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Ladies and gentlemen,

This year the ceremony for the official opening of the judicial year of the European Court of Human Rights is rather special since it coincides with the beginning of the Court's 50th anniversary year.

Perhaps that explains why the number of people attending this year's event is exceptionally high.

In any case may I thank you all for coming. Your presence this evening is greatly appreciated as warm encouragement for us. I should like to greet in particular the many former judges of the Court and members of the Commission who have joined us this evening.

I should also like, on behalf of my fellow judges and the members of the Registry, to wish you an extremely happy and successful year in 2009.

I am delighted to see so many representatives of different authorities, members of governments, parliamentarians, the senior officials of the Council of Europe and the permanent representatives of the member States. I greatly welcome the presence of so many Presidents and high-ranking members of national and international courts. The national courts help us to ensure that States respect the rights guaranteed by the Convention, demonstrating the importance of domestic remedies and therefore the principle of subsidiarity; if the Convention is a "living instrument" it is also because you make it live. International courts show that the existence and expanded role of numerous international judicial bodies make possible a joint effort to uphold justice and fundamental rights.

I do, however, wish to greet more personally our two special guests and speakers.

Dame Rosalyn Higgins, who in a few days' time will be leaving the International Court of Justice, which she has served and presided over brilliantly, is honouring us with a few thoughts on the judicial cooperation between the Hague Court, whose vocation is universal and general, and the Strasbourg Court, whose jurisdiction is regional and specialised.

We are also honoured by the presence of Rachida Dati, Garde des Sceaux, Minister of Justice, representing the French Republic as the host State of the Court and the Council of Europe. She will close the ceremony by reminding us how much France and indeed Europe are attached to the protection of rights and freedoms.

I thank them both wholeheartedly.

We are going through a phase of anniversaries. Last December the 60th anniversary of the Universal Declaration of Human Rights was celebrated all over the world. On 5 May our parent institution, the Council of Europe, celebrates its 60th anniversary, and last October we organised a seminar to mark the 10th anniversary of the transformation of the existing Convention bodies into a single, full-time Court.

In view of all these different commemorations, I propose to take stock of the last fifty years and then reflect on the long-term future. This was the approach taken by the historian Fernand Braudel when he asserted that it was necessary to study history from the long-term perspective. The world, Europe and human rights are radically different in this first part of the 21st century from what they were after the Second World War. Moreover, when the Court was set up, no one, I think, could have imagined that it would one day fill the European judicial space to the extent that it does today. Its current influence in Europe, and even beyond, could hardly have been predicted. As an eminent observer said to me recently, seen retrospectively, the Court's development over the last fifty years was something of a miracle.

When the Court began its work, only twelve States had ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. The "iron curtain" denounced by Churchill in 1946 remained lowered. In the West some dictatorships survived, disqualifying those countries from entry to the Council of Europe, and decolonisation wars were still in progress. The state of fundamental freedoms was below the required standard of protection.

It is nevertheless striking that the first signatories of the Convention, clearly linking their initiative to the Universal Declaration, expressed their belief in common values and ideas: democracy, freedoms and the rule of law. There was a political commitment, and indeed a bold one since States recognised that individuals had rights and freedoms guaranteed under international law and created a judicial mechanism to ensure the observance of their own engagements. This was a gesture whose nobility and far-reaching significance we should not underestimate.

The last fifty years have been far from idyllic. International and civil peace, an indispensable, albeit not necessarily sufficient, condition for the development of human rights has not prevailed everywhere. The democratisation of European States was not achieved without clashes. The reconciliation of the two halves of the continent did not produce a consistent and immediate improvement in the protection of freedoms.

However, if we compare 1959 with 2009, it is clear that the state of human rights is broadly speaking better – in Europe at least – than fifty years ago; and that application of the Convention at national level and its review by the Strasbourg Court have played a major role in achieving this.

Numerous reforms have been undertaken as a result of the judgments delivered here and executed under the supervision of the Committee of Ministers of the Council of Europe. Through its interpretation of the Convention, the Court has gradually raised the standards of protection required, which has led via a process of emulation to a harmonisation of standards at a higher level. It has been assisted in this task by the other organs and institutions of the Council of Europe, to which due credit should be given.

