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ADDRESS

By The Honorable Mary Robinson
Former President of Ireland and United Nations High Commissioner for Human Rights

The Annual Dinner of The American Law Institute was held in the Imperial Ballroom of The Fairmont, Chicago, Illinois, on Tuesday evening, May 13, 2003. President Michael Traynor presided.

President Traynor: Tonight, we have the great honor of hearing from Mary Robinson, who served as President of Ireland from 1990 to 1997, and thereafter, until last September, as the United Nations High Commissioner for Human Rights. She is presently leading a project, based in New York City, to shape a values-led globalization process, based on the principles of international human rights. Her life is one of singular accomplishment and service to her country and to the world. She is also a distinguished barrister and has been a member of the Institute since 1991.

Her extraordinary career begins in Ballina, County Mayo, Ireland, and with her determination to follow in the footsteps of her grandfather and become a lawyer. It continues through her appointment at age 25 as Reid Professor of Constitutional and Criminal Law at Trinity College; her election that same year to one of Trinity's three seats in the Irish Senate, where she served for 20 years; her time at Harvard Law School, where she received an LL.M. degree; and her great service as President, and then as UN High Commissioner. In 1971, when she was just in her 27th year, she was listed in *The Irish Press* as one of the 25 most influential women in Ireland.

President Robinson was once described in *Vanity Fair* as having "a little bit of Havel and a little bit of Hepburn." A biographer — think of doing this in one sentence — compared her to Mother Teresa and to Ayers Rock, (*laughter*) a world wonder. Although such comparisons are complimentary, in truth she is a unique life force. She has a genius for finding, articulating, and implementing the ideas that will unify others rather than divide them. On the day of her inauguration as President of Ireland, her guest list included representatives of the homeless, people with disabilities, and those associated with women's rights, along with the cream of the Irish establishment.

In her inaugural address, she spoke of a fifth province that she wished to represent, and I will use her words, "not anywhere here or there, north or south, east or west," but "a place within each one of us — that place that is open to the other, that swinging door which allows us to venture out and others to venture in.... While Tara was the polit-

ical centre of Ireland, tradition has it that this Fifth Province acted as a second centre, a necessary balance. If I am a symbol of anything I would like to be a symbol of this reconciling and healing."

In 1994, *Irish Times* columnist Fintan O'Toole wrote that "Mary Robinson has achieved approval ratings of over 90%, even in the most controversial periods of her presidency. And, what is most extraordinary," he said, "she has done so from a background not of balmy graciousness but of furious ideological struggle."

As a legislator, a senator, she engaged in many reform areas and became renowned for her efforts to legalize birth control and divorce in the Irish Republic. As a barrister, she brought key cases, such as the ones challenging the jury system as then discriminating against women; seeking the right for 18-year-olds to be allowed to vote; challenging the illegal tapping of journalists' phones; finding Ireland in breach of the European Convention on Human Rights for failing to provide civil legal aid; and a case that led to changes in the treatment of nonmarital children. She specialized in constitutional law and human rights litigation in the Irish courts, the European Court of Human Rights in Strasbourg, and the Court of Justice of the European Communities in Luxembourg.

While living a life of extraordinary accomplishment and public service, Mary Robinson also raised a family with her husband, Nicholas Robinson, and the Robinsons have three children: Tessa, William, and Aubrey.

Is there any possible flaw that I should mention tonight in the spirit of total candor that our speaker exemplifies? Yes, I must say, after considerable searching, I learned that at university, she abandoned the Stanislavsky Method of acting after, "failing to imagine herself as a briefcase." (*Laughter*)

It is a great pleasure to present to you President Mary Robinson. (*Applause*)

President Mary Robinson: I would like to begin by thanking your President, Michael Traynor, for his very warm words of introduc-

tion. I never thought that that incident, when I sat on the stage pretending to be a briefcase, would ever come back to haunt me. It is very frightening. (*Laughter*)

But I am very honored to be here this evening and to address you as the officers, Council members, and members of The American Law Institute. It is in fact a great pleasure to return to Chicago and to coincide with the good weather. I understand that some of you came through a more troublesome time when you had to hold your breath as you landed here, but I came this afternoon in the sunshine.

