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“International Law and Changing Climate”

Address by

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Professor Träskman, Dean of the Faculty of Law,
Professor Ortwein,
Professor Modéer,
Professor Noll,
Doctores promovendi,
Colleagues and friends,
Fellow students,

It is with great delight that I take the rostrum today. Allow me, first, to extend my warmest thanks to the Faculty for inviting me to address you on this “Annual Day of Legal Science Research” and for bestowing upon me an Honourary Law Degree. I am deeply grateful for this award – this mark of distinction.

The title that I have chosen for my address is: “*International Law and Changing Climate*”.

As it will appear, the title is meant to cover not only the environment. It is intended to cover also the political climate, which has undergone significant changes over the past few years.

In my presentation I will make three main points:

- First, that the global climate change that we are presently experiencing will require States to cooperate even more closely in environmental matters in the years to come, including by framing their commitments in legal terms;
- Second, that climate change and other threats that we are facing will present even greater demands on the institutions that we have created for the maintenance of international peace and security, in particular the United Nations; and
- Third, that scrupulous adherence to the rule of law both at the national and international level is the only way forward to ensure peace and security for future generations.

In a few concluding remarks I will make some suggestions with respect to the role of Academia in the rule of law context.

First point: Climate change requires close cooperation among States

Climate change has played a prominent role in the media lately. Former Vice-president Al Gore’s “An Inconvenient Truth” and the preparatory work for the upcoming Fourth Assessment Report “Climate Change 2007” of the Intergovernmental Panel on Climate Change (IPCC) have contributed to this focus.

So far, the reports by the three IPCC Working Groups – Group I on the Physical Science Basis, Group II on Impacts, Adaptation and Vulnerability, and Group III on Mitigation of Climate Change – have been made available.

The conclusion of Working Group I is that current warming trends are unequivocal, that it is very likely that greenhouse gases released by human activities are responsible

for most of the warming observed in the past fifty years, and that the trends are projected to continue with greater intensity over the course of the 21st century and beyond.

However, this conclusion and other assumptions of the IPCC Working Groups are disputed by some. The critics maintain that the change of temperature is generated by other factors and that the effects of human activity on the global climate are marginal.

Obviously, the provision of energy for a rising world population will be one of the greatest challenges for the future. The indications are that the world population will rise from the present 6.5 billion to 9.1 billion by 2050. Millions of people are living in great poverty and without access to clean drinking water. This cannot be allowed to continue. Also these people should be allowed to live under decent conditions.

At the same time there are positive trends. India and China presently demonstrate a tremendous economic growth. But, of course, this is combined with a rise in their energy consumption. Carbon dioxide emissions from the developing world will soon bypass the emissions generated by the industrialised countries.

How should these challenges be tackled? This is basically a question of policy. However, once decisions are made they will inevitably have legal consequences.

Environmental law is a late arrival at the international level. The first significant step was the groundbreaking Stockholm Declaration of 16 June 1972. In this Declaration the participating States declared that “the protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world”.

In this context it is also worthy of note that the Declaration addresses the growth of population. Having noted that the natural growth of population continuously presents problems for the preservation of the environment, and that adequate policies and measures should be adopted, as appropriate, to face these problems, the participating States included Principle 16 in the Declaration:

“Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.”

Since 1972, States have negotiated several conventions and protocols for the protection of the environment. These instruments are by now more or less generally accepted by the entire State community. Recently, I had reason to look at the status of ratification of some of these treaties for which the Secretary-General of the United Nations is the depositary. I updated this list on 25 May 2007, and this is what I found (please bear in mind that there are presently 192 Members of the United Nations):

- The Vienna Convention for the Protection of the Ozone Layer (1985) – 191 parties

- The Montreal Protocol on Substances that Deplete the Ozone Layer (1987) – 191 parties
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) – 170 parties
- The United Nations Framework Convention on Climate Change (1992) – 191 parties
- The Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997) – 173 parties
- The Convention on Biological Diversity (1992) – 190 parties
- The United Nations Convention to Combat Desertification (1994) – 191 parties
- The Stockholm Convention on Persistent Organic Pollutants (2001) – 146 parties

As it appears, there is an almost universal participation in these agreements by the State community. Five of them have 190 parties or more. One has 173, one has 170, and one, adopted as late as in 2001, has 146 parties.

