

**THE VISIBLE COLLEGE OF INTERNATIONAL LAW:
“TOWARDS THE RULE OF LAW
IN INTERNATIONAL RELATIONS”**

*by Mr. Hans Corell**

Mr. President, Distinguished Members of the Board, Madam Executive Director, Colleagues, and Friends:

It is a great honor for me to address the Annual Meeting of the American Society of International Law once more in my capacity as the Legal Counsel of the United Nations.¹ I thank President Arthur Rovine and Executive Director Charlotte Ku for the kind invitation.

The topic that I have chosen for this keynote address is “Towards the Rule of Law in International Relations.”

I bring greetings from Kofi Annan, the Secretary-General of the United Nations. Although not a lawyer, Kofi Annan is very much focused on international law. Time and again, he has emphasized the importance of the rule of law, both at the national level and at the international level.

In his Millennium Report last year, the Secretary-General emphasized that, if we take a long-term view, the expansion of the rule of law has been the foundation of much of the social progress achieved in the last millennium. He reminds us, however, that this remains an unfinished project, especially at the international level, and that our efforts to deepen it must continue.²

How does one approach, on an occasion like this, a topic that is so well known to the audience but not so readily understood by the general public, including their elected representatives?

I have decided to assume tonight the role of the advocate and to approach the topic in a very simple, frank, and straightforward manner. The issue is of crucial importance to mankind, in particular, if we look beyond the immediate future. As always, I must make the customary disclaimer that the views expressed are my own and do not necessarily reflect the opinion of the United Nations.

I have taken as a point of departure a reflection by the Secretary-General in his Millennium Report. I did the same last November when I spoke at a conference on the rule of law in international relations in Moscow. There seems to be an increasing understanding among many states that international relations have to be governed by international law.³

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¹ The first occasion was in 1996. *The United Nations in Crisis: Reflections from Within the Secretariat*, 90 ASIL PROC. 324 (1996).

² UN Doc. A/54/2000. The quotation is from paragraph 326. See also the Secretary-General's Annual Report to the General Assembly, UN Doc. A/55/1, paras. 273–81.

³ My fellow keynote speaker at the opening of the conference in Moscow was Igor Ivanov, foreign minister of the Russian Federation. The following quotations from his speech on that occasion are noteworthy in this context:

Whatever the differences in the views of States on the future world order, it is quite obvious that any international-relations architecture can be solid enough only if it is based on an appropriate international legal foundation.

....

I am firmly convinced that there are no obstacles that would prevent us from further developing international law and gradually filling the remaining gaps in this field based on the fundamental principles of the UN Charter. The United Nations should remain the main generator of legal norms in this field, governing essentially all spheres of international relations.

However, there are those who have a less positive attitude toward the creation of common international legal norms. This attitude is sometimes found even in the United States. This fact is of great concern to many—including, in particular, many insightful Americans.

A couple of weeks ago, I read *Six Nightmares* by Anthony Lake, National Security Adviser to President Clinton from 1993 to 1996. The book was published in October last year.⁴ In his book, Lake examines six scenarios that, in his view, each pose a threat to the safety of the United States. The point of departure in one of the scenarios is a quotation from Anatole France: “Strong nations cooperate to the harmony and wealth of the world. Weak nations are a perpetual cause of disturbances and perils.”⁵

Lake then goes on to discuss the perils and aspects of such weakness. His conclusion is that one of the greatest threats to building a world of democracies that respect the rights of their peoples and a world of free markets that are open to American goods is the accumulated weaknesses in many states.⁶

I could not agree more, but would, from my perspective, like to put special emphasis on one contributing factor to such weaknesses: the absence of, or poor state of, the rule of law.

With respect to the rule of law at the national level, suffice it to say that it implies that within a state, the exercise of power in the public domain should be performed with full respect to the laws that apply.⁷ Everyone, including the head of state, the parliament, the government, the judiciary, and other authorities are bound by the constitution of the state and must act within the parameters set by the same. They are also bound by the statutory provisions enacted by the parliament and by rules issued at lower constitutional levels, be it by the government or other bodies entrusted with legislative power.

