

**HE The Hon Kim Beazley
Australian Ambassador to the USA**

**Speech at the
Reception honouring Australia
at
The Washington Foreign Law Society
Washington DC**

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It is a pleasure and a privilege to address this distinguished gathering. My thanks to the Washington Foreign Law Society, and the State Department's Legal Adviser, for honouring Australia in this auspicious setting.

Before I begin, I would like to acknowledge a few individuals:

- Emily Rae, President of the Washington Foreign Law Society – thank you for all your efforts in putting this event together. Thanks also to incoming President, Sam Witten, from Arnold & Porter.
- Thanks to our co-host for this evening, State Department Legal Adviser Harold Koh, a truly eminent practitioner and scholar of international law, with whom we work so closely.
- I am also pleased that Department of Foreign Affairs and Trade Senior Legal Adviser Richard Rowe could join us this evening from Canberra. It is great to have you here, Richard.
- I am pleased to welcome West Australian Senator Alan Eggleston, who has come down from New York where he is attending the United National General Assembly.
- I see a number of friends and colleagues from the current and previous administrations, including good friend John Bellinger. Welcome to you all.
- Finally, I am also pleased to see so many law students and recent graduates here.

This evening the Washington Foreign Law Society and the State Department honour Australia.

Like the US, Australia is amongst a handful of countries that held fast to strong, liberal democratic foundations throughout the turbulent twentieth century. We believe strongly in the rule of law, both at home and abroad.

Our world is far too interconnected and complex for countries to solve challenges alone. We know that good international citizenship advances our foreign policy and national interests. We know that fidelity to the rule of law makes us stronger and safer. As President Obama said in his Nobel lecture at Oslo, we know that “adhering to ... international standards, strengthens those who do, and isolates those who don't”.

Australians have played, and are playing, important roles in the international legal system. From Sir George Rich, Australia's delegate to the League of Nations, to Dr Herbert Vere Evatt, one of the drafters of the UN

Charter, President of the Third Session of the General Assembly, and who presided over the adoption and proclamation of the Universal Declaration on Human Rights.

From Sir William Webb, President of the International Military Tribunal for the Far East in the 1940s; to Sir Percy Spender – the first Australian judge appointed to the International Court of Justice; to the international tribunals for the former Yugoslavia and Rwanda, where our former Governor General Sir Ninian Stephen, as well as Judges David Hunt and Kevin Parker, have played significant roles. To the work of Elizabeth Evatt and Ivan Shearer as members of the UN Human Rights Committee, and James Crawford's significant contributions as a member of the UN's International Law Commission, particularly as a special rapporteur in developing its reports on both the ICC statute and state responsibility.

While Australians do our part, you cannot talk about international law without acknowledging the remarkable leadership of the United States. The UN Charter and the Universal Declaration of Human Rights would not have been possible but for the US.

We have always worked together. In 1948, Eleanor Roosevelt, then chair of the Human Rights Commission, handed the Declaration to Bert Evatt, as President of the UN General Assembly. Evatt said "it was the first occasion on which the organised community of nations had made a declaration of human rights and fundamental freedoms ... backed by authority of the body of opinion of the United Nations as a whole and millions of people, men, women, and children all over the world, would turn to it for help, guidance and inspiration".

Over time the international community moved beyond the expression of ideals and principles to real legal obligations assumed by states.

The Geneva Conventions were also transformative documents for international humanitarian law (IHL). Their near universal acceptance and acceptance to a large degree into customary law is remarkable.

IHL faces a range of new challenges. The way in which armed conflicts are fought has evolved since the Geneva Conventions were drafted. Military conflict has moved from between States to within States; from the battlefields to cities; and from conflicts between opposing uniformed militaries to conflicts involving non-State actors. The use of private security companies in times of armed conflict also poses a challenge for IHL. Australia is a strong supporter of the Montreux Document, which the US has also endorsed, and continues to work closely on further developments in this area to ensure that only those private security companies that are likely to respect IHL, through appropriate training, internal procedures and supervision, can provide services in armed conflicts.

Despite these challenges, Australia remains firmly of the view that the restraints placed on armed conflict by the Geneva Conventions and IHL remain relevant and should continue to receive the strong support of all States.

R2P

We can certainly take some satisfaction from our achievements. But as the horrors we witnessed in the 1990s in Rwanda and the former Yugoslavia, and now in the Sudan and the Democratic Republic of the Congo, remind us, there is much work still to be done. “Never again” needs to have real meaning. Prevention must be our goal.

