CONTEMPORARY THREATS TO INTERNATIONAL PEACE AND SECURITY IN WEST AFRICA, THE RULE OF LAW AND JUDGES

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APPRECIATION

▶ Appreciation.

Preliminary comments:

▶ Very dynamic area. Everything could change as I speak and yet it is a case of, "plus ca change, plus c'est la meme chose".

▶ Intention is to increase awareness of judges to threats around them as well as conscious and sub-conscious challenges to the judicial function.

▶ - no intention to explain, or make excuses for the role of any major power

▶ References to national vulnerabilities are generic on account of similarities generally on the continent, and in the sub-region.

▶ Specific mention of any country is not intended as criticism, but as a real example of situations that can pose "threats" to judges and to the judicial function.

SCOPE

- Introduction
- Significance of Rule of Law and its principles
- Rule of Law and judicial power
- The terrain of conflict in international peace and security - up to 20th century
- The changing terrain of contemporary conflict
- The changing and challenging terrain of contemporary conflict
- International Responses
- African vulnerabilities affecting terrain of conflict
- Africa Regional and sub-regional approaches – including institutional approaches
- Terrorism in West Africa
- Intra-state Vulnerabilities
- National Action – Needed responses
-                -Effect on Legal terrain
- Role of Judges in national action and Challenges
- Conclusion

INTRODUCTION

- ▶ Threats to international peace and security changing from old paradigm of conflict between States; and evolving into new forms involving conflict within States.

- ▶ These changing dynamics have consequent effects on approaches by the international community to the control and management of its tools for peace; and for States and their development agenda.

Introduction cont'd

- Respect for the rule of law is thought to be a mechanism for alleviating the threats as respect for human rights of citizens undermines stress-points in a country.

- Judges are the ones called upon to mediate between the state and its citizens in times of disagreement; and to uphold the rule of law

WHAT IS 'RULE OF LAW'?

- a synonym for 'law and order'

- description of the nature of institutions

- a technical expression which denotes the functioning of a system

'RULE OF LAW'

- In more particular terms, the following principles are acknowledged as constituting the principles or the rule of law :

- '1.   All laws should be prospective, open and clear – i.e no retroactive legislation Laws that criminalise past conduct or that are deemed to take effect from the past should not be made. Laws are supposed to be a guide for future conduct not a trap for the unwary. Retroactive legislation undermines the respect for law since no one can trust that today's lawful conduct would not be made unlawful by a law passed tomorrow.

- 2.   Laws should be relatively stable – they should not be changed so rapidly and constantly that it becomes impossible to know at any particular time what the law is.

'Rule Of Law' cont'd

- 3.   The making of particular laws must be guided by rules which are stable, open clear and general in scope – laws should be made in a manner that is known in advance, and should not target particular individuals (ad hominem legislation)

- 4. The independence of the judiciary must be guaranteed – the need to ensure that the judiciary would be in a position to treat all parties that appear before it (including the government) fairly without fear of official sanction.

'Rule Of Law' cont'd

- ▶ 5.   The principle of natural justice must be observed – everyone accused of a crime should have a fair opportunity to be heard.

- ▶ 6.   The courts should have review power over the implementation of the principles – there should be opportunity for judicial review of administrative action to ensure that everyone has justice.

'Rule Of Law' cont'd

▶ 7. The courts should be easily accessible – this is not just in physical terms, but in speedier justice so that those with grievances have an early opportunity not only to air them but also to have them promptly and competently handled.

▶ 8.	The discretion of crime – prevention agencies must not be allowed to pervert the law – everyone must be equal before the law so that some people do not escape punishment in circumstances which show an unfair advantage over others equally placed.'

Summary Of Principles Of Rule Of Law

- "The protection accorded by the law to each and every citizen is what can make the State a meaningful and functioning reality in the lives of ordinary citizens. The principles of the Rule of Law aim at ridding the ordering of the system of governance of arbitrariness, capriciousness and unfairness, first in the administration of law and justice, and then in the society at large. These principles also aid in the promotion of certainty, as well as the prescription of orderliness on the part of both the governors and the governed."