Rule of law means also that the legislative bodies have to bow in respect to the very laws they have adopted. The fact that judicial instances and other public authorities in the exercise of their functions are subject to the existing law means that, unless this is specifically prescribed for certain cases, there is no room for discretion on the part of those who apply the law. On the contrary, what is required is an impartial and independent application of the law by the judiciary. Other state or local authorities are required to apply the law objectively in accordance with its letter and intent. In short, authority in the public domain should be exercised “under the laws.”

It goes without saying that the law that I refer to here must be adopted with full respect for applicable international standards in the field of human rights. The rule of law also presupposes that the application of the law is entrusted to persons with the necessary integrity, independence, and impartiality. Furthermore, the laws must be properly published and accessible to the general public.

In this context, I would like to point to the fact that the United Nations makes great efforts in promoting the rule of law at the national level, especially through the “good governance” programs of the United Nations Development Programme and the United Nations High Commissioner for Human Rights.

....

Evolution of global and regional processes will undoubtedly require further development and adaptation of international law. For that reason, we favour the most active involvement of scientists and experts, representatives of non-governmental organizations and civil society as a whole in this creative process.

⁴ ANTHONY LAKE, *SIX NIGHTMARES* (2000).

⁵ LAKE, *supra* note 4, at 215.

⁶ *Id.* at 234.

⁷ Sir Arthur Watts, *The International Rule of Law*, 36 GER. Y.B. INT'L L. 15 (1993). This writing provides an excellent overview of the questions relevant to the topic. See also IAN BROWNLIE, *THE RULE OF LAW IN INTERNATIONAL AFFAIRS: INTERNATIONAL LAW AT THE FIFTIETH ANNIVERSARY OF THE UNITED NATIONS* 1–17, 213–28 (1998).

The principle of the rule of law is also applicable at the international level, or more specifically, in international relations. According to the preamble of the Charter of the United Nations,⁸ the peoples of the United Nations are determined “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”

The Charter states that one of the purposes of the United Nations is “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”⁹ Another purpose is to achieve international cooperation “in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹⁰

More detailed provisions on pacific settlement of disputes appear in Chapter VI of the Charter; and, as you know, one of the six principal organs of the United Nations is the International Court of Justice.

Efforts aimed at enhancing the rule of law in international relations encompass both the field of lawmaking as well as acceptance of, and respect for, international law by all states. Moreover, they should be accompanied by increased encouragement of the dissemination and wider appreciation of international law.

During the twentieth century, international law has been developed both at the universal and regional levels. It has been incorporated in a great number of universal, regional, and bilateral treaties. The efforts by the United Nations alone in this field have led to the elaboration of hundreds of multilateral treaties dealing with essential issues of inter-state relations, as well as to the individual rights to which human beings are entitled in their own countries, to the protection of the environment, and to the regulation of commerce and trade.

This process has not only put custom in writing but has also allowed all members of the international community to participate in the formulation of international law. It has been fundamental to the very conduct of international relations and the legitimization and acceptance of international law. Some of the products of this codification process have laid the structure of an entire field or domain of international law, setting forth principles and rules that define the basic lineaments of the law and the framework within which problems are analyzed.

Today’s international lawmaking has to catch up with the speed of technological and scientific developments. Forecasting future needs and making policy decisions about how such needs should be addressed are now part of the required skills of lawyers and policy makers.

The United Nations has served as a mechanism of coordinating a multitude of international lawmaking activities and provided diverse information not only to governments and international or national institutions but also to the general public.

At the present stage, in securing the rule of law in international relations, the focus should be on a strengthening of the political will to apply existing instruments when the need arises and on a more widespread knowledge of their content.

Since its establishment, the United Nations has helped create a global legal culture necessary for the promotion of respect for the rules and principles of international law. The institutional mechanisms aimed toward guaranteeing the implementation of international obligations by states, however, are still rather weak, if they exist at all.

⁸ UN CHARTER.

⁹ *Id.* Art. 1, para. 1.

¹⁰ *Id.* Art. 1, para. 3.