Admittedly, even where faulty national legislation has been remedied, it is not always correctly applied. Execution of the Court's judgments is frequently delayed or, in rare but deeply regrettable instances, refused. The Convention is not sufficiently well-known everywhere or sufficiently relied on or given effect to. There are many reasons for this, including the linguistic hurdle, but there are also, and perhaps this is even more common, certain nationalist reflexes. It does not necessarily come naturally to accept all the consequences of acceding to a binding international instrument, in particular where they relate to the execution of judgments which can be perceived as awkward or even offensive. For the States it takes a great amount of open-mindedness to assimilate this dimension; for the Court it takes a great deal of pedagogy and judicial diplomacy if it is to succeed in persuading national authorities that this mechanism of a collective guarantee requires compliance with common rules.

The States have on the whole made remarkable efforts to apply the Convention guarantees and to implement the Strasbourg judgments. We need to be pragmatic. There is no point in chanting the maxim "*pacta sunt servanda*" on which Grotius based international law. The Court could only have been influential and it can only avoid the danger of being misunderstood, or even rejected, so long as it observes a degree of restraint and explains again and again to judges and other national authorities the basis for its decisions. This is why we attach great importance to meetings with other courts. Rosalyn Higgins has herself always encouraged this approach.

In any event the stature the Strasbourg Court has acquired and the influence it exerts contribute to the development of human rights. It has given the Convention a dynamic interpretation. It has thus expanded the scope of the rights guaranteed, while adapting its reading of the founding text in the light of technological and societal evolutions which were unforeseeable in 1950. At the same time, the case-law has developed concepts like the margin of appreciation and that of the threshold of severity in relation to violations. These methods of interpretation and the solutions which derive from them are clearly not immune from criticism, and the Court is sometimes criticised. However, such reticence is certainly less strong than fifty years ago or even ten years ago.

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Let us look briefly at the statistics. The Court's activity has grown spectacularly. Over its first forty years, it delivered just over 800 judgments on the merits, in other words around 20 a year, even if this average masks what was in reality a gradual increase, with a steep rise in later years. At that time, from a quantitative perspective, the main burden of the system was borne by the European Commission of Human Rights, whose activity ceased ten years ago. Since then the Court has issued tens of thousands of inadmissibility decisions (or striking-out decisions), but also more than 9,000 judgments on the merits: that is an average of more than one thousand a year and in fact well over that average in 2008.

The increase in the number of applications has the effect of generating a persistent deficit. There continues to be far too great a gap between the number of judgments rendered and decisions, on the one hand, and the volume of newly registered applications, on the other (for 2008 some 1,900 applications gave rise to judgments and there were 30,200 decisions, but there were also around 50,000 new applications). In these circumstances the number of cases pending (97,000 at the end of 2008) continues to grow, leading to increasing delays in the processing of cases. Yet the Court should normally examine each case within a "reasonable time" within the meaning of Article 6 of the Convention.

It is true that the potential applicants to the Court number over 800 million and that proceedings are instituted almost exclusively through individual applications, even though at present there are two inter-State cases pending, both brought by Georgia against the Russian Federation. Currently 57% of the applications pending before the Court are directed against just four States (the Russian Federation, Turkey, Romania and Ukraine), whose combined population accounts for only about 35% of the total population of the Convention States. This shows that, if the problem of the Court's case overload is a general phenomenon, it is in reality particularly concentrated on a limited number of countries. Efforts have to be made as a matter of priority in relation to them.

Many judgments over the last half-century have had far-reaching implications and have influenced national law. This is not the place to draw up a list, even a short one, since it would inevitably be subjective and over-simplistic. Moreover the collections of leading judgments in different countries and in different languages provide sufficient information in this respect. I will therefore confine myself to the most recent period and indicate without analysing them in any detail some of the judgments delivered in 2008, which are of course accessible via the Court's website.

Saadi v. Italy[1] dealt with the problem of the expulsion of a person suspected of terrorism to a State where he would be at risk of inhuman or degrading treatment.

In *Korbely v. Hungary*[2], the Court found a violation of Article 7 on account of conviction for crimes against humanity of a person prosecuted for a murder committed during the uprising in Budapest in 1956.

In *S. and Marper v. the United Kingdom*[3], the Court was confronted with the issue of the retention for an indefinite period of fingerprints, biological samples and DNA profiles of persons suspected but not convicted of criminal offences.

E.B. v. France[4] was a case concerning the prohibition of discrimination on grounds of sexual orientation with regard to adoption authorisation.