Henrietta J.A.N. Mensa-Bonsu (JSC) "We Are Watchers Of A Beacon, Whose Light Must Never Die" –Contemporary Musings On The March From The Ghana We Have, To The Ghana We Desire." Aggrey-Fraser-Guggisberg Memorial Lectures, University of Ghana, Lecture 1, 2023 .

RULE OF LAW AND JUDICIAL POWER

▶ Courts are the ones called upon to mediate such State-citizen conflict by interpreting and applying rules made for the governance of the polity, and for making voices and opposing ideas heard in the polity.

▶ Access to courts also help to reduce possibilities of harassment from official sources and even more equitable access to social services and balanced economic development. These reduce grievances against the State and its officials – often a source of intra-state conflicts.

Rule of Law and judicial power cont'd

▶ The ends of conflict-prevention can, thus, be served when individual grievances, particularly against the State and its agencies are fairly and speedily addressed.

▶ Hence the need for judges to understand and appreciate the interplay between their role and resolution of issues involved inintra-state peace, as well as contemporary threats of conflict in international peace and security.

THE TERRAIN OF CONFLICT IN INTERNATIONAL PEACE AND SECURITY – UP TO 20TH CENTURY

▶ Concept of State Sovereignty recognised in Europe by the Peace of Westphalia in 1648 ending the Thirty Years War.

▶ Need to regulate State system leading to formation of League of Nations and then following WW2, United Nations.

▶ The Charter recited in its Preamble the need to protect succeeding generations from the scourge of war.

Terrain of conflict cont'd

▶ Conflicts of those days that presented a threat to international peace and security were largely between States.

▶ UN Charter following WWII (Chapter 6) established principle of maintenance of international peace and security by the pacific settlement of disputes to avoid large-scale inter-state conflict.

▶ Security Council given sole responsibility to oversee the maintenance of international peace and security between member states, where such conflict has a tendency to threaten international peace and security.

The terrain of conflict cont'd

- Norms of state sovereignty which the Security Council has to respect are principles that constrain the Council from dealing with "interfering in" affairs within states ie intra-state conflict.

- The remit of the Council did not see any expansion until Rwandan Genocide in 1994. This was intra-state conflict and so the UN did not act. However, the scale of horror shocked the conscience of the international community into action.

- Since then, norms such as Responsibility to Protect (R2P) have been adopted and used in Libya, but has since not gained much traction.

The terrain of conflict cont'd

▶ The respect for sovereignty and the remit of the Security Council in ensuring international peace and security and respect for human rights seem to carry promises that do not address issues faced by many Africans as they live under non-accountable governments; experience intra-state conflict; and/or are forced to move from country to country in search of safety and sustenance.

▶ These notions of "insignificance of welfare of Africans" and the use of Veto powers by the 'P5' states have undermined the confidence and effectiveness of the work of the Security Council on the African continent, leading to agitations for reform of that World body.

The changing and challenging terrain of contemporary conflict cont'd

Changed world politics also means changed dynamics of conflict, resulting in need to change management of conflict by the international community, eg:

- The "CNN effect" - The emergence of 24-hour news networks, which beam horrors of these intra-state conflicts day after day into living rooms around the world, blurring distinction between inter-state wars that threaten international peace and security and intra-state wars in which egregious human rights abuses are committed. This has caused the Security Council to amend its focus to include intra-state conflict characterized by the commission of egregious abuses of human rights against the citizens.

The changing and challenging terrain of contemporary conflict cont'd

- Emergence of new Technologies and new forms of media enabling disaffected around the world to link up and join forces; mobilise and recruit new adherents in far-flung areas for operations around the world; learn new technologies for causing harm.

As UNDP/RAND Report acknowledges, "Despite its role in encouraging political participation and promoting development, social media has also led to a number of less desirable impacts including online payment fraud, online child sexual exploitation, cyber-dependent crime and online radicalisation."

UNDP/RAND Social Media Africa Research, 2019

The changing and challenging terrain of contemporary conflict cont'd

▶ Technology has also created easy access to information from Extremist groups has bred various categories of actors and operatives: "authorised"; "franchisees"; "affiliates"(of particular terrorist groups)"; "inspired"; (by particular terrorist groups), "lone wolf "; and "copy-cat" acts of terrorism

▶ To complicate matters, widely available technologies also spread know-how on production of homemade weapons of various kinds; suicide belts; other improvised explosive devices (IEDs), etc. which enable such actors to acquire lethal arms without regulation.