As I was coming here, I was very conscious that it meant a great deal to me when I was honored to be elected as a member of The American Law Institute, which I knew, as a law student in Ireland and in particular in my time at the Harvard Law School, as the body that had done such rigorous work in areas such as developing Restatements of the Law and Model Codes. What I also should have appreciated some time ago when I was elected to membership is that there is no such thing as free membership. Someday, sometime, you must stand up and account for yourself, which I am now doing this evening. (*Laughter*)

I even recognize that I am doing it in a context where you have completed your work. You are well through: you've done Sunday afternoon and then yesterday and today, and I understand that today even went on longer than was anticipated, so I am wondering, in my Irish way, whether you expect me to entertain you this evening with readings from Oscar Wilde and Samuel Beckett, because I am not going to do that. I am not capable of such lighthearted relief.

I was interested to see that you began this year with an ethics session, and I was glad that you considered the recently released Report of the ABA Task Force on Corporate Responsibility, as well as the Sarbanes-Oxley Act of 2002 and the revisions to the ABA Model Rules of Professional Conduct. You are a body that should be taking stock as the credible voice you are entitled to be, on these issues today: that is what you gain from the long period in which you have been in this country a learned forum. You are a standard setter and a credible voice in times of rising public disquiet about the activities of some corporate lawyers and

their clients, and you can take great heart from that credibility. I am proud, as a member who comes this evening to justify herself, to link with your credibility in that regard, because it is needed; it has to be firm and it has to be strong and it has to be, I think, very vocal at the moment.

I also welcome the opportunity to thank the Institute, and I do that in a lighthearted way. I would like to thank the Institute — better late than never! — for its pioneering and prophetic work in the 1940s in drafting the Statement of Essential Human Rights. I won't ask for a hands-up of how many of you have read the Statement of Essential Human Rights, but believe me, your Institute was very pathfinding in its time. That Statement was greatly influenced by a number of different inputs. It in turn influenced the drafters of the Universal Declaration of Human Rights under the inspiring chairmanship of Eleanor Roosevelt, and in turn this led more than 50 years later to the creation of the Office of United Nations High Commissioner for Human Rights, which I was privileged to hold for five years.

The Statement broke new ground in identifying not only civil and political liberties, but also education, food, housing, and social security as human rights, and through its broad membership — from China, the Arab world, India, and Latin America — it anticipated and answered later critics who would claim that human rights are a product of western culture and history. That Statement is something I will come back to, because we need that approach now more than ever, at the start of this new century.

Since then, we have seen the internationalization of human rights, both the ideas and the institutions. This is a process which — in the words of Professor Lou Henkin, one of my gods of human rights, as for many of us, I think — can rightly be seen as a "compliment" to America. Nor has it been a one-way street. The Institute's influential Restatement Third, Restatement of the Foreign Relations Law of the United States, recognized international human rights as a part of American law, and since the Restatement was published in 1987 the momentum has increased with, as you know, the U.S. ratifi-

cation of the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention for the Elimination of Racial Discrimination. So far so good, but I believe it is time to consider a further step, an important further step.

When I spoke recently to the American Society of International Law, I dwelt at some length on the importance of the United States embracing again — as it did in the Universal Declaration of Human Rights — the broader agenda of human rights. This would include the United States ratifying the three core instruments that require a different approach from the immediate recognition of safeguarding civil and political rights, where you can actually go into court with your lawyer and be defended on that account. It is a different approach, that of progressive implementation, without discrimination, of economic, social, and cultural rights, and the three instruments are the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of Discrimination Against Women, and the Convention on the Rights of the Child.

I also expressed concern, when I spoke to the American Society of International Law, at how changes to U.S. law and policy since the terrible attacks here in this country of September 11, 2001, have both eroded human rights and civil liberties here in the United States and affected standards internationally. This is well documented in a report of the Lawyers Committee for Human Rights called "Imbalance of Powers," which analyzes these changes. It is one of the great strengths of the United States that the most informed, rigorous, and trenchant criticism comes from within. Those from outside often don't fully understand the nature of the way to assess trends. It is the bodies from within who courageously and implacably and rigorously do that accounting, as the Lawyers Committee has done on this occasion.