However, these and related instruments will not suffice in the future. If, for example, there is agreement to reduce carbon dioxide emissions, it will be necessary to establish limits and adopt a regime to assure that these limits are kept. This would require a binding international agreement. Reference is often made to the need to establish a regime that succeeds the Kyoto Protocol. This will not be possible unless there is a well functioning international legal order.

In addition, irrespective of the reasons for the changing climate, global warming is a fact. We should not exaggerate or over-dramatise this development. But States must get together and discuss this phenomenon and develop appropriate contingency plans for the situation that will develop if the warming continues.

If it does, there will be further desertification and a rise of the sea level. This will have as a result that large areas of land will become inhabitable. Where will the people who now live in these areas go – whether they live in southern Florida, in a Pacific Island, or in Bangladesh?

It goes without saying that this development will not occur all of a sudden. Therefore, there is time for reflection and planning. How do we deal with the situation? By applying an open-minded immigration policy or by building fences around our countries like the ones presently being erected between the United States and Mexico and around Spanish enclaves in Africa?

And what do we do about the growing world population? Experience shows that one of the most effective means to address this phenomenon is to raise the level of education of the women!

Irrespective of how we attempt to solve these questions, we must realise that our politicians and decision-makers will be put under tremendous pressure in the future. Open minds, cooperation and legal commitments will be necessary.

Second point: Climate change and other threats will present even greater demands on international institutions, in particular the United Nations

Climate change is only one element among other threats that we are facing. Let me in this context recall the identification of threats made by the High-level Panel on Threats, Challenges and Change.

You may remember that, on 1 December 2004, this Panel presented its recommendations to Secretary-General Kofi Annan. The Panel maintained that any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security. Against the background of this definition the Panel identified six clusters of threats with which the world must be concerned now and in the decades ahead:

- Economic and social threats, including poverty, infectious diseases and environmental degradation;
- Inter-State conflict;
- Internal conflict, including civil war, genocide and other large-scale atrocities;
- Nuclear, radiological, chemical and biological weapons;
- Terrorism; and
- Transnational organised crime.

A common denominator in addressing these threats is a well functioning system of collective security. Such a system was established through the Charter of the United Nations. However, a precondition for making this system work as it was intended is that the Members of the Organisation respect the Charter.

Since the UN is not always functioning as intended, it is sometimes suggested that it should be replaced by a new organisation, maybe reserved for certain States. This would be a grave mistake. Furthermore, the dilemma that I just pointed to will always be present. Either States abide by their commitments, or the system will not function.

This applies irrespective of whether the obligations are the ones laid down in the UN Charter or emanate from an agreement establishing a new organisation. In addition, nothing prevents States from establishing new organisations to look after their common interests as long as they respect the UN Charter. The North Atlantic Treaty Organisation (NATO) with its explicit reference to the UN Charter is a case in point.

The message of the UN Charter is clear. *Pacta sunt servanda!* Agreements must be honoured! The Charter also demands that all UN members respect human rights and the rule of law, even if the latter term does not appear in the Charter *expressis verbis*. It is regrettable that many UN Members are far from living up to what is required from them.

In later years, the development has actually backtracked. States that claim to be democracies and governed by the rule of law do not live as they preach. The attack on Iraq in March 2003, a flagrant violation of international law, and the undermining of the respect for human rights in the wake of the so-called “war against terrorism”

have seriously damaged the confidence in the world order that we are attempting to establish.

Much and well deserved criticism has been directed against the two major Western powers that are responsible for this setback. It is important that this criticism is on record. And I am convinced that history's judgement will be extremely harsh.

But I believe that the time has now come to steer the energy that is generated by this wrongdoing in a positive direction. I also believe that we should look upon the situation as a challenge to be addressed in a positive spirit. What is needed is to channel the constructive forces that are present in many societies and organisations towards a common effort to strengthen the rule of law and the institutions that support it. To this end, it is necessary to engage in an educational effort in order to reach people in all countries at all levels, but in particular at the grassroots level.

That the United Nations needs strengthening is self-evident. But this can be achieved only if its Members adhere to the rule of law both at the national and international level. During my 10 years as the Legal Counsel of the UN it also became crystal clear to me that the absence of democracy and the rule of law are at the root of every conflict that the UN deals with – among States or within them.