The changing and challenging terrain of contemporary conflict cont'd

▶ Upsurge in growth in violent extremism and terrorism.

▶ 'Terrorism' – Basically the use of violence as political action for a political cause. "Terrorism attacks the values that lie at the heart of the Charter of the United Nations: respect for human rights; the rule of law; rules of war that protect civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; it also flourishes in contexts of regional conflict and foreign occupation; and it profits from weak State capacity to maintain law and order."

Report of High-level Panel on Threats, Challenges and Change UN General Assembly 59th Session A/59/565 2nd December, 2004 para 145.

The changing and challenging terrain of contemporary conflict cont'd

- ▶ Some of these political causes arise from the so-called clash of cultures, such as the of rise of Islamist movements linked to a resurgence in fundamentalist Islam and the desire to establish theocratic states or Caliphates; the spread of militant ideologies either from national causes with international links or even religious causes, eg recent disruption of Internet traffic attributed to "cut cables" (rumours of links to Yemeni Houthis and the conflict in Gaza.)

The changing and challenging terrain of contemporary conflict cont'd

▶ These causes have, in turn, led to the emergence and growing importance of non-state actors ie individuals or groups of private persons, who wield power outside state structures. with varying numbers of following, and operational modes.

▶ Thus the changed nature of protagonists also means parties to conflicts that threaten international peace and security are no longer only States.

The changing and challenging terrain of contemporary conflict cont'd

- The non-state actors have publicity-seeking agendas that result in the creation of maximum terror effect in the target community

- Financial incentives by terrorist organisations to families of "martyrs"; and promises of "luxurious living in afterworld" to idealistic young people as reward for participation in terrorist activitieshave also led to easier recruitment of new operatives.

The changing and challenging terrain of contemporary conflict cont'd

► These 'non-state actors' have maximalist goals, but often no identifiable leadership to enable reaching out to them for negotiation, etc unlike previous ones made up of States and leaders of states.

► They are not amenable to existing Tools or mechanisms for exacting compliance developed to deal with States and leaders of states. eg Sanctions; asset-freezing; Travel bans; – effective against States and prominent leaders but not against bush-dwelling rebel leaders

The changing and challenging terrain of contemporary conflict cont'd

▶ The 'non-state actors' are often new to norms of democratic governance; and are, sometimes even unaware of a legal regime of International Humanitarian Law and of Human Rights Law that bind their conduct.

▶ Indiscriminate violence is their modus operandi. Therefore their use of heavy weapons; and use of by suicide bombers or other "human bombs" deliberately detonated in crowded areas to achieve maximum casualties

INTERNATIONAL RESPONSES

► Responses to these crises by the international community were and have been ineffectual, and showed that existing tools are inadequate to deal with new generation "threats to peace and security", eg. UN still grappling with strategies for countering violent extremism; and whether it should engage in counter-terrorism.

► Diffuse nature of threats and actors as well as targets of terrorism, prevention and protection have resulted in a need to move from the global level to regional and national action:

International Responses cont'd

▶ The development and deployment of drones and other Autonomous Weapons Systems (AWS) by rich countries who can afford their use are also raising questions about the legality of such weapons and whether they do not violate Laws of War, and respect for sovereignty. These are difficult times indeed for the world.

International Responses cont'd

- Fortunately, the UN Charter, made provision for cooperation and collaboration with Regional bodies in Chapter 8. Therefore rendering it possible for action at the global level to be stepped downwards to regional levels without appearing to have surrendered to realities and left Africans to their fate.

- Therefore cooperation with African Union (AU) and its sub-regional bodies has been stepped up to enable more effective action by the UN Security Council on the African continent.

AFRICAN VULNERABILITIES AFFECTING TERRAIN OF CONFLICT

► Issues compounded by poverty and growing inequality, especially in the developing world. Extreme poverty threatens "many African people as directly as weapons of mass destruction, making development centred on the eradication of poverty an indispensable basis for collective security on the continent."

   Mary Chinery-Hesse (2006)

► Increasing illegal migration to more prosperous parts of the world leading to the Mediterranean Sea becoming a "graveyard" for migrant African youth. On their part, citizens of the global north are also resisting such migrants, creating great unease, and even conflict in some of the countries.