One reason, I believe, the time is ripe for a reappraisal of the extent to which the United States has adopted international human rights standards is because of the circumstances of the recent war in Iraq, whose purpose — as President Bush has emphasized — was to bring freedom and human rights to the Iraqi people. It is of paramount importance that human rights in this context embraces that broad

approach, which was so well captured in the Statement of Essential Human Rights in the 1940s that this Institute pioneered. It may seem strange to go back to that thinking and that period, but believe me, it is of incredible importance that the agenda of human rights that is being furthered and properly promoted in the context of Iraq for the long-suffering and beleaguered Iraqi people is that broad agenda. So it is an agenda that needs to be approached with credibility and conviction, and somehow I have a sense that The American Law Institute, as a learned forum, has a big role to play here, if you can find your way to influence the thinking, perhaps not initially in the United States itself but certainly internationally, to take very seriously the importance of the right to food, to safe water, to health, to education, and to shelter, as human rights. That, in my view, is an absolutely essential part of the mission and responsibility of the United States in the context of what has happened and what will now continue to happen for the people of Iraq and in that region.

I propose to focus in particular this evening on some of the challenges in creating an international rule of law, within which human rights can be protected.

Looking at your history, it is clear that the Institute was established to respond to some very specific concerns. The founding experts reported that the uncertainty and complexity of American law had produced a "general dissatisfaction with the administration of justice." They pointed to a lack of agreement among lawyers on the fundamental principles of the common law, "conflicting and badly drawn statutory provisions," and the "number and nature of novel legal questions," all compounded by a "lack of systematic development" and the law's numerous variations within the different jurisdictions of the United States.

I deliberately quote those concerns, not that they are relevant today in the United States, because reading these words today, it is not the United States, with its now highly developed national legal system, which comes to mind. Rather, they describe the problems that face us in developing an international rule of law, and any international lawyer

would recognize the causes of dissatisfaction identified by the experts in 1923. Indeed, the problems of reconciling different jurisdictions, and of the many novel legal questions that present themselves at the international level, would be very familiar indeed.

I will give one example. Ten years ago, the United Nations — led by the United States — created the world's first international criminal tribunal to prosecute acts of genocide and crimes against humanity committed in the conflicts in Bosnia, Croatia, and later Kosovo. The indictment of the former President of Yugoslavia, Slobodan Miloševic, for crimes against humanity and genocide has been widely reported.

But for lawyers there is a more dramatic and untold story behind the headlines: that of the novel legal and procedural challenges that had to be resolved in building an independent and effective international tribunal. Judges from a range of jurisdictions had to be elected, and had then to reconcile their contrasting national experiences. Prosecutors had to carry out their investigations in different continents, languages, and jurisdictions. Trials had to be conducted and defendants prosecuted using new rules of criminal procedure. And in drafting these rules, the judges had to reflect the world's different legal traditions — civil law as well as common law — which may see trial by jury or the use of hearsay evidence as integral to their legal systems.

When the judges sat down to draft the rules, they were surprised to find little in the way of precedent: they discovered that the rules in Nuremberg were less than four pages long, while the Tokyo tribunal had only nine rules in total. But the task that would have been best understood by the founders of The American Law Institute was the need to clarify international humanitarian law in order to reach a definition of crime against humanity that the prosecutor and the judges could apply.

In 1993, there were many — and not only in the former Yugoslavia — who objected that an international court created by the political decision of the Security Council could never be independent, and that it would inevitably be a political body dispensing victor's justice. Happily, I believe they have been proved wrong. It is remarkable what the international tribunals both for the former Yugoslavia and

Rwanda have been achieving. For international rule of law, international justice, in difficult circumstances they have in fact achieved what all of us here would wish that tribunals of that kind would achieve.

Today, we face new challenges of how to strengthen and build broader institutions of global governance and regulation. We live, after all, in a globalized world, in which interdependence requires cooperation, and no country — however strong — can stand outside the essential global institutions. It is crucial that the United States, and in particular the U.S. legal profession, is centrally engaged in this task.

Fifty years ago, President Harry Truman called for federal engagement in local health provision because: "diseases and epidemics are no respecter of city or state boundaries." The SARS epidemic of the last weeks has shown itself to be no respecter of sovereign frontiers or national economies — whether in Beijing, Hong Kong, or Toronto. It has demonstrated beyond doubt both the need for international engagement, and the fact of our interdependence in a world of globalized travel, multinational business, and communications. It has also proved — if proof were necessary — that strong and effective global institutions, such as the United Nations World Health Organization, are essential to act in ways to complement and protect national governments.

