having set up this award and for recognizing the importance of the values that are represented in this award. The importance of it is not so much to gratify the recipient as much as it is to send a message to eth many others in the world who eventually aspire to serve the same cause. And that's what's important, you mentioned the idea that everyone can make a difference and indeed our goal is to continue to have the opportunity to invite others to join in this great mission in the world, the civilizing mission that we have to uphold the values of human rights and of the rule of law. And on a personal note, if I may say so, it is a particular pleasure for me to be here in Stockholm and to see so many old friends Christine ** and Ulrika, the Corells and many other friends whom I have known and had the priviledge of working with over the years and so to not only share with my predecessors, who are friends, but also to receive the award with other friends here makes this event particularly worthwhile.

Stockholm Q&A with Todd Benjamin

TB: A great privilege to be with you here today. Christian, thank you so much for that kind introduction. It's very appropriate of course, Ann called you the godfather of international criminal law, because you are from Chicago after wards. [Laughter]. It is great to have you here. But you are an international citizen. You were born in Egypt, you still have a great affection for your home country, you understand so well the history, the geopolitics, the mentality of the Arab

World so I want to start in the Mideast, which is such a focus for so many of us right now. And you along with several others maintain that the Arab Spring, the Arab revolution is a work in progress, that it's facing some very key obstacles. What do you see as the main obstacles? I know you feel there are two.

MCB: Well there are obviously a number of obstacles and I would like to suggest that you think of the Middle East as a seismic terrain in which, in every one of those countries there is a different volcano. And there seismic energy going underground but each volcano is independent of the other.

TB: Well one of the things that you've suggested, you know, is that basically there are two obstacles. The first is, the prior regimes are fighting for their survival. That's obstacle number one. Whether is a monarchical regime or military regimes of their successors, they are all fighting for their survival. And the second one, and I think this is very key here and I would like for you to elaborate, is the only organized group that's capable of moving a revolution from going into the street, to keeping something, such as a new constitution and new forms of government, are Muslim or Islamic organizations. Yet they themselves are handicapped by their own problems. Why?

MCB: Well of course every regime change necessarily implies that those who are being pushed out will resist being pushed out and want to stay in. They may also leave reminisce behind them that will continue as sort of a rear-guard action. But when you have societies where democracy doesn't exist, there are few opportunities for secular democratic forces to organize and be able to take the sweet what follows. So, you then find that in these transitional periods it is those secret organizations which have survived the prior regime underground, who are the best organized ones and who manage to surface. And so, the Muslim Brotherhood, being in the underground for some many years, surfaces and basically co-opts the secular, democratic governorship.

TB: Aren't they really still anchored in the historic past? Don't they also suffer from what you call significant human development deficit?

MCB: Absolutely. But in a sense, you have to think about it in those terms. If you have an underground organization like the Muslim Brotherhood, who for eighty years have been suppressed and worked underground. If I can make the analogy, it's somebody whose eyes have been accustomed to the darkness of the underground. Suddenly, they come above ground and they are blinded by the light of day. They have no experience in managing anything, let alone managing a country. The only thing that kept them together all of these years is their ideological commitment. And so that ideological commitment becomes paramount and that's what you see the conflict between the ideological commitment of the Muslim Brotherhood and the national goals of reform that Egypt has.

TB: How often does it ** that we can move to an era that would be Islamic ****, which is a prerequisite?

MCB: You know, I have my doubts about it. My reading of Islamic history is that Islamic history for the most was really secular government. In fact, the only reason Islam has been able to come out of the southern Arabian Peninsula and occupy so much territory is because it had to be secular, because it had to deal with local people, local cultures, the diversity of people. And I think the challenge is in the sense, how do you preserve the values of Islam as human values and yet at the same time be able to operate a modern state that will elevate the level of human, social and economic development throughout the country.

TB: That's a challenge. How do you overcome that challenge? What is it going to take and is it likely to happen?

MCB: well, there are a number of factors. The first factor is that you can shorten time just by so much, but you really do need a certain amount of time. Number two you can't do it without having a strategic plan and being able to implement the strategic plan. And number three, you need a great deal of discipline in order to achieve it.

TB: And of course, part of the problem is a lot of these groups are not well organized therefore you have fractionalized movements.

MCB: Not only that these groups, because they are so anchored in their ideology, are incapable of developing the type of pragmatic, strategic plans and to implement them in a way that permits the recognition of mistakes and then changing courses.

TB: So, in a sense we have a crisis of stagnation...

MCB: We have more than a crisis of stagnation, we have a crisis of stagnation which tends to regress as a way of solving the problems of the future.

TB: So, you're not optimistic. Is there anything path or courses [very much complicated] by the geopolitics of the region, especially with Iran's involvement in Syria?