African vulnerabilities affecting terrain of conflict cont'd

- Organised crime and the trade in illicit drugs, human trafficking, arms trafficking and other illicit goods eg fertilizer.

- Illegal exploitation of natural resources leading to confrontation between State and local communites eg 'galamsey' and illegal logging as means to survive uncertain economic terrain.

- Rise in fundamentalist Christianity producing more confrontation and upsetting balance between religious groups.

African vulnerabilities affecting terrain of conflict cont'd

- ▶ Climate change exacerbating already grinding levels of poverty, eg drying up of Lake Chad.

- ▶ Youth bulge in African countries and therefore increased vulnerability and susceptibility to recruitment to idealistic social causes

- ▶ Weak governance and hard-to-control Corruption.

- ▶ Security institutions with inadequate capacity.

African vulnerabilities affecting terrain of conflict cont'd

▶ "Border porosity, the absence of a regional strategic approach, youths' frustration towards the elders' political and economic monopoly, rural and urban disparities and rampant illiteracy are some of the regional aggravating factors for the spread of extremist ideology and dividing behaviours."

Clingadael Report 2016

▶ The desire to establish a caliphate across the sub-region leading to terrorism in a number of countries in the Sahel and slowly edging towards coastal regions.

AFRICA REGIONAL AND SUB-REGIONAL APPROACHES

▶ Regional and sub-regional approaches are required. Limited effectiveness of military responses generally acknowledged.

▶ On 29th January 2024 Peace and Security Council of African Union adopted the '*Common African Position on the Application of International Law to the Use of Information and Communication Technologies in Cyberspace*' to encourage the membership to regulate cyber technologies to combat misinformation and disinformation on the continent.

▶ Need to enhance prevention and mediation capabilities through strengthening regional and subregional instruments of integration to increase cooperation, control capabilities and collaboration.

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REGIONAL AND SUB-REGIONAL INSTITUTIONAL APPROACHES

- ▶ AU Peace and Security Council

- ▶ ECOWAS Instruments on Peace and Security

- ▶ MNJTF; G5 force

- ▶ UN peace operations

- ▶ Other regional forces –

- ▶ APSA - ASF based on Subsidiarity outmoded at birth: ESF, NACC, EASF (IGAD), ECCAS SADC whose SAMIDRC (Southern African Development Community Mission) deployed forces into DRC in December 2023. It suffered casualties 3 dead and many wounded *(Tanzanian soldiers) when its camp was attacked by mortar in April 2024.

- ▶ Accra Initiative – joined up action by countries to combat terrorism in the sub-region

Regional and Sub-regional institutional approaches cont'd

- Into this mix of complex factors has come coups d'etats in Sahelian countries Mali, Niger, Burkina Faso, Guinea. All such acts violate legal instruments of regional and sub-regional institutions of integration and cooperation.

- These acts have necessitated a resort to legal measures for compliance such as suspension and imposition of sanctions by the regional and sub-regional bodies as well as threats of military intervention. These measures to restore democratically-elected, but unpopular governments, have not been well-received by the citizenry of the sub-region, creating a crisis of confidence for the sub-regional body.

Regional and Sub-regional institutional approaches cont'd

▶ The imposition of these compliance measures has been met by threats of resignation from sub-regional bodies by the new leaders of the countries concerned, at a time when cooperation, collaboration and joined up action are most needed.

▶ Suggestions of the formation of new bodies of cooperation by the pariah states have not yet materialized, but the threat remains real.

▶ Sanctions have been quietly lifted by some contiguous states to abate severe economic catastrophy on border communities.

TERRORISM IN WEST AFRICA

- The Islamic State in West Africa or Islamic State's West Africa Province (formerly known as Jamā'at Ahl as-Sunnah lid-Da'wah wa'l-ihād. Nigeria

- Islamic State in the Greater Sahara (ISGS)

- "ISIS is now a threat to the entire African continent, from North to South and East to West. Groups like ISIS-West Africa, ISIS-Greater Sahara, … have conducted attacks in Bamako, Cairo, Ouagadougou, and Sousse to name just a few."

Nathan A. Sales, Acting Under Secretary For Civilian Security, Democracy, And Human Rights, UN CT Conference, Nairobi (July, 2019).