Headed by Gro Brundtland, a former Norwegian Prime Minister and medical doctor, WHO has led recent global responses to the outbreak of the epidemic in terms of quarantine requirements and diagnosis. Laboratories were mobilized in 13 countries to identify the new virus and devise a diagnostic test. This broke the normal pattern, in which laboratories compete against each other for commercial advantage — as has been, sadly, so often the case in relation to HIV/AIDS. That SARS is now off the front pages of most of our newspapers shows that the international response has been quite effective. But SARS has made the case powerfully for even stronger international institutions.

At present, WHO can visit and inspect countries where it suspects there is an undisclosed epidemic only if it is invited by the government. If the government does not report — as in the case of China in January and February this year — or covers up, no challenge inspec-

tions can be made, and now, interestingly, a debate has begun on how to strengthen WHO's powers of inspection.

In a globalized world, trade and crime are two more areas in which international mechanisms are most needed to resolve disputes and prosecute offenses.

Real progress has been made in the rules of the international trading system, and in the resolution of international trade disputes. This is in no small part because the United States has been fully engaged — both as an architect of the system, and as a party to a number of the disputes. For example, since 1995, 65 cases have been brought against the United States by the WTO, with findings in 22 cases that there had not been full compliance with WTO rules. One, you will recall, and I mention this just because it's important to do so, involved copyrights on Irish music. (*Laughter*)

In most of these cases, the United States has already acted effectively to change its practices — setting an important example to other countries. The system works, and it works not least because the United States is very engaged to ensure it works.

There has also been major progress in developing international criminal law and the administration of criminal justice, first, as I mentioned, through the International Criminal Tribunal for the Former Yugoslavia, and then through a second international tribunal to prosecute acts of genocide committed in Rwanda in 1994. The Convention Against Torture, which the United States has ratified, makes the investigation and prosecution of torture a treaty obligation for states parties. It requires states to exercise universal jurisdiction over acts of torture — a provision most spectacularly applied by the House of Lords in the United Kingdom, when it ruled against Augusto Pinochet's claim of immunity from criminal prosecution in relation to the torture of political opponents, while he was President of Chile.

Today, the new International Criminal Court builds on these achievements. The Court is an institutional recognition that certain crimes — because of their nature — affect the entire international com-

munity, and where they cannot be prosecuted by domestic courts, an international court must have jurisdiction. One hundred thirty-nine states have signed, and 89 have then ratified the treaty. The Statute of the Court defines it as a court of last resort, complementary to domestic courts, and with jurisdiction only where national legal systems have failed to act in cases of genocide, crimes against humanity, and grave breaches of humanitarian law. Judges from 18 countries have been elected under a Canadian President, Philippe Kirsch. Next month, the prosecutor — Luis Moreno Ocampo from Argentina — will start work. He has already identified as one of his priorities to assist states in strengthening their domestic legal systems so that they can prosecute complex and sensitive crimes. So the establishment of the International Criminal Court will help strengthen national criminal jurisdiction, another benefit of the institution.

The Court's members, the states' members, have a wide geographical spread. They include some — like Sierra Leone — with recent experience of a brutal civil war being waged against a collapsed national legal system that could neither prosecute nor deter the atrocities. Twenty-one of the members are from Africa, 18 from Latin America and the Caribbean, 36 from Europe, and 12 from Asia.

It is a matter of great regret to supporters of the Court that the United States is not engaged in this great legal enterprise, that there is no U.S. judge, and that the decisions that will shape the Court's legal and procedural character for the duration of this new century are being taken without an input from this great country with its rich jurisprudence. The U.S. decision in May 2002 to withdraw from any legal obligations as a signatory was unprecedented. I remember being very shook, actually, when I was serving as High Commissioner for Human Rights by this act that was called "an unsigning." In fact, the United States wrote to the Secretary General of the UN on May 6, 2002: "This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000."

That U.S. decision to withdraw from any legal obligations as a signatory raised possibilities of other unsignings of countries in the context of international law. Happily, that has not happened, but it was a worry at the time. It also sent a dangerous signal to other nations about the fragility of international law, and it raised a question about the seriousness of the U.S. commitment to ending impunity for genocide and crimes against humanity.