MCB: It's not a question of being optimistic or pessimistic, it's a question of making an objective assessment of what the challenges are and how do you face those challenges. And yes, there are invariably geopolitical considerations, whether they involve Iran on the one hand but they could also involve for example, the interests of Russia in Syria or the interests of the United States in strategic locations of the Arab Gulf.

TB: And this is complicated, you're saying, since we're moving backwards instead of forwards. I mean, you maintain in many ways, if you look at the situation that we're moving more towards what you call secrian mentality, which is focused on money and power, instead of being focused more on what would be the post World War Two idea of being more humanistic, more grounded in international law. I want you to know you're depressing me as we speak. But this is the world you see we are moving towards, which seems to me not a very good place to get out.

MCB: Well, if I can start from a global perspective, I think that the international community has started in the course of a dissent from human rights that we have seen after World War Two. I think considerations of national security have prevailed in many countries, economic factors, the existence of multinational corporations that are beyond the reach of the law, there are so many global factors that impact on the decision making process of states and I'm seeing the gradual

decline of the protection and preservation of human rights as we have seen it in the post World War Two era. Now that's at the global level. At the level of Arab states and developing countries, it is basically needs for survival. I mean these societies have a tremendous need for survival. Take Egypt with about twenty million people who are below the level of poverty. For them democracy is a luxury, human rights are a luxury, the piece of bread in the day is what they need. And unless regimes and governments start planning in a very concrete, objective and pragmatic way, how to satisfy first the economic needs of that society then the needs for their social development, the strengthening of legal institutions and the rule of law and then ultimately reach democracy. We're going to find ourselves in a constant cycle of revolutions and upheavals.

TB: So given all of that you've said, we know what the blueprint should be but we also know what's the reality on the ground is, is there a viable solution? And when I say viable, I mean both practical and political, either in Syria or in Egypt, where some contention is focused?

MCB: There is no doubt that there exists, you know in a sense I'm sort of if I can mention this reminded of my experiences as legal adviser to the late President Sadat both at Camp David in '78 and the peace treaty '79. Here you have totally different personalities with President Sadat and Prime Minister Began, but what they shared in common is the same goal and the same values. And they were able to sort of breach their differences precisely because of these goals and values to try to arrive at a pragmatic solution. That doesn't mean that they necessarily trusted each other completely but they established the plan for what you don't have in the Arab world today is this type of leaders. This type of leaders with a vision, this type of leadership which is capable of thinking of how do you move not one step ahead but how to do you move your society several steps ahead.

TB: But Cherif, you know, it goes way beyond the Middle East. You could argue there's certainly a lack of leadership in the U.S., there's political paralysis, there's a lack of leadership in Europe where the consensus is a disease almost. You know many feel there is a lack of leaders locally right now. Why do we have so few leaders now, compared to let's say when, you know, Anwar Sadat and of course the Israelis were speaking? What isn't happening? Where have we

gone wrong? Is it because we don't share values? Or because we have become much more insular about thinking?

MCB: I'm not really sure, I have a feeling that if I were to answer your question I would be tempted to look at Huxley's brave new world and say that, you know, the brave new world that we are at is very much of a hedonistic world, a world of pleasure and satisfaction, a world in which traditional human values have sort of dwindled apart. Um and a world in which the pursuit of higher purposes, that material satisfaction, pleasures, prevail. You know I couldn't agree more with you about what you said about leadership. In my mind, I have always had a little test, and the little test was I'd like to see a leader once stand up and say, you know I'm making that decision because it is the right thing to do. And I still have to wait to hear that.

TB: Well, while you are waiting let me ask you something else because we live in a world that is incredibly diverse and yet one of the cruel ironies of the world, even ** champion of the more humanistic world, one of the cruel ironies of the diverse world we live in is there is no tolerance for diversity. And that seems to be the great ***.

MCB: Well, first let me say, I am opposed to the use of the word tolerance. I think the word should be respect. There is no basis for anyone of us to feel tolerant of the other. We should have respect for one another. Each human being is entitled to the respect of being another human being within the context of the family of human kind. To be tolerant is somewhat condescending and I think we have lost the significance of this value. And if I may, I would like to just quote two verses of the Qur'an which are relevant here, the first verse says and [I forget or at the beginning of] the chapter, about human creation and it says, and we have created you man and woman, people and tribes, so that you may get to know one another, verily the best among you is the most pious. The verse doesn't say that we have created you man and woman but they are different and unequal, or people and tribes and they are different because of their religion or beliefs. It's an implicit sense of equality. And the other verse says, and we have dignified the descendants of the Adam. We have dignified the descendants of Adam meaning all the of the descendants of Adam and it crystallizes the idea that if you believe in one God and you believe in one humankind that this one God has created, then you can't make the type of distinctions that

you have seen and engender the type of beliefs in monopoly on right. No one has a monopoly on right and everyone has an obligation to respect one's own fellow human being.