Terrorism in West Africa cont'd

- Most active Groups in West Africa:

- Boko Haram (Nigeria)(JAS) with Breakoff group (ISWAP)

- Ansaru (Nigeria (affiliated to Al-Quaeda)

- Movement of Oneness and Jihad I West Africa.

- Al-Quaeda in Islamic Maghreb (AQIM) (Mali) .

- Islamic State in Greater Sahara (ISGS)

- Ansar al-Dine (Mali)

- Mokhtar Belmokhtar's katibat (battalion) al-Murabitun (Those Who Remain Steadfast) formerly MUJAO)

- More danger as rivalries intensify – eg Two rivals clashing in Nigeria in Jan 2020, November 2021 and in October 2023 with casualties.

See: Malik Samuel, Institute for Security Studies (ISS) Regional Office for West Africa, the Sahel and the Lake Chad Basin, www.defencweb.co.za 8th May 2024

Terrorism in West Africa cont'd

- "The security situation across the Western Sahel is deteriorating and the outlook looks bleak, as climate change impacts make local populations more vulnerable to the influence of terrorist organisations such as ISGS, Boko Haram and AQIM."

"The Warning Signs are Flashing Red" Planetary Security Initiative(Icct 2019)

- The Jihadists seem intent on achieving a foothold on the coast, thereby increasing threat of attacks against coastal states, such as Cote d'Ivoire, Ghana, Togo and Benin. Recent training in Maritime Security in Gulf of Guinea now becoming a priority.

Terrorism in West Africa cont'd

- Climate change seems to be exacerbating the situation and strengthening the hand of the terrorist groups. Currently, much of Burkina Faso is under the control of these groups.

- Nigeria seems to be in the throes of battling jihadists, farmer-herder conflicts and activities of criminal groups, leaving a pervasive sense of insecurity.

- Growing incidence of piracy and kidnapping for ransom making Gulf of Guinea unsafe. More attacks than Somalia coast.

INTRA-STATE VULNERABILITIES

- ▶ Inter-ethnic stress points affecting national cohesion

- ▶ Inadequate presence in cyberspace to detect and fight terrorism

- ▶ Growing incidence and scope of cyber crimes

- ▶ Inadequate awareness of changed security environment.

INTRA-STATE VULNERABILITIES AND NEEDED RESPONSES

▶ National action to address stress points (including effects of climate change) within States

▶ Improved counterterrorism measures and heightened security awareness in general populace to address threats to national security to preserve national stability because of symbiotic relationship between peace and development.

▶ Need for active implementation of cyber security measures to enhance online protection of vulnerable groups and to deal effectively with growing incidence of cyber-based offences.

NATIONAL ACTION – EFFECT ON LEGAL TERRAIN

▶ All around, anti-terrorism legislation, the establishment of special tribunals; the development of special regimes for the trial of terror-suspects, the criminalization of some forms of cyber-based activities. and other forms of legislation aimed at strengthening the hand of state agencies have been adopted in many countries.

▶ These legislative responses invariably seek to lower human rights standards, fair trial provisions or breach citizens' privacy of communication.

▶ Herein lies the burden of the judge.

National Action – Effect On Legal terrain cont'd

- On 4th April 2024 Defense Headquarters of Nigerian Army reported that in the first Quarter of 2024 2351 terrorists had been neutralized, (killed)..." Such statistics should raise alarm bells in the legal community because the "neutralized terrorists" had in fact been punished by death without recourse to the courts. Were all of them guilty? Could the identities of the neutralized be independently verified? Who is asking questions of the Military, or holding them to account? Could any judge avoid feeling a sense of relief that those persons were no longer a threat?

ROLE OF JUDGES IN NATIONAL ACTION

- Manifestations of conflict on the continent and within the sub-region, pose serious challenges to judges and their role as impartial arbiters between the State and some of its disgruntled citizens. It is from the judge that the interpretation and application of rights restrictive legislation would be sought.

- The judiciary has a role to play in actualising the rule of law for every citizen so that the disaffected do not become a threat to the generality of the citizens.

ROLE OF JUDGES IN NATIONAL ACTION - CHALLENGES

▶ When the Nigerian Defense Headquarters further reported that 2,308 suspected kidnappers had been arrested and 1,241 kidnapped hostages were released. At the same time, could judges avoid feeling a sense of mission that those persons would now come before the courts to answer for their actions?

