

# ASHWANI KUMAR

Senior Advocate Supreme Court; Former Union Minister for Law & Justice, India

## Jim HOAGLAND

Our next speaker is Ashwani Kumar, a distinguished advocate barrister from India, who has been Senior Advocate for the Supreme Court, and former Union Minister for Law and Justice.

## Ashwani KUMAR

Thank you Jim.

Let me on behalf of all of us here and perhaps on behalf of all the people in the world who care, thank Thierry and his team who have brought together in this wonderful city of Marrakech - a galaxy of global leaders and thinkers who have devoted the last three days of their time, to find solutions, which we confront in common - the grave challenges, which all of us face in common, and which make this world a challenged world.

I am a hopeful person by choice, and by nature. But all hope and all initiatives towards realizing our hopes must begin with a candid acceptance that we are living in a very troubled, challenged, conflict driven, and a violent world. We are living in a world which is for a very large number of people is neither just, nor stable, nor peaceful, nor a world that gives hope to future generations. But what do we do? Do we put our hands up and say that all is lost? Certainly not. We know from Carlyle's theory of history that the story of human civilisation and its progress through the ages could be measured in terms of the contribution of geniuses and great world leaders, who came for a limited time on this earth but change the course of history for the better.

What we see today is not all gloom. What we see today is a vastly superior world in the sense of the fastest and the most abundant growth of material prosperity. We see a world in which there is hope for the very sick people, because of technological advancement. We see a world which has endless possibilities for a better life, for a very vast majority of our people. But who is to realise this potential?

When I come to the conclusion of my presentation, I will talk about the way forward. But today, let me, at this point of time talk about the fears that I have. My first and foremost fear is that, the potentially volcanic trouble spots in this world are growing. We discussed about the situation in the Middle East and North Korea, Yemen, Libya, Afghanistan, Pakistan, Iran, Qatar and Saudi Arabia. We have discussed all these and there are potentially growing areas of conflict such as the South and East China Sea. And I think, that these conflicts are going to exacerbate in the future, depending upon the proclivity of the rising powers to assert against their expansionist programs. We see this phenomenon, we recognize it as well but sometimes we are diplomatic enough not to assert it in the manner that we ought to.

As a lawyer, I am extremely worried at the impotency of the international legal order. We recently had the Hague Tribunal's judgment, about territorial claims in East China sea. And China, a great power in fact, in some ways a responsible power too, openly defied international legal order and said that it does not accept the judgment of the Tribunal. I ask myself the question - what is the point of repeatedly asserting that we must live by the international legal order if we have in our midst, not one, but several powers, who, if they chose to defy the international rules of the game cannot be held accountable for defiance of the law.

Therefore, I think one of the foremost challenges is for global leaders to sit together and to devise rules of engagement that would not depend upon their enforceability, upon the sufferance of one or two or three powerful States and I think as somebody rightly pointed out - international morality and law are impotent without the backing of power. Power is the only constant, which defines the contours of international relationships. This has been the theory, for as long as we have read it. We have known from history that at the end of the day the weak must yield what they



must and the strong take what they can. Is that the world that we want our children to live in? No. We need a just, fair, law based international order and the establishment of that international order is one of the foremost challenges for statesmen of the world.

The second point that I want to make in this regard is that we are witnessing a sure retreat from multilateralism. President Trump's walking out of even UNESCO, leave aside the TPP or the other arrangements, or the Paris Accord. But withdrawal even from UNESCO shows an utter contempt for what has been achieved thus far.

It is not my place to pass judgment on an individual leader of great country. But it is time for us to interrogate ourselves whether collective judgments in democracies are always the right judgments. Of course, some may argue that the collectivity has spoken and democracy is about the rule of majority and so be it - Yes, this is certainly a point of view. But does the majority always get it right is the question we have to ask and the terms of engagement in the debate between right and wrong are defined by what we all know instinctively to be right and what we all know instinctively to be wrong or bad.