Third point: Scrupulous adherence to the rule of law both at the national and international level is the only way forward

Much has been said about the need for reforming the United Nations. But in my view, the greatest need for reform is at the national level.

It is easy to agree with the High-level Panel when it argues that “capable and responsible States must be on the front line in combating today's threats”. To focus on UN reform only will therefore not be sufficient. As I have commented on other occasions, the constant talk of UN reform is more often that not attempts to draw attention from the shortcomings of the Members of the Organisation!

No, we must start at the national level by making a systematic and organised effort in which all countries should be involved. This will not succeed unless it has the wholehearted support of the most powerful Members of the United Nations.

As I have said on many occasions before, it was with great sadness that I observed how these Members sometimes behaved. This goes in particular for the United States, a democracy and a State under the rule of law. But I believe that there is now a growing understanding among the general public in that country that its administration must rediscover the ideals upon which the United Nations was founded.

Among the positive signs is that the U.S. civil society is presently more actively engaged than ever in efforts directed towards strengthening the rule of law both within their own country and elsewhere. Suffice it to mention the efforts by the American Society of International Law and the American Bar Association (ABA).

Also the United Nations and other international organisations, such as the World Bank, the European Union, and the Council of Europe, provide assistance to help establishing societies under the rule of law. The same goes for many governments. That governments should engage actively in this work cannot be stressed enough. In the public debate I have expressed the opinion that for strategic reasons donor countries should give priority to the rule of law and legal technical assistance in their international aid activity.

But let me now turn to the non-governmental organisations engaged in this work. Let me illustrate with the following examples.

- The International Bar Association (IBA) has adopted a resolution to strengthen the rule of law and is supporting a Rule of Law Movement. In that context it has also established an International Rule of Law Directory, which is the first centralised, fully searchable, online database of entities engaged in rule of law work throughout the world. It is established to provide users with reliable information and a compiled directory of Internet resources and links to organisations offering assistance to the rule of law. The IBA Human Rights Institute is engaged in extensive legal assistance work in many countries. At its Annual Meeting this autumn, IBA will devote a full day to the rule of law.

- The ABA has launched a Rule of Law Initiative, which is a formal consolidation in March this year of ABA's international rule of law programs into a single entity. This entity is comprised of the Africa Law Initiative, the Asia Law Initiative, the Central European and Eurasian Law Initiative (CEELI), and the Latin American and Caribbean Law Initiative and has some 400 staff and volunteers in over 40 countries, including the U.S. The whole idea of this initiative is to strengthen the rule of law.

- In September 2006, the IBA and the ABA jointly organised a Rule of Law Symposium to strengthen their cooperation.

- The ABA is presently consulting with others with a view to developing a Rule of Law Index to be able to measure the adherence to the rule of law at the national level around the world.

- The International Legal Assistance Consortium (ILAC), established in 2002, is an umbrella organisation for non-governmental organisations and other organisations interested in promoting the rule of law. The Consortium has some 40 member organisations (among them IBA and ABA), representing over 3 million judges, prosecutors, lawyers and academics world wide, and is engaged in a number of countries focusing on challenges that justice systems face in the aftermath of armed conflict. Its working methods contains several elements, among them initial assessment of the justice system in a post conflict situation, working with the host government, making recommendations on what is needed to rebuild that justice system, assessing what resources are available in country and highlighting the assistance that is needed from the international community, and helping the host government and the United Nations to coordinate the implementation of ILAC's recommendations.