▶ Nevertheless, Judges must apply the law fairly and evenly and ensure fair treatment of every citizen to obviate the necessity to adopt "self-help" modes for achieving justice.

Role of Judges in national action - Challenges cont'd

- ▶ Access to judges, once a formidable challenge has become comparatively easy as they can be reached via social media. This has decreased the levels of protection from social currents, and increased dangers of contamination by persons who require judicial intervention.

- ▶ Judges must use social media with caution and discretion.

- ▶ Judges must appreciate that they can no longer live in a cocoon, but must inform themselves of dangers around them to avoid falling prey to individuals determined to operate outside the law

Role of Judges in national action - Challenges cont'd

▶ Judges must be mindful of their personal security and not take obvious risks or make assumptions as to invincibility. "You are your own best security" should be every judge's mantra.

▶ However, how is the Judge, who now must be mindful of her own personal security, maintain impartiality when she feels threatened by acts of anonymous enemies who seek publicity by perpetrating mindless outrage?

Role of judges in national action – challenges cont'd

▶ How does one resist the feeling that one's posture as a judge might frustrate the State's efforts in protecting the citizenry from perpetrators of acts of terror, and yet one can do no less?

▶ No easy answers there – only a consciousness that the obligation to act "without fear or favour", is one that is never suspended or abrogated; and that a judge is all

CONCLUSION

▶ The world has become a little more unsafe than it used to be and so no country on the continent can afford to take its own security for granted.

▶ All African States are vulnerable and must actualise the instruments of cooperation, collaborate with regional institutions and share intelligence.

▶ The Sahel region must not be abandoned because of breaches of sub-regional organizational instruments.

Conclusion cont'd

- Better and more sustained law enforcement holds the most promise for peaceable existence and peaceful societies.

- The frontiers of physical security have moved from the level of the state to the level of the individual. This holds consequences for the citizen as a blurring of distinctions between persons waging war on the country and ordinary citizens poses a threat to the rights of the innocent, who deserve the protection of the law.

Conclusion cont'd

- Social Media outlets have become the new frontiers of territory and require appropriate regulation and law enforcement presence.

- No country is an island, even if it is geographically so. Being in the global village, every country is susceptible to all the threats faced by the international community at large. Concerted action to eliminate causes of disaffection, and fight climate change on the continent must be pursued with diligence. These may reduce the vulnerability of citizens and officials alike.

Conclusion cont'd

▶ A judge who is unaware of these changes in the socio-political environment and the threats those changes pose to her duty to uphold the law may be a danger to herself and to her society.

THANK YOU

End notes

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- Report of High-level Panel on "Threats, Challenges and Change" adopted by UN General Assembly A/59/565 2nd December, 2004.

- See, Joseph Raz, "The Rule of Law and its Virtue" in Liberty and the Rule of Law, Robert Cunningham (ed.) Texas A&M Univ. Press, College Station, 1979 p.3 at pp.7-12

- Henrietta J.A.N. Mensa-Bonsu (JSC) "We Are Watchers Of A Beacon, Whose Light Must Never Die" –Contemporary Musings On The March From The Ghana We Have, To The Ghana We Desire." Lecture 1, University Of Ghana 75th Anniversary Aggrey-Fraser-Guggisberg Lectures, 2023. 'Resilience, Technology And Humanism" p. 32

End notes cont'd

▶ Henrietta J.A.N. Mensa-Bonsu (JSC) "We Are Watchers Of A Beacon, Whose Light Must Never Die" –Contemporary Musings On The March From The Ghana We Have, To The Ghana We Desire." Lecture 1, University Of Ghana 75th Anniversary Aggrey-Fraser-Guggisberg Lectures, 2023. 'Resilience, Technology And Humanism" Recommendations, pp67-68

▶ Henrietta J.A.N. Mensa-Bonsu (JSC) "Yen Ara Asaase Ni" Remix – Tuning Up The Contribution Of Law In The Ghana We Desire." UG@75 , University Of Ghana 75th Anniversary Aggrey-Fraser-Guggisberg Lectures, 2023; Lecture II, 'Resilence, Technology, Humanism'. p.20, 21.

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End notes cont'd

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