The latest significant event in this field is the Millennium Declaration adopted by the UN General Assembly at the level of heads of state and government on September 8, 2000.¹¹ This Declaration was adopted to translate fundamental values essential to international relations in the twenty-first century into actions. The Millennium Declaration identifies certain key objectives, including those in the legal field:

- To strengthen respect for the rule of law in international as in national affairs and, in particular, to ensure compliance by member states with the decisions of the International Court of Justice, in compliance with the Charter of the United Nations, in cases to which they are parties
- To make the United Nations more effective in peaceful resolution of disputes
- To ensure the implementation by states parties of treaties in areas such as arms control and disarmament and of international humanitarian law and human rights law, and to consider signing and ratifying the Rome Statute of the International Criminal Court
- To take concerted action against international terrorism, and to consider acceding, as soon as possible, to all the relevant international conventions
- To minimize the adverse effects of UN economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews, and to eliminate the adverse effects of sanctions on third parties

In the Declaration, member states also made the following pledge, followed by a number of detailed commitments: “We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.”¹²

Over the last ten years, the United Nations has taken decisive steps toward bringing about a world in which international law is actually applied and justice is done. This is most apparent in the field of international criminal law.

Over the twentieth century, states put in place a comprehensive set of international legal instruments designed to prevent atrocities and curb inhumanity in warfare. What was lacking was the will to enforce those laws. Serious violations of international humanitarian law went unpunished.

The decision of the Security Council in 1993 to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 marked a decisive break with this record of inaction.¹³ States, acting through the Security Council, showed their determination at last to take concrete steps to enforce the rules of international humanitarian law that they had created and had undertaken to respect.

This determination was shown again a year later when the Security Council established the International Criminal Tribunal for Rwanda.¹⁴

It was shown yet again last year when the Security Council charged the Secretary-General with negotiating and concluding with Sierra Leone an agreement to establish a special court to try persons bearing the greatest responsibility for the commission of serious violations of international humanitarian law in Sierra Leone, as well as crimes under relevant Sierra Leonean law.¹⁵ We are presently in the process of establishing this court.

¹¹ GA Res. 55/2 (Sept. 8, 2000).

¹² *Id.* para. 25; *see also id.* para. 26.

¹³ SC Res. 827 (May 25, 1993).

¹⁴ SC Res. 955 (Nov. 8, 1994).

¹⁵ SC Res. 1315 (Aug. 14, 2000).

Perhaps most dramatically, states have shown their determination to enforce international humanitarian law by embarking on the project of creating a permanent international criminal court.¹⁶

Moving beyond the area of international criminal law, it is evident there, too, that, in order to realize the rule of law in international affairs, it is not enough for states to establish their consent to be bound by treaties. It is necessary that states also respect and implement the obligations that those treaties lay down.

To this end, the United Nations takes a broad range of measures to help create conditions that will ensure that rules of international law are implemented in practice.

A number of offices, departments, programs, funds, and agencies of the United Nations provide governments, on request, with assistance in drafting the laws that are needed at the national level to ensure implementation of the treaty commitments that they have assumed or that they intend to assume in the future.¹⁷

Similarly, a number of UN entities help governments run training programs in particular aspects of international law for those whose work involves them in its application (for example, law enforcement officers, prison officers, social workers, and immigration officers).

It is clear, though, that much remains to be done in these respects.

To ensure the rule of law in international relations also requires more widespread knowledge of international law. To encourage the teaching, study, dissemination, and wider appreciation of international law was one of the goals of the United Nations Decade of International Law, declared by the General Assembly for the period 1990–1999.¹⁸

Within the framework of the Decade, states and international organizations and institutions have undertaken a multitude of activities, including sponsoring conferences on various subjects of international law. Numerous programs and events were undertaken in areas such as the development and adoption of international treaties, facilitation of the ways and means of implementing treaties, and improvement of means and methods for settling disputes between states. International and regional seminars or symposia were organized for the training of legal professionals and government officials. Steps were taken for the wider publication of the practice of states and international organizations in the field of international law.

