



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

“International Law Today: Perspectives and Challenges”

**A panel discussion organized by the Asian-African Legal
Consultative Organization (AALCO)**

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“Promoting and applying international law: some personal observations”
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Delegates,

Distinguished guests,

Ladies and gentlemen,

It is a pleasure to be with you today. I would like to thank, in particular, Mr. Roy Lee, who is representing the Asian-African Legal Consultative Organization as the organizer of this meeting. As I am sure you know, Mr. Lee had a long and distinguished career in the United Nations, including Office of the Legal Affairs, Office of the Legal Counsel and in the Codification Division. As evidenced by this event, I can see that the fire for the practice of international law still burns brightly for Mr. Lee—in his commitment and drive, I think he can serve as an example for all of us who devote so much of our time, energy and attention to this discipline.

In my opening remarks for today’s meeting, I would like to speak with you frankly about an issue that is central to all of us in our various professional roles, and that is **promoting and applying international law**.

Whether in government, academia, an international organization, such as the United Nations, or the various other contexts in which international law is taught, practiced, examined and analyzed, this is a matter that is integral to our activities.

We are rare birds in the legal academy, generally speaking, in that—and I say this based on my own experience—we are probably the only legal practitioners in the world who are ever questioned about whether the law they are practicing is, in fact, law at all. We are also unique in that the scope of our activities is exceptionally broad, both conceptually and in terms of spatial application. International law is law for the entire world and everyone in it—and this poses particular challenges in promoting and applying its terms.

On this first question—which I might frame as the existence of international law as law, “properly so-called”—I am often struck by the persistence of this critique, both within the discipline and among non-international lawyers, policy-makers and the general public. It was Professor H.L.A. Hart who, in his *Concept of Law*, famously compared international law to a “simple form of social structure”, consisting of primary rules, but lacking the secondary rules and the unifying rule of recognition that he viewed as necessary to create a developed “legal system”; and perhaps it is this type of evaluation, buoyed by the high-profile violations and weak enforcement that often dominate the headlines, that serves to perpetuate the notion that international law may not be law at all.

Any international legal library, even the section devoted to the subject at the Dag Hammarskjöld Library here at the Secretariat, has, no doubt, many legal publications espousing the “limits” and “weaknesses” of international law.

And I can remember my own experience as a student—which was recent enough for me to remember it with some clarity, but far enough in the past for the world to have undergone tremendous change—where the question of international law’s existence was raised, soberly and with some risk to their own job security, by my own law professors.

To this critique, I have a very practical response, and that is that everyone—and I mean everyone, even those with reputations as pariahs and outliers in the international system—agrees that international activities, which are becoming ever-more present in the daily lives of people, governments and private interests all over the world, should be subject to law.

We see this recognition in the way that issues of global concern are discussed not only by governments, but also in the media and in the general public. Considerations of the legality of international acts—particularly with respect to high-profile international interventions—are invariably part of the evaluation of whether a particular action should be taken and, if taken, what restrictions should apply.

The prevalence of international law is also evident in the Charter, which speaks in its preamble of the determination of the peoples of the United Nations “*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*” and also provides, in its Article 1, paragraph 1, 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.*”

The United Nations General Assembly has also taken a number of specific steps to reinforce and promote international law, including, notably, through its resolution 2625 (XXV), whereby the Assembly approved the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” and, more recently, through its resolution 67/1, by which the Assembly adopted the “Declaration on the rule of law at the national and international levels”.

It is also, importantly, a very rational position, which appeals to the interests of nations both large and small—every government in the world engages in international relations, and the system simply would not be able to function effectively if international law did not exist.

In this way, the necessity of the rule of law at the international level—of international rules that guide and bind—is unquestioned. The challenge becomes, first, developing the best rules and enforcement procedures to apply to such activities—the law-making process—and, second, making that information more accessible and recognizable to the subjects of such international rules.

The first challenge is largely the province of governments and their political leaders, but certainly they are steered by the substantive expertise of international lawyers, both within and without their ministries of foreign affairs, state departments and the like. For its part, the United Nations also has a very important role to play. Pursuant to Article 13, paragraph 1(a) of the Charter, the General Assembly “*shall initiate studies and make recommendations for the purpose of...promoting international co-operation in the political field and encouraging the progressive development of international law and its codification*”.

