It is really quite hard to comment on so thoughtful and well-balanced a paper as Sir Jeremy Greenstock’s. On the other hand, it would not be much help if I simply were to say: ‘Yes, I agree.’ [In fact, if after years of sitting together and serving together in the Diplomatic Service I were to turn to him and say: ‘Jeremy, that was excellent, I agree’, he would probably fall of his chair in astonishment!]

Perhaps there is one point on which I am not sure that I do totally agree, and I was intrigued to see that Dr Hollis also picked up the aphorism that the good governments do not do enough and the bad governments are not sufficiently constrained – I think it is probably the other way round. It is the good governments who are not sufficiently restrained and it is the bad governments who do not do enough, but the art is to decide what exactly it is that the bad governments should be doing in the areas in which they are failing.

In any case, what I am going to do is to step aside a little from the main theme of the paper and give some broader background from my own professional point of view, that of a lawyer/diplomat. If Rosemary Hollis said that she felt somewhat overawed by the eminent human rights lawyers, I am the one who ought to feel overawed because of the depth of their expertise, because human rights, even amongst lawyers, is a subject which raises huge passions and because it may seem that something of what I am going to say will sound a bit sceptical. This is unintentional – it is informed far more by what I have always regarded throughout my career as being important, namely that there are limits to what you can ask the law to do for you and that you must be conscious of those limits. If you demand too much, then you damage an institution on which, in the end, you depend in an important way.

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I would like to structure my remarks around three broad points and then say something about law and policy. Firstly, what is a human right? Secondly, what are the sources of human rights, looked at from the legal point of view – where do human rights come from? Thirdly, what is the consequence of the fact that something is, properly, a human right?

I start with the first: what is a human right? This may address directly one of the sources of frustrated puzzlement that Dr Hollis referred to. We talk very easily about human rights, but the question ‘what is a human right?’ is a rather important one. It is important not least because there has been, I think, latterly an enormous amount of inflation in the use of the description ‘human right’, and inflation, as we know in economic and other fields, leads ultimately to devaluation.

There is apparently an issue now – if you simply confine yourself to the newspapers – which journalists tend to find as being ‘an abuse of human rights’, things which previously just were international crises, were wrongs, were problems, are now almost all described as ‘an abuse of human rights’. It raises the question as to why this is done. No doubt the answer is because some special magical quality is thought to inhere in a human right, which I will touch on a little later when I talk about consequences, and the consequences raise all sorts of issues about the power of particular kinds of legal rules.

Is there a touchstone for what sort of right is a human right? It seems that such a touchstone does not exist. What is a human right? A human right is something we call a human right, something which occurs in a legal instrument, which calls itself an instrument on human rights. Something is a human right because it is in that instrument, but beyond that, it is all rather grey and indeterminate.

One way to talk about it would be to say that inasmuch as we recognise nowadays that international law is not just about rights and obligations between states, it also deals with relations between states and the individual, then anything touching the individual is a human right. However, I think this goes too far, because there are all sorts of provisions of international law – dealing with ordinary travel, dealing with trade, dealing with economic activity and finance, which directly benefit individuals – which one would not really think in any sensible way of describing as human rights.

So I do not pursue the point beyond that, but I do insist upon the fact that there is not a self-evident answer to: ‘What is a human right?’ Is this particular claim or entitlement properly called a human right or not? There is no touchstone from which to decide.