The dissemination of information concerning UN activities in the field of international law through the electronic medium has advanced markedly. One notable example is the creation of the UN Web site of international law.¹⁹ Another is the establishment of the UN treaty database.²⁰

Ladies and gentlemen, in his book from 1996 with the provocative title, *The Death of Competition: Leadership and Strategy in the Age of Business Ecosystems*, James F. Moore reminds us of the seventeenth-century biologist Albrecht von Haller, who commented on both the richness of nature and the limitations of our minds.²¹ According to von Haller,

¹⁶ Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9*, *reprinted in* 37 ILM 999 (1998).

¹⁷ Such assistance is given inter alia by the Office of the High Commissioner for Human Rights; the Office of the High Commissioner for Refugees; the UN Environment Programme; the International Trade Law Branch of the Office of Legal Affairs; United Nations Development Programme; and United Nations Children's Fund. See the icon "Technical Assistance" at <<http://www.un.org/law>>.

¹⁸ GA Res. 44/23. (Nov. 17, 1989).

¹⁹ At <<http://www.un.org/law>>.

²⁰ At <<http://untreaty.un.org>>.

²¹ JAMES F. MOORE, *THE DEATH OF COMPETITION: LEADERSHIP AND STRATEGY IN THE AGE OF BUSINESS ECOSYSTEMS* (1996).

nature connected her things in a net, not a chain, and humans can follow only by chains because their language cannot handle several things at once.

James F. Moore thinks that this is a particularly essential point today. Human beings have always separated themselves from other species by the degree to which they transform their environments to meet their needs. On the other hand, he says, our minds have always had a limited ability to see the big picture and understand all the consequences of our actions. James F. Moore then goes on to say:

Today our power to change our world has grown to the point where we run the real risk of destroying it. Our capabilities still outrun our abilities to understand them. But there is no turning back from these capabilities. And so we must find ways to embrace our powers in a positive fashion. We must develop ways to augment our thinking. Studying ecology is one of the most promising ways to stretch our minds—and on occasion to help us succeed in reaching beyond chains.²²

It struck me that this parallel between business and nature can also be drawn between law and nature and, more specifically, between law and *human* nature. So let us stretch our minds. If we look to the future, I think that it is obvious that if we are to survive on this globe, we must reach out across boundaries to find common denominators on how to deal with matters that concern all of us, regardless of where we happen to live on the globe. The international law that we already have actually forms a carefully woven net. It is not possible just to follow a particular chain and disregard the net. To pick and choose among the many international agreements that exist will simply not do in the future.

In this perspective I think we would all expect that those states that are the strongest and most powerful would take the lead in knitting this net. The point has been made that it is weakness that poses the greatest threat, even to the strong and powerful. Therefore, it should be in the interest of the strong and powerful to add their determined contribution to our common effort.

What, then, would be the incitements for a powerful state like the United States to demonstrate firmly and consequently that it will align itself with other states in accepting the international rule of law? I would have many suggestions, but why not look at it from the perspective of a concerned American? I revert again to Anthony Lake:

Those obsessed with saving America's sovereignty from the clutches of international institutions are missing the fundamental point about the new world. America's sovereignty *is* being lost. To some degree, it is lost to the UN and other international bodies. But to a far greater degree, America's sovereignty is being lost to the forces of globalization. The unilateralists can try to build all the walls and barriers they want. They can insist that America act alone or not at all. But many of the threats we face today, such as currency crises, international crime, drug flows, terrorism, AIDS, and pollution, cannot be defeated single-handedly or shut out at the border. Turning our backs will not turn back the clock. It will only leave us more vulnerable.²³

How should states proceed to engage in international cooperation? I would like to point to another interesting conclusion that Anthony Lake draws:

We do not, on our own, have the resources to help every fledgling market democracy deliver for its people, or to turn weak nations into strong, reliable partners by waving some magic wand. Yet, if the remarkable tide of democracy is reversed, our interests will surely suffer. We need the cooperation of other nations and international institutions like the United Nations, the World Bank, and the International Monetary Fund to help make sure economic and democratic reform keep advancing hand in hand.²⁴

²² *Id.* at 277.

²³ LAKE *supra* note 4, at 283.

²⁴ *Id.* at 290.