TB: Everyone has the obligation to respect every fellow human being, yet your own institute, and when I read this it was such a staggering statistic and I would like to share it with all of you, from World War Two to 2010, based on the research that your institute has done, there have been 313 conflicts, 92 million victims. Now that is twice the number of victims in World War One and World War Two. And that is despite the evolution of international criminal law, which you have been so involved in, despite the UN Security Council, despite the doctrine of the Responsibility to Protect, so my question, and I know you believe so much in the law, we have all these legal mechanisms and yet in many ways we haven't [have?] evolved.

MCB: Philosophically I don't think human nature has evolved much. We have acquired a pattern [?] of evolution but the fundamentals in us haven't changed. I can tell you, having been in war contexts, in five wars and having seen the same atrocities committed, irrespective of the culture and the context of it, you realize very soon that the veneer of civilization is very thin and that you can easily scratch that veneer of civilization and human atavism comes out. The purpose of the law in a sense is to curtail or restrict this human atavism, but it ultimately depends on the will of the people. But there is nothing that is a better guarantor of the prevention of atavism than the existence of collective social values where a society refuses to be dragged into or drawn into the type of dehumanization which we have seen with the Holocaust, which we have seen in some many other conflicts, where basically what happens is one group of people decide to dehumanize another group of people and justify whatever terrible things they can do to them.

TB: In your career and its been a long, distinguished career, fifty years, I would have to assume your greatest disappointment is just what we have been talking about. What has been your greatest moment of satisfaction?

MCB: In a sense my work has been more or less at the macro level if I can use that term. And, as any other human being my greatest satisfactions are always the micro level. It's the feeling that a given human being has benefited from what one has done and it sort of comes back to the fact

that, you know, everything good happens one at a time and helping people means one at a time and that's when we as human beings receive our greater satisfaction.

TB: Now of course, this award is really a celebration of your life and your efforts [in terms of] [achievements in] human rights, you know, when you look back on your career, you have been involved in the creation of every major instrument of international law over the last fifty years, if you look back it may be hard to pick one, because they are like children, but what or which has been most important?

MCB: Well, Todd admonished me to be short and brief...

TB: And you're doing a good job.

MCB: I'm trying to but this one is going to take a little more time. This goes back to 1957, Egypt. I was being vetted by the intelligence service to work in the office of President Nasser. And one of the techniques of vetting is of course you know they show you things they expect you to go along with them and do it. And they showed me the picture of a person who was tortured. He was a Muslim Brotherhood. And He had a metal sort of band around his head with a tourniquet. And they would turn the tourniquet so that the band would be so tight that the head opened up. And you could see the smoke coming out of the brain. And these people wanted to see my reaction and of course my reaction was very negative. I barged into a meeting that was headed by the vice president, yelled and screamed denouncing the torture that was taking place, and my naïve 19 years old believing that President Nasser would not have tolerated that if he knew it. Well before you knew it and before you can imagine, I was arrested and I was placed on house arrest. The reason that I was placed on house arrest and not sent to one of these prisons is that I received in the 1956 war the highest metal of military valor and was in all the newspapers so I couldn't over night be the terrible fellow who would go away. In the seven months in which I spent in the dark without any contact with the outside world, and in the daily fear that I would be tortured in the same way, I realized the meaning of psychological torture. And of course, it was an enormous reward to be able to participated in bringing about the Convention Against Torture because it brought a close to that experience. And so, to a large extent, I think my entire

life after that was affected by this traumatic experience and more than anything else this sort of stayed with me and, played a sort of insipient role within me in trying to shape what I would do. And I could never forget that you can't always stay at this high level and many years later I happened to have been in Afghanistan and I discovered that there were 852 Afghans who were held prisoners, who had been in prison for thirty months. And apparently, they were there because the United States had put a hold on them because they wanted to interrogate them but they didn't have enough people to interrogate them, to do the translation because they spoke different languages. So, these people had lingered in a terrible prison over 200 of them, I discovered, had lung diseases including tuberculosis. And the biggest purpose in my life and I prayed to God that I could accomplish it was to get to see these people released. And that was the biggest thing I wanted to accomplish in life and when three months later I was able to see them released I thanked the Lord for having been and instrument in accomplishing that and these are the great satisfactions that one carries with oneself and that sort of, you know, are the dynamo that keeps charging one to continue to do that work.

TB: You know, looking back on your career, also you played an important role in having sexual violence against women recognized as a war crime after the atrocities in Bosnia in the early '90s. Considering that unfortunately atrocities against women are still taking place, particularly in the Democratic Republic of Congo, just to mention one, obviously very frustrating. Do you think it's really made any difference?