It was to give effect to this provision that the General Assembly established the International Law Commission in 1947 and imbued it with the objective to both “*prepare draft conventions on subjects which have not yet been regulated by*

international law or [where] the law has not yet been sufficiently developed” and to more precisely “formulat[e] and systematiz[e] rules of international law in fields where there has already been extensive state practice, precedent and doctrine”.

The International Law Commission has, since its inception, lived up to this aspiration by serving as a vital catalyst not only in the pre-production process of international law-making—the delivery of ready-made instruments to States for their consideration and adoption—but also in bringing together the various strands of legal rules and helping to create a cohesive and coherent system that is both intelligible and accessible to the international community.

The Codification Division of the United Nations Office of Legal Affairs, which serves as the Secretariat for the International Law Commission, is also charged with implementing the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which was established by the General Assembly in 1965 to provide direct assistance in the field international law. The Programme of Assistance is operationalized through the International Law Fellowship Programme, held annually in The Hague, the Regional Courses in International Law, the Audiovisual Library of International Law and the preparation and dissemination of various international legal publications.

In my trip to Addis Ababa in April of this year, I had the pleasure of addressing the professors and participants of the 2014 Regional Course for Africa.

I can tell you that it was a particularly moving experience; the students, some of whom travelled from the poorest countries in the world, were so thankful of the opportunity to learn, so eager to engage in the hard work of their studies—it really reinforced for me, on a personal level, the value of such initiatives. The next generation of international lawyers will no doubt be better equipped to handle the challenges of the future precisely because they were able to engage in this kind of scholarship, meet with their peers and take that experience back to their home countries.

The Codification Division is not alone among the divisions of the Office of Legal Affairs in promoting international law. For instance, just this past week, the Director and Deputy Director from the Division for Ocean Affairs and the Law of the Sea travelled to Somalia at the request of the Government to brief lawmakers and parliamentarians on the rights, duties and opportunities set out in the United Nations Convention on the Law of the Sea. In a similar vein, the Treaty Section

recently concluded its annual Treaty Event, which aims to facilitate universal participation among States and implementation of the various international legal instruments deposited with the Secretary-General. The International Trade Law Division is also very active on a regular basis in its role as the Secretariat for the United Nations Commission on International Trade Law, which seeks to modernize and harmonize rules on international business through, among other things, the production and endorsement of model laws and uniform texts.

As these examples indicate, the Office of Legal Affairs takes its promotion responsibilities very seriously. Importantly, I also encourage personal engagement by my legal officers—and this is something that I also seek out, whenever possible—with the broader intellectual and policy-making community, both within the “house”—as they say—and with organizations and institutions external to the UN.

Through such activities, we not only have a chance to participate in public discourse and add our views to the various conversations, but we also hear the opinions of others, which informs and strengthens our work.

Before ending my remarks, I would like to say a few words about the application of international law, particularly as it relates to this general idea of promotion that I have been discussing thus far.

As a working international lawyer, the vast majority of my time is taken up providing advice to my various clients in the UN system. This is quintessentially an exercise in application. Given that I serve as the head of the central legal office of the Organization responsible for providing legal advice to the Secretary-General, Secretariat departments and offices and United Nations organs in the field of public and private law, there is no shortage of requests that come across my desk.

The United Nations works along three fundamental pillars, enshrined in the Charter: peace and security, development and human rights. The knowledge of and respect for international law is central to the work of the Organization across the three pillars. I know this because I experience it in my daily activities, from the various threats to international peace and security, to terrorism, to infectious disease, to peacekeeping, to peacebuilding, to respect for human rights, privileges and immunities, international criminal justice and everything in between—the legal office and considerations of international law represent a vital part of the United Nations’ decision-making process.

While it is difficult to draw very many uniform conclusions across what is a very diverse workload, I can say that in giving legal advice, and in applying the various legal rules to complex factual situations, I am ever-mindful of the need to formulate opinions that are both faithful to my analysis—representing my “best legal advice”—and that also take account of the challenges facing my clients and the often novel and thorny situations in which the United Nations finds itself.

Part of promoting international law through application is, in my view, thinking through these factual situations in a very methodical, rigorous way, and arriving at a solution that helps to clarify the various legal options that are available. This is not an easy task, but it is something that I think international lawyers are particularly well-equipped to handle. Well-researched, well-reasoned legal advice is, more often than not, well-received, and I think the value of our legal opinions is enhanced when we are cognizant of the situations in which requests for legal advice arise, and the obstacles that our clients must consider.

Thank you, I look forward to our discussion today.