I don't say this in a negative, finger-pointing way. I say it really from the heart, with a sense — in an audience that includes many judges, many people who have studied the U.S. system over long years and who have a great accumulated knowledge — both of the rich texture of protection of rights in this country and the role the United States can play.

It is also, I believe, a matter of surprise and dismay internationally that the United States has somehow withdrawn from its historical role of leader in the development of an international criminal-justice system. As I said earlier, the United States was there. Without the United States, it is unlikely that any Nuremberg trials would have taken place: in 1945, other nations, including the United Kingdom, preferred to "dispose" of the Nazi leadership politically. They changed their policy only in the face of the United States's insistence that Nazi war criminals should receive a fair trial, and that their guilt should be found judicially. Both the Yugoslav and Rwanda tribunals have depended heavily on U.S. political and material support.

There is also a kind of amazement that perceptions of the Court should be so different in the United States and in the rest of the world. When I read the two sides of the discussion, even within America, it is difficult to believe that they refer in fact to the same Court, the same institution. Some critics castigate the Court in the most extravagant terms. They see it as threatening to "diminish America's sovereignty, produce arbitrary and highly politicized 'justice,' and grow into a jurisdictional leviathan." That's the website of the Cato Institute [http://www.cato.org].

Outside the United States, the view from a recent editorial in *The New York Times* is in fact vety heartening, that that newspaper has recog-

nized the importance of the Court as a U.S. "ally in efforts to prevent the globe's most serious crimes and bring to trial those who commit them."

Today, we are confronted with a fundamental question: Will the normative global system that restored peace and security after the Second World War be seen by future generations as an idealistic dream that was unable to respond to the realities of a changing international landscape? Or will it instead be viewed as the essential foundation of a more just and secure world based on respect for the international rule of law?

I believe that the International Criminal Court is a vital element in the task of building the international rule of law, and I believe it is important that American lawyers are there to help shape the decisions of the Court as it prosecutes its first cases.

It is going ahead. It doesn't need an immediate membership of the United States. It needs a kind of supportive witness from those of you here in the United States who have understood the importance of the contribution that your country has made to what we have built up internationally and who are prepared, even in slightly difficult political times, to say "we want to be closer to this institution," to be thinking about how it is working, and perhaps to revisit the possibility in the future of the United States being part of this system.

As I said — and I know that as an Irish person I should have been more lighthearted and found more reason to enjoy the evening with you, as I have enjoyed the pleasure of coming back to Chicago in such beautiful sunshine — I very much welcomed the opportunity as a member of The American Law Institute, as somebody who has been honored by that membership, to talk quite seriously to you about the times we are in. What you represent is the strength of a learned institution that since 1923 has been giving leadership in restating the law in this country and internationally for this country. That is more needed, I think, than ever before.

So I would end on an Irish note of encouragement. There is an Irish greeting, which is very often misunderstood, which is very much used in the west of Ireland, where I come from, and it is, "Be good."

It is meant to say, "Enjoy yourself, but don't overdo it," (*laughter*) and when I say "Be good" to The American Law Institute, it is take these issues seriously and make a difference. Thank you. (*Applause*)

President Traynor: As I visit with members in different parts of our country, it is clear that one of the great challenges to The American Law Institute is to help foster the responsible and intelligent formation of opinion to help effectively in meeting these problems. We need also to do so in a nonpartisan and nonpolitical way. We have begun doing so and there is very preliminary thinking about it, but there is certainly an awakening among our membership, given all that has gone on in the last two years, that these are issues that are certainly political in a sense, they are global, they have things to do beyond the law, but the law is at the core of them, as Mary Robinson has so helpfully reminded us tonight, going back to our Statement of Essential Human Rights in the '40s and the provisions of our Restatement of the Foreign Relations Law of the United States. So we thank you, Mary Robinson, for bringing us back to our own roots, as well as challenging us and encouraging us in meeting these challenges today.

Mary Robinson was famous while she was President for keeping a constant light on, a welcoming light of hope and welcome and inspiration, primarily for the people, so many people who had had to leave Ireland, that there was a home. Tonight, she has given us another kind of light, a light of encouragement, one where we can search for the deep values that we can all share, without at all being political about it, and it has been an inspiration to have you here with us. Thank you very much. Our evening is adjourned, and we will meet promptly at 9:00 tomorrow on Sentencing. Thank you. (*Applause*)