1 [GC], no. 37201/06, to be reported in ECHR 2008.
2 [GC], no. 9174/02, to be reported in ECHR 2008.
3 [GC], nos. 30562/04 and 30566/04, to be reported in ECHR 2008.
4 [GC], no. 43546/02, to be reported in ECHR 2008.

Kovačić and Others v. Slovenia[5] concerned the freezing of bank deposits after the dissolution of the former Yugoslavia. The Court approved the position adopted by the Parliamentary Assembly of the Council of Europe and called upon the successor States to resolve through negotiation the problems encountered by the thousands of persons in the same situation as the applicants.

I should also mention the advisory opinion delivered at the request of the Committee of Ministers – and it was the first such opinion – on certain legal questions concerning the lists of candidates submitted for the election of judges of the Court. The central issue was whether such lists could be rejected solely on the grounds of gender balance.

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Without allowing any room for complacency, I think we can say that the Court's activity since it began has had an important and positive impact. But what is the future of human rights in the 21st century and what is the future of the European system for the judicial protection of those rights?

It is difficult not to see how fragile human rights and their protection are.

The "resurrection" of human rights which occurred at the end of the 1940s was of course ideological, but this ideology was ultimately carried forward by an almost unanimous political wave of enthusiasm. At the United Nations, the Universal Declaration was adopted without a single vote against. It was a revolt ("never again") and an aspiration (for peace, justice and freedom).

More recently, new threats and a new context have emerged: terrorism, crime (whether organised or not), different types of trafficking. All this has created tension in public opinion and in our societies and a tendency to give precedence to order and security. The influx of illegal immigrants driven by poverty and despair has an impact on policies, but has also been accompanied by xenophobia, racism and intolerance, or contributed to their increase. In the same way the connection which is, sometimes over-hastily, made between certain types of religious belief and violence, or indeed terrorism, has exacerbated sensibilities, yet freedom of religion is also a fundamental human right. This requires dialogue and not insults.

In addition, the nature of protected rights has become more complicated. The development of science and technology in the fields of information technology and biology, while an instrument of progress, may generate new threats for private life and freedoms.

Moreover the texts for the protection of rights were designed to protect persons from abuses perpetrated by States, whereas such abuses frequently derive from groups or persons who fall outside State authority.

5 [GC], nos. 44574/98, 45133/98 and 48316/99, to be reported in ECHR 2008.

Likewise, conflicts are no longer necessarily between freedom and the defence of public order, but often between two competing human rights which are equally guaranteed and deserving of protection, for example freedom of expression versus the right to respect for private life. This gives rise to difficult balancing exercises for legislators and for judges, including ourselves.

Moreover, the ideology of the protection of rights can no longer rely on the groundswell of support that carried it forward in the 1950s. It has come up against the difficulties of establishing or maintaining peace, the return of materialism and of individualism, the extolling of national interests, and more recently the financial and economic crisis which could force freedoms into second place. Bismarck's old expression "*Realpolitik*" has reappeared and is regularly cited.

The protection of human rights has thus become more fragile, more complex. But does that mean that it must yield?

My answer is no. On the contrary, I would argue that it is necessary to consolidate and breathe new life into these rights, to bring about their *aggiornamento*.

We should reinforce what already exists. Reinforcing what exists means reaffirming what we call "classic" rights, what Jean Rivero called freedom-rights as opposed to claim-rights. It also means driving back areas of non-law and accepting that women, children, old people, the disabled, detained persons, all vulnerable people, and minorities, that they too must have the benefit, on the same basis as everyone else, of the freedoms guaranteed.

Moreover many European constitutions now stress the importance of economic and social rights and of what are known as third-generation rights. The same is true of the Charter of Fundamental Rights of the European Union, which under the Lisbon Treaty will acquire the same binding force as the Treaties. I accept that we should not extend the rights protected indefinitely. At the same time it makes sense to see human rights differently compared to fifty years ago. It is perhaps a paradox that in the present crisis human rights appear in a different light from how they were viewed in the years of post-war economic growth, if only because of greater understanding of the need for solidarity.

This analysis calls for a long-term perspective and a common political will.

It seems to me that the States Parties to the Convention should, fifty years on, engage in a collective reflection on the rights and freedoms which they wish to guarantee to their citizens for the future, without of course in any way reneging on the existing rights. I do not believe that any one is seriously considering going backwards after half a century of progress and development.