The second takeaway that we can all claim from this Conference is that whether we like it or not, globalisation is in retreat. Is it necessarily a bad thing? I think the jury is out. We will have to await the verdict of history. But the fact remains that globalisation has not necessarily led to a just society or a just world order. A great international lawyer, Professor, Louis Henkin has described our age as the age of rights and what is it that we actually confront? We confront the sad and tragic reality of 3 billion people by 2020 having to live and subsist on less than \$2 a day, 793 million people facing hunger, 11 million children dying of hunger every year and 155 million children being undernourished.

Globalisation, leading to imports from China into the U.S. led to 2.4 million job losses in America. Surely, Americans had a right to challenge the conventional wisdom and the established order. We know that drugs and human trafficking continue to be a grave reality. And the laws in the world and all our collective resolve – the resolve of leaders in the world has failed to check the menace.

Something is therefore, not right and I would like to complement Thierry for organizing this conference because as Goethe reminded us, we must proclaim from time to time what we believe in and reject what we must condemn and I think conferences and platforms like this, ought to be used to repeat what we believe to be right and to reject what we believe to be wrong. That, I think will be the lasting service that Conferences of this kind will render to humanity.

Fundamentalism, a rise of identity politics, breakdown of inter-faith dialogue, and as somebody said "the failure of happy modernity" are inescapable realities of the present world, and my very grave doubt about our capacity to regenerate failing democracies troubles me a lot. I come from a country which prides itself in the defence of human rights and in its irrevocable commitment to the fundamentals of constitutional democracies. But what do I see? I see, my country rejecting lock, stock, and barrel, the plea of Rohingyas for asylum in our country. I can understand any government's right to reject 1, 2, 5, 10, 100, 500 people on grounds of suspected involvement in terrorist activity, but, how can you dub a whole class of helpless people as potential terrorists and deny them the humanitarian relief of asylum. And this is a country associated with the Mahatma and the Buddha, who taught us the first principles of humanitarianism. Ours is a country that gave to the world the slogan of 'Vasudhaiva Kutumbakam', that is, that the whole world is one family, and here I see this happening.

We have a stellar record of human rights jurisprudence in our country, which has been borrowed by many many countries - not only in our neighbourhood, but even in the advanced countries. I am, myself fighting a case for the Rohingyas in the Supreme Court of India and on a number of issues I am myself a public interest petitioner. I find that the rise of a dominant person, perhaps in reaction to things that were not so positive, does lead to the weakening of the institutions of libertarian democracy. This is the lesson of history - whether it is in the United States of America or in India, or in any other democracy and I think it is absolutely necessary for us to insist on diffused power structures - whether that is represented by multilateralism on the global stage or by institutions of constitutional democracy in democracies across the world. A diffused power structure is something that we have to struggle for.

Yes, technology has been a great saviour in some respects. But technology has defied our humanity. It is invading our humanity. The right to privacy, the right to dignity, the right to reputation, which are casualties of fake news, is something that we have to be concerned about. The monster of social media is threatening our family lives and it is threatening our social existence. We need to ask ourselves - whether in the name of technology we can allow all of this to happen?

And, finally, I have to say - do we need to barter our freedom to qualify as patriots? This is about the assault on liberal democracies. Are our freedom and nationalism mutually exclusive? Do we need to pronounce the demise of reason to appease radical populist demagogues? Is it fair to invoke moral relativism to eliminate the testing measure of power and can we afford to forget the caution sounded by James Madison that there are more instances of abridgment of freedom of the people by the gradual and silent encroachments of those in power than by violent and sudden usurpations.

Let me conclude by what Toynbee, my favorite historian, reminded us. He said – “civilisation moves forward on the basis of challenge and response” and each age has to write its own history Martin Luther King told us - there is no such thing as tomorrow and he said that we are “ confronted with the fierce urgency of now in the unfolding of life and history and let me tell you ladies and gentlemen, we are all individually and collectively duty bound - not once, not twice, but over and over again, to repeat what we believe is right because as Dante cautioned us - the hottest places in hell, said Dante, are reserved for those who in period of moral crises, which we face today, preserve their neutrality.