

JAPANESE PRESIDENCY OF THE UNSC — SIGNATURE EVENT

THE PROMOTION AND STRENGTHENING OF THE RULE OF LAW IN THE MAINTENANCE OF
INTERNATIONAL PEACE AND SECURITY: *THE RULE OF LAW AMONG NATIONS*

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Speech by H.E. Judge Joan E. Donoghue,
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Mr. President,
Mr. Secretary-General,
Excellencies,

I am grateful to Japan, and to Foreign Minister Hayashi in particular, for convening an open debate on the rule of law among nations, which I am honoured to join via videoconference from the seat of the International Court of Justice in The Hague, the Netherlands. I am particularly pleased to speak after the Secretary-General's informative briefing, for which I thank him.

My remarks today focus on the role of the peaceful settlement of international disputes in advancing the rule of law.

Over the past several decades, Member States have made progressive efforts to articulate and affirm their commitment to the rule of law and the principles of the United Nations Charter. Notable among these efforts is the Friendly Relations Declaration, adopted by the General Assembly by consensus in 1970. The Declaration expounded, among other things, on the requirement that States “settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered”¹. The relationship between the obligation to settle disputes peacefully and the prohibition on the threat or use of force was further addressed, 12 years later, in the Manila Declaration on the Peaceful Settlement of International Disputes, which states that “[n]either the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute”².

A central objective of the General Assembly in adopting the Friendly Relations Declaration was to “promot[e] the rule of law among nations and particularly the universal application of the principles embodied in the Charter [of the United Nations]”³. Since then, the term “rule of law”, which did not appear in the Charter itself, has been used in numerous resolutions and reports produced within the Organization. The content of the “rule of law” has been rather well developed as applied at the national level, although, even in that context, competing definitions have been put

¹ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV) of 24 Oct. 1970, second principle. See also United Nations Charter, Art. 2, para. 3 (“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”), and Art. 2, para. 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”).

² Manila Declaration on the Peaceful Settlement of Disputes of 15 Nov. 1982, Sec. I, para. 13.

³ General Assembly resolution 2625 (XXV) of 24 Oct. 1970, annexing the Friendly Relations Declaration.

forward. For example, some such definitions place emphasis on substantive norms, such as equality before the law, while others focus on structural elements, such as the review of executive actions by an independent judiciary.

There is, however, broad agreement that the concept of the rule of law is not easily transposed from the national to the international level. This difficulty is especially obvious when one considers the role of adjudication in advancing the rule of law. At the national level, one well-recognized aspect of the rule of law is the constraint placed on what has been called the “otherwise all-powerful governing authority” of the State⁴ by the existence and operation of a judiciary that is empowered to strike down acts that exceed the powers assigned to the executive organ. Within a national system, of course, the executive organ and other entities cannot avoid the jurisdiction of national courts by refusing to consent to it. But at the international level, States can avoid compulsory and binding international dispute settlement by withholding consent to jurisdiction. This means that, as a structural constraint, international adjudication is far less robust than adjudication by independent national courts.

On the international plane, it is the behaviour of States that largely determines whether the rule of law is being respected. If States mean what they say when they proclaim their fidelity to the rule of law at the international level, it is incumbent on them to exercise restraint and forbearance. They may not settle their disputes by using or threatening force and must be prepared to have the legality of their conduct evaluated by international courts and tribunals.

The rule of law among nations demands that States incorporate systemic community priorities within their conceptions of self-interest, even when these broader priorities may seem to be in tension with short-term objectives in relation to a particular situation⁵.

Every person in this room today knows perfectly well that States prize their autonomy and strive to safeguard whatever levers of power they hold. We also know that national leaders often prioritize near-term and parochial objectives over broader and longer-term interests. At the international level, the concept of the rule of law is in a constant battle with these competing tendencies. However, this is not a time for the rule of law to wave the white flag of surrender. In particular, the ways in which Member States engage with international adjudication can have a significant impact on the realization of the rule of law at the international level. I offer a few specific comments in this regard.

First, States that are truly committed to the rule of law must entrust international courts and tribunals with judicial settlement of legal disputes. When a State avoids binding and compulsory third-party dispute settlement, its invocations of the rule of law sound hollow.

Second, engagement with international dispute settlement means more than accepting jurisdiction. States must also participate in proceedings that may be brought against them. If they believe that a particular body lacks the jurisdiction to decide a dispute, they should appear before that body and make that argument.

Third, the rule of law requires States to comply systematically with decisions of international courts and tribunals that are binding on them, even if they disagree with a decision. It is encouraging to note that there has been compliance with the vast majority of cases decided by the International Court of Justice to date.

⁴ A. Watts, “The International Rule of Law”, *German Yearbook of International Law (GYIL)*, Vol. 36, 1993, p. 16.

⁵ See R. McCorquodale, “Defining the International Rule of Law: Defying Gravity?”, *International Comparative Law Quarterly*, Vol. 65, 2016; A. Watts, “The International Rule of Law”, *GYIL*, Vol. 36, 1993.

Finally, the rule of law at the international level demands that States remain steadfast in their willingness to have their conduct judged by international courts and tribunals, even when adverse judicial decisions create pressure at home to retreat from the jurisdiction of those courts and tribunals.

Concrete steps such as those that I suggest today may appear more difficult for national leaders than are recitations of the importance of the rule of law. However, the long-term strategic interests of States committed to the rule of law are best served by maintaining and bolstering a robust system of international adjudication.

As a final remark, I note that the concept of the rule of law at the international level applies not only to States, but also to the organs of international organizations, including the ICJ. I cannot call upon Member States to do more to align their conduct with the rule of law without also stressing that international courts and tribunals must also do their part, by deciding disputes submitted to them in a conscientious and impartial manner, in accordance with international law and within the limits of the jurisdiction conferred upon them by the consent of States. The judges of the International Court of Justice take these responsibilities seriously and are mindful of the important role bestowed upon them by the Charter in the pursuit of the Organization's fundamental objectives.

I thank you for your kind attention.