As part of the same process, the States should also reflect on how to protect such rights. The principle of collective guarantee is, I think, inviolable but the practical aspects of the protection of rights and their implementation can be rethought.

This reflection could be organised around a major formal conference in the first half of 2010. Such a conference would articulate a new commitment and it would be the best way of giving the Court, which exists only by the will of the States, a reaffirmed legitimacy and a clarified mandate. These revised objectives

would also concern the national authorities, without forgetting the very important role in the field of fundamental rights played by a court with which we have excellent relations, the Court of Justice of the European Communities. The presence of its President this evening honours us.

To give a label to this special conference, which will need to be prepared with great care and which cannot have any real impact without the participation of senior political figures, I floated the expression "*Etats généraux des droits de l'homme en Europe*". In fact the title matters little, apart from its value for communication purposes, if the idea and objective of such an event are accepted. The Court envisages setting out the arguments for such a conference and explaining what the subject matter might be by submitting a "memorandum" to the member States on the subject.

The idea is for the States, the guarantors of human rights, to give human rights protection a second wind. This would help to express support for the Court, breathe new life into this fifty-year-old and rejuvenate it.

The present situation is not satisfactory (the few figures that I mentioned demonstrate this). Over the last ten years, the different reform processes have not yet produced results. Protocol No. 14 has still not entered into force, and I regret this. The causes of this blockage are well known. As a consequence, the report of the Group of Wise Persons, which contained some good proposals, is also blocked. We should, of course, not give up on these reforms; indeed, I believe we must continue to work for their implementation, but they should be viewed from a broader perspective.

Despite the budgetary difficulties, the States have enhanced the Court's resources – for example the Registry staff has tripled in ten years; over the same period the number of decisions and judgments has been multiplied by eight. We have to thank the States for their support, even if we must say clearly to them that we will continue to need that support in the coming years.

But can we go on like this indefinitely? Can we proceed with an unlimited expansion of the Court and its Registry? Are we not running the risk of exhaustion with this headlong flight?

It is hard to see how the system can remain viable unless we slow down the influx of new applications, without of course blocking those which are new and well-founded. At the same time, the Court is reforming itself. It is developing new working methods, such as a more systematic sorting of cases with a view to giving priority to the more important and more serious ones, more frequent recourse to pilot judgments, in cooperation with the States and the Committee of Ministers, and encouragement for the conclusion of more friendly settlements. Following on from the seminars held in Bratislava and Stockholm under the chairmanships of Slovakia and Sweden, the Court will look to enhance the role of Government Agents, while of course preserving fully its own independence. It also expects much from measures to be taken at national level to prevent violations and to remedy them. It counts on Bar associations who in often difficult, and sometimes dangerous, conditions

make a major contribution, as do non-governmental organisations, to assisting applicants, for which they should be given credit. They can also help the Court by preventing futile or hopeless applications.

Finally, part of the case overload is due to the large number of repetitive applications. In this context, the Court hopes to be able to rely on the cooperation of the Committee of Ministers in ensuring effective execution of its judgments.

The Court can in no way be accused of being passive. Yet, it will not surmount its difficulties if it is not given a clear indication of the commitment or reaffirmed commitment of the States. Fifty years after it began sitting, it needs an updated "roadmap", including directions as to the means of protection.

Claude Lefort wrote "rights cannot be disassociated from the awareness of rights". This is true of people too, and also of civil society which does so much to promote human rights – their contribution cannot be underestimated. But it is also true of the States themselves. The rule of law means that States are subject to the law and they must accept that with full awareness of what it entails. I think the time has come for States to reassess their position, which will lead to a renewed momentum.

Ladies and gentlemen, it is time for me to give the floor to our two speakers. Let me finish by making a bet. In twenty years time, in fifty years, there may even be a World Court of Human Rights, I do not know. But I do know that there will always be human beings who suffer from physical abuse, whose freedom is curtailed and whose dignity is undermined. We must ensure that at least we Europeans use the law to reduce that suffering and to prevent it recurring. We need to reflect upon how to give human rights an even more concrete character, a more effective and less illusory character. That was the will of the founding fathers, and much has been achieved. We need to consolidate and reinvigorate the system. Before you here today, I make the bet that this is possible, but only with your help.

Thank you for your attention.