If we are to succeed in establishing the rule of law in international relations, it is of crucial importance that states respect this joint effort within the framework of the United Nations. Unfortunately, we see tendencies to pick and choose, as I just indicated. It occurs that states criticize other states, vigorously invoking international law, only to turn their back on this very law as soon as it suits their interests. This is simply not credible. Nor is it sustainable.

Ladies and gentlemen, I said that I would appear before you tonight as an advocate. Allow me now to address two areas of international law where the views in the United States seem to differ, often with reference to state sovereignty, while at the same time there is great support in many other countries: The 1998 Rome Statute of the International Court with 139 signatures (including by the United States) and twenty-nine ratifications, and the 1982 United Nations Convention on the Law of the Sea with 158 signatures and 135 ratifications.²⁵

First, the ICC. On July 17, 1998, in Rome, a UN Diplomatic Conference decided to establish a permanent international criminal court to try individuals for the most serious offences of global concern, such as genocide, war crimes, and crimes against humanity. The adoption of the statute was hailed by the Secretary-General as a "giant step forward in the march toward universal human rights and the rule of law."²⁶

The Rome Conference succeeded in creating a major new international institution for prosecuting individuals accused of committing the most serious crimes of concern to the international community as a whole. The adoption of the Rome Statute fills a major gap in international law and constitutes an important step on the road to a better and more just and peaceful world.

Some governments remain wary of this enterprise. It is hard to believe, though, that their skepticism flows from any disagreement with the importance of compliance with international humanitarian law or from principled opposition to the notion that those who are guilty of the most atrocious crimes known to humanity should be tried and punished, as the law prescribes that they should.

I would encourage those, like yourselves, who have dedicated your lives to the cause of the rule of law to help better educate your fellow citizens in the role of international humanitarian law and to familiarize them with the central principle of Nuremberg and Tokyo: that those who commit, or authorize the commission of, war crimes and other serious violations of international humanitarian law are individually accountable for their crimes and that the community of states can and should bring them to justice, in accordance with due process of law.

And let me state this emphatically: The international criminal court is not a threat to states with an organized criminal justice system. It is designed to protect those most vulnerable in situations where their own government, if there is one, is unable or unwilling to prosecute those who violate their most fundamental human rights. It is designed to help end the impunity that has caused so much suffering and sorrow among human beings for as long as we can remember.

Second, the law of the sea: The United Nations Convention on the Law of the Sea is one of the most fruitful and successful contributions to the establishment of the rule of law in the world's oceans and seas. The General Assembly has asserted that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out.²⁷

²⁵ Status as of 4 April 2001.

²⁶ The Secretary-General's Statement at the Ceremony on Campidoglio in Rome on July 18, 1998, at <http://www.un.org/icc/speeches/718sg.htm>.

²⁷ See <http://www.un.org/Depts/los/index.htm>.

The focus on the rule of law came at a time when conflicting jurisdictional claims, competing demands for living and nonliving resources, increasing globalization of the shipping industry, and spreading pollution were threatening to transform the oceans, over two-thirds of the surface of the earth, into an arena for chaos, conflict, and unilateralism. The core of the legal order is the agreed upon and systematic specification of rights and duties of all states, coastal and land-locked, island states and archipelagic states, flag states and port states, developing and developed states.

The law is reflected in unique and momentous proportions in the oceans where political boundaries do not necessarily coincide with ecological boundaries and the boundaries of resource occurrence. In this context it should also be noted that one state's actions invariably affect other states.

The law is reinforced by a built-in mechanism for the settlement of disputes, making it obligatory for a party to the Convention involved in a dispute with another party to go through the settlement procedures established by the Convention.

The law as laid down by the Convention is comprehensive and dynamic since it codifies traditional rules for the uses of the oceans and at the same time introduces new legal concepts and regimes. It also provides the framework for further development of specific areas of the law of the sea.

These are two examples of fields of international law, one focusing on criminal law, the other on environmental law, where it is of particular importance that all states walk in step.

I beg forgiveness for preaching to the converted! However, it is my sincere hope that my words tonight will not simply stay in your minds and in the walls of this stately room. Together, you form a formidable power of outreach. Please make use of that power!