Australia is an active supporter of the ‘responsibility to protect’ or R2P. Our former Foreign Minister, Gareth Evans, played an instrumental role as co-chair of the International Commission on Intervention and State Sovereignty (ICISS), whose 2001 report articulated the principle. In 2010, Professor Evans was awarded the Franklin and Eleanor Roosevelt Stichting Four Freedoms Award for his pioneering work on R2P and his contributions to conflict prevention and resolution, arms control and disarmament.

In September this year, our Foreign Minister Kevin Rudd participated in a Ministerial Meeting on R2P in the margins of the UN General Debate, a follow-up to last year’s successful roundtable which Australia co-chaired. We are making progress. Our discussions focused on operationalising R2P and enhancing inter-governmental coordination, which Australia actively supports.

We also welcomed the UN Secretary-General’s report on “Early Warning, Assessment and the Responsibility to Protect”. The report seeks to address gaps in early warning capabilities and recommends the establishment of a Joint Office for the Special Advisors to the Secretary General on R2P. Australia has committed funds to support this Joint Office. We are also supporting the Global Coalition of Civil Society for R2P and the Global Center for R2P based in New York.

Closer to home, we have joined with the Asia Pacific Centre for R2P at the University of Queensland to support research and advocacy to make R2P a regular, reliable part of international crisis handling.

A vital aspect of our approach to advancing work on R2P will be continuing close consultation with the United States, which is providing strong leadership in this field.

ICC

We must continue to strive to prevent and protect. But where that fails, we must ensure accountability.

Australia has been a strong supporter of international criminal tribunals since Nuremberg. But these were necessarily limited in scope and purpose. What was missing was a permanent court to try those accused of the most serious crimes of international concern; genocide, crimes against humanity and war crimes.

We are a strong supporter of the International Criminal Court (ICC). Australia played a significant role in developing the court at the Rome Conference in 1998. DFAT Senior Legal Adviser, Richard Rowe, chaired a group of 60 plus "Like-Minded Countries" committed to the establishment of a strong and effective court. We ourselves ratified the Rome Statute in July 2002. Since then, we have worked hard with other states to support the Court as it develops.

The US is not a party to the ICC. But it was engaged in drafting the Rome Statute. We welcome US engagement with the ICC as a non-state party. Our good friend Harold Koh has said he hopes that this engagement will "assist the ICC in fulfilling its historic charge of providing justice to those who have endured crimes of epic savagery and scope". Ambassador for War Crimes Stephen Rapp too is working to identify ways that the US can support prosecutions already underway in the Congo, Sudan, Central African Republic, and Uganda.

We welcome the role the US delegation, led by Harold, played at the recent ICC Review Conference in Kampala. The Conference was important. We took stock of lessons learned since the Court's inception and reaffirmed the commitment of States Parties and other stakeholders to the Rome Statute system, including in relation to the vital area of cooperation. The Conference also adopted a definition for the crime of aggression and three new war crimes relating to the use of prohibited weapons during non-international armed conflict. The success of the Review Conference clearly demonstrates the pivotal role played by the Court in relation to international criminal justice.

International Trade

Just as human rights and humanitarian law promotes peace and security, international trade law makes a profound contribution to our collective prosperity. It underpins expanding global trade and drives economic development.

For a medium-size country like Australia, an enforceable rules-based trading system is vital. We also believe the WTO acted as a necessary check against protectionism during the global economic crisis.

But it needs to do more than limit protectionism. We need to advance the trade agenda. Securing an ambitious conclusion to the current Doha Round remains Australia's highest trade priority. We are determined to move the process forward, strengthen existing rules and lower barriers to trade.

We must not allow current frustrations to derail our progress. We need only look to previous negotiation rounds for what is possible. The WTO Dispute Settlement Understanding or DSU stands out as one of the greatest achievements of the Uruguay Round, and one of the most utilised dispute resolution mechanisms.

We must continue to promote economic integration. In the Asia Pacific region, Australia, the US and other members of the Trans Pacific Partnership, are making good progress. We want to make maximum headway in the lead-up to the APEC Leaders Meeting in Honolulu in November 2011. As we continue to push forward, it will be important that we let substance rather than arbitrary deadlines determine how quickly TPP negotiations conclude.

We draw on the same values and commitment to the rule of law as we navigate through the often contested space of common resources - those parts of international life that are beyond national jurisdiction but which we hold in common, and in trust for future generations.

UNCLOS

As major coastal states, the US and Australia share strong interests in the stable framework provided by law of the sea, for our collective security and prosperity.