- The Hague Institute for the Internationalisation of Law (HiiL) is an international research institute focusing on national legal orders and how they function (or not) in a world where national borders in the traditional sense are becoming less important. The institute has organised seminars, bringing together experts from different organisations which has led to the establishment of a Network of High Level Experts on the Rule of Law.
- Since I am addressing the Law Faculty at Lund University, I would be remiss if I did not also mention the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. The goal of this institute, connected to the University, is to advance knowledge and understanding of international human rights law and to promote respect for and fulfilment of human rights through research, education, and overall capacity building. This is done through an extensive program including through local offices in Beijing, Jakarta, Nairobi and Istanbul.
- The Atlantic Council of the United States works to promote constructive U.S. leadership and engagement in international affairs based on the central role of the Atlantic community in meeting the international challenges of the 21st century. On 1 November 2005, the Council's Program on Transatlantic Relations organised a workshop on "International Law in an Age of Globalization and Terrorism", which brought together 26 European and U.S. experts on international law. The result of the workshop was published in an Atlantic Council policy paper in March 2007, authored by William H. Taft, former Legal Adviser to the Department of State, and Frances G. Burwell, Director of the Council. This policy paper contains a number of very constructive recommendations, among them that the United States and the European Union should demonstrate their commitment to the future of international law by launching a program of extensive legal assistance that will bolster the rule of law around the world.

In this context should also be mentioned a very interesting initiative by an intergovernmental organisation. As an outflow of discussions within the Network of High Level Experts on the Rule of Law (see HiiL above), the International Law Development Organization (IDLO) is in the process of establishing the IDLO Rule of Law Assistance Directory. The purpose of this Directory, which will soon be available on the Internet, is to serve not only as a database but also as a tool to facilitate the exchange of information, generate debate and discussion, and promote harmonisation of development strategies for the legal and judicial sectors. So far, several thousand technical assistance projects from 2004 onwards have been registered.

It is also interesting to note the initiatives that are now increasingly being taken by business. Many enterprises have joined the Global Compact launched by Secretary-General Kofi Annan in January 1999. Corporate Social Responsibility (CSR) has become a major issue in the decision-making at the highest level, in particular in transnational corporations. CSR now constitutes an important element in their risk management.

But needless to say, the United Nations and other international organisations must strengthen their efforts to provide legal technical assistance in order to help establishing societies under the rule of law. The same applies to the governments that

are in a position to contribute in this field. The rule of law at the national level is a precondition for a well functioning system at the international level.

Concluding remarks

In concluding, allow me to make a few suggestions with respect to the role of Academia in the rule of law context.

You may have noticed that so far I have not mentioned the question how to define the rule of law. This is intentional. There are books written about this, and there are many suggestions for such a definition. Some of them are quite elaborate (“thick definitions”), others are more narrow (“thin definitions”).

Some of these definitions are based on the precondition that the rule of law cannot exist unless there is democracy. I agree. However, in countries where there is no democracy one has to start somewhere. Therefore, in order to be able to assist such countries it may be necessary to start by developing proper legislation in areas where this is possible, even if this legislation is not adopted by an assembly elected by a popular vote. Also in an autocratic society there must be some order. And if the political conditions do not make it possible to immediately introduce a constitution based on democratic principles, it may be better to convince the leadership in such a country to adopt legislation in certain areas that will benefit the country, e.g. trade law. As the country develops, this would eventually pave the way for democracy and a State under the rule of law.

Therefore, I am not convinced that it is worth the effort to invest more energy in trying to define the rule of law. Instead, it is better to identify some key elements, without which the rule of law cannot be said to exist. Based on such identification it would be possible to make an assessment to which extent a particular State lives up to these conditions. One could then identify sectors where assistance could be extended without compromising the final goal. This is an area where more research, based on experience, might be helpful.

Furthermore, the link between the rule of law and development is important. This should be a strong argument in convincing States that need assistance to seek support. It is of great importance that States can identify their needs and take appropriate contacts with those who can provide legal technical assistance.

What I would like to see for the future, in addition to the different tools that have been developed so far, is actually a kind of “stock exchange” on the Internet, were those who need assistance can make contact with those who can provide it and, in turn, with those who are in a position to finance the project that eventually will be the result of this matching exercise. Maybe this could also be looked at from a scientific point of view?

Furthermore, and most importantly, Academia must constantly remind us of what history teaches us. It is frightening to observe that the memory at the political level is sometimes so short. Who could believe that the lessons from the two world wars in the last century – lessons that led to the establishment of the United Nations – should

fall into oblivion so quickly, especially at the highest political level where this knowledge was needed the most.

“International Law and Changing Climate” : My final point is that there is need for global warming – of the political climate! At the end of the day, there is no other recipe! To maintain international peace and security in the future we need a warmer political climate and “capable and responsible States” – ultimately democracies governed under the rule of law!

Thank you for your attention!