We know that politics begin back home in the village. We also know that politicians concentrate on matters that they know are of concern to their constituencies. Therefore, I think that it is important to inform the general public, the constituencies, about the issues we are discussing at this annual meeting specifically and in your Society in general, so that they understand that it is in their interest to support the progressive development of the international legal system.

So please reach out to all the many that represent civil society: political parties, other non-governmental organizations, the business community, and others. It is important that the fundamentals of international law are brought all the way to the grassroots level and that, from this level, the pressure can be built that finally will set the politicians in motion.

As international law develops to regulate more and more fields of daily life and business, it plays an ever greater part in the laws of each nation. This imposes a special responsibility on lawyers and on those who educate and train them. International law can no longer—if it ever could—be considered an “optional extra” in which lawyers may or may not be trained, as they wish.

To satisfy the fundamental demands of the rule of law, lawyers nowadays must be familiar with international law—to be schooled in its methods and to know how to research it when the need arises. I would therefore encourage you to consider what further steps you might take to help increase awareness of international law, not only among the public at large but specifically among those who are involved in the application of the law, including legal practitioners and judges.

In particular, I would ask you to encourage the running of courses in international law that sitting judges and practicing lawyers might take on a voluntary basis. I would call on you to work for the adoption of a qualifying requirement for the judiciary and for practicing lawyers, that they should have taken a course in international law during their professional training. And I would ask you actively to promote the recognition of courses in international law as fulfilling applicable continuing legal education requirements for practitioners in the various jurisdictions from which you come.

However, while such training courses may increase awareness of international law among legal practitioners and judges, a longer term strategy is needed to ensure that international law is more widely and better known by all those involved in public affairs. In this connection, I would observe that, even today, international law is not taught in all law schools. Where it is taught, it is usually not a core, or compulsory, subject of study—though the law of human rights in some form often is. Moreover, the subject is often not taught in courses in public administration or in politics.

In an effort to address this shortcoming, I have written to deans of law schools throughout the world, encouraging the broader teaching of international law and, wherever possible, its recognition as a compulsory subject in the law curriculum—one that a student must take in order to be awarded a degree in law.²⁸

To assist those universities that may need help in developing suitable curricula for courses in international law and in identifying relevant teaching materials, I have enlisted the assistance of a team of prominent academic lawyers.²⁹ I would encourage you to join this network or, as the case may be, to take advantage of the resources that it offers.

I know that many look upon international law with cynicism and name those of us who support it idealists. This may be so, that we are idealists. But I venture to say that our idealism is based on the realities that we foresee if our ideas are not brought to fruition: the risk that if we do not act in time mankind will repeat the mistakes of the past. Seen in this perspective, maybe the idealists are the true realists.

Be that as it may, what it all comes down to can be formulated in very simple terms. What is needed is that those who govern us have experience, vision, and ability to stretch their minds.

Being a Swede, it is natural for me to refer to the history, poetry, and folklore of the Nordic countries. Some time ago I again read *Hávamál*, the Sayings of the Vikings. (Not that I necessarily approve of how the Vikings behaved on their expeditions!) I came across one poem that the translator has given the title, *Experience*.³⁰ It struck me that the wisdom of this poem goes way back—more than one thousand years. It was formed by men—and for men—whose only means of traveling long distances was to plough the seas in open wooden ships, men whose only protection against the wrath of the elements was the dragon's head in the bow of their long-boat.

In Icelandic the saying goes:

*Sá einn veit
er víða ratar
og hefir fjöld um farið
hverju geði
stýrir gumna hver,
sá er vitandi er vits.*

Translated into English this saying on experience goes:

*He is truly wise
who's travelled far
and knows the ways of the world.
He who has travelled
can tell what spirit
governs the men he meets.*

My friends, when will this wisdom dawn on some in the twenty-first century?

I rest my case!

²⁸ Hans Corell, *An Appeal to the Deans of Law Schools Worldwide*, reprinted in ASIL NEWSL. July–Aug. 2000, available at <<http://www.un.org/law/counsel/info.htm>>.

²⁹ *Id.*, *supra* note 28.

³⁰ HÁVAMÁL: THE SAYINGS OF THE VIKINGS (Björn Jónasson trans., Gudrun Publishing 1992).