MCB: It made a difference. I personally interviewed 223 rape victims and I can't tell you the feeling that you have if your sitting in front of a human being who has been so degraded and whose dignity has been so trampled and who feels so helpless. And that person sort of looks you in the eye and says, without saying it, where were you when this was happening to me? Where was the international community? Where was the United Nations or whatever it is? For that human being that sense of gripping realization that the person was totally abandoned and that you are totally helpless to reach out to that person is a tremendous feeling but, you know, the history of civilization, the history of law is a history of accretion. It's a step-by-step process. You may not be able to see what you are doing, but it's like adding a little grain of sand to the mound, you know. It's like the little ant that's building the anthill. Each ant brings a little grain of sand.

You may not see it but you hope that one day you will have a mound and that mound will stand for something.

TB: Another pivotal moment in your career was of course the creation of the Rome Statute for the International Criminal Court and yet you have been disappointed in the ICC, you have been vocal about it, its absorbent costs, its bureaucratic overload, is there a better mechanism for bringing war criminals to trial?

MCB: Well, I think that the first thing that states, if I can use the term like that, have to realize that whenever you have conflict, there are basically two phases. The first phase is the prevention phase. What is it that we can do, you mentioned earlier the responsibility to protect. What is it that we can do to push the international community to do something at an earlier stage to prevent the harm. That's number one. Number two, once the harm has occurred, how do you minimize the harm as it's going on? It does us very little good after the fact to say we've prosecuted two hundred people. What need is to save two hundred lives. Both the Talmud and the Qur'an share that same saying that he who saves one life saves all of humanity. And that's what we should be looking at. Unfortunately, any institution that is established has growing pains, it has difficulties, which is understanding. So we have to be ready with the ICC to look at the growing pains of the institution without elevating it to the level of crisis and saying as with any institutions, we'll see what the problems are, if there's a leak on the roof, we'll fix the roof, if there's something that doesn't work, we'll fix it and move on with it.

TB: So, is there a better mechanism?

MCB: There certainly is a better mechanism and, you know, with all due respect to the United Nations, I would have liked to see the ICC completely separated from the United Nations' bureaucratic system and financial system. I think it would work much better if it had its own internal rules of operation than the UN rules and separate financial system at the very high costs. When you think that last year's budget was \$145 million, with about 800 employees, respecting four cases and seven defendants, it is just not good cost-benefit analysis.

TB: And of course, when you had the International Criminal Tribunal for the Former Yugoslavia, you pointed out that you did that a much more cost-effective bases, about \$10 million per...

MCB: yeah but you can't say that \$10 million per defendant is a cost-effective bases, it's still a very high cost.

TB: It's a very high cost. Less than what the ICC is dealing. Talking about the UN, just a moment ago so let me ask you a question because a lot of frustration on the UN Security Council and the way its acted in Syria and you've also been very critical. First of all, do you think it was a mistake not to intervene militarily? And secondly, do you think there will eventually be legal consequences for Assad and other war criminals in the Syrian war theatre?

MCB: Well I think that the responsibility to protect principle was established in the Summit of 2005, many of us would have hoped that the UN would have developed an early warning system so that States cannot say well we could not have foreseen these consequences. We need to be a little more scientific and precise about our predictability of what conflicts are like, how they develop, what the potential victimization and harm is, in order to be able to intervene at an earlier stage and to prevent further harm. So that's one aspect, it's very doable. And it doesn't really involve the type of political difficulties that the decision of the Security Council to intervene or to send peace keeping operations does. So that I think is the first thing we have to do it. These are things that can be done. With respect to Syria, to be perfectly honest, now is the time to call for a ceasefire. Now is the time to stop the war. I would not wave the flag of accountability now because waving the flag of accountability could very well be a hurdle in reaching a ceasefire and a negotiated settlement. When I chaired the Yugoslavia Commission, I was on the 5th floor of the UN building at one end and Lord David Owen was on 1st floor at the other end of the building. And it was clear. His job was to achieve a political settlement leading to a peace and my job was to collect the evidence. But there was a question of timing and a question of appropriateness. It was not the time for me to make statements, speeches, press conferences, accuse people of being criminals while on the other hand there was somebody

trying to negotiate on stopping the harm. There is a time for everything, now the time in Syria is to stop the war, the time for accountability comes later.

TB: Realistically, what is going to stop the war?

MCB: What is going to stop the war, is going to be the result, I think of Russia and the United States, taking into account the interests of other States and that includes Iran, it includes Israel, it includes Lebanon, it includes Saudi Arabia and the Gulf. All of these interests of these diverse states have to be taken into account and the two major powers are in a position to collect, if you will, and understand and evaluate those different needs and to be able to, I hate to use the term, impose it on them.

TB: You said now is not the time for accountability to get some ceasefire because it's been such a great tragedy, two million Syrians displaced, 4.5 million displaced internally, thousands and thousands of dead, is it ever justified to have justice blind? What I mean by that is