We are proud of Australia's contribution to the development of the continental shelf regime, and the regime for the seabed beyond national jurisdiction. We were one of the first states to submit data on our continental shelf beyond the exclusive economic zone. This exercise, stretching over a decade and involving survey work and data analysis on an area of more than 3 million square kilometres, helped establish concepts and precedents for many states. The Commission made its recommendations in relation to the Australian shelf in 2008. Since that time we have shared our experience of the Commission process with many other States as a means of assisting them with the preparation of their own submissions.

Much of the Law of the Sea Convention is now customary international law. Nonetheless, we firmly believe that universal participation in UNCLOS is in all our interests. In this context, we would very much look forward to welcoming the US as a fellow State party.

The Law of the Sea Convention was a remarkable achievement not only in its own right, but as a template for dealing with contemporary challenges.

Piracy continues to compromise the freedom and security of maritime trade and transport, particularly off the coast of Somalia and its neighbours. It is also hampering the delivery of much needed humanitarian assistance to Africa.

That is why Australia continues to assist international efforts to combat piracy, including through contributions to the US-led Combined Maritime Forces. We are also supporting international consideration of the legal aspects of piracy in the Gulf of Aden through the International Maritime Organisation's Contact Group on Piracy off the Somali Coast, initiated by the US pursuant to UN Security Council Resolution 1851.

The Security Council has usefully extended the international law of piracy to Somalia's territorial sea. This provides a broad mandate for states, including the US and Australia, to "use all necessary means" and "undertake all necessary measures" within Somalia and its territorial waters, to combat the threat of piracy and armed robbery, subject to international law and cooperation with the Transitional Federal Government of Somalia.

Cyber

While the Law of the Sea is very well developed and codified, the framework governing our inter-state relations in cyberspace is still evolving.

IT systems are a critical infrastructure and act as vital enablers for our economies, our defence, and our way of life. The ability of non-state actors to use this vital tool either against states or as their proxies is increasingly of concern.

Australia announced in May that we intended to join the EU, US, and others in signing the Council of Europe Convention on Cybercrime. The Convention creates a number of offences related to illegal access, fraud, child pornography, and copyright infringement, and strengthen efforts to fight international cybercrime. To date, 30 countries have ratified the treaty, but more than 100 are using it as a basis for reforming their domestic legislative framework.

All states need to take strong national steps to protect their information networks. But we also need to work together on strategies to ensure the security of all.

An important part of this process is to work towards internationally accepted norms of behaviour in cyberspace.

Formal international treaties have been proposed. However, a treaty will face significant challenges regarding attribution, verification and enforceability. The range of state and non-state actors involved also poses challenges in seeking to apply traditional strategies such as arms control-like measures.

Notwithstanding the unique attributes of information and communication technology, existing principles of international law can serve as a framework to address cyber challenges. One example is in the defence field. The principles underpinning the law governing the use of force and self-defence, and IHL, are a good starting point to the consideration of the legal rules to be applied to cyberspace. The relevant principles include those of distinction and proportionality, and the prohibition of indiscriminate attacks.

The further development of the international legal framework and international norms for cyber will be a challenging task for the legal communities as much as it is for policymakers and those in the technical sphere.

Space

We confront similar challenges for space. Space is critical not only to our defence capabilities but also to our national economic infrastructure and the way we live.

Space debris is an increasing problem which threatens both defence mission and the safety of civilian satellites. We see great value in demonstrating our common resolve and developing appropriate international norms on acceptable behaviour in space, including preventing debris-causing activities.

Space arms control is also emerging as a key contemporary security challenge and along with the other likeminded countries, the US and Australia are continuing a long and fruitful cooperative partnership on space issues. We particularly welcomed US re-engagement on space arms control articulated in the US National Space Policy.

We share with the US a concern that space arms control measures should meet the criteria of equitability and effective verifiability, and should enhance the national security of the US and its allies. We agree that transparency and confidence building measures are the right initial focus.

We welcome the initiative taken by the EU in developing a draft Code of Conduct for Space, and we are currently giving the document active consideration.

Australia is also developing a new national space policy to provide a vision for our use of space and space-related technologies, which will emphasise the need for international collaboration.

Conclusion

I will leave you with a couple of final thoughts.

I said at the start of my remarks that no country, however strong, can solve the most pressing contemporary challenges alone. The interconnectedness and complexity in the international system will only increase, and, with it, our need for predictability and stability to underpin our collective security and prosperity.

We need to be ambitious about the role of international law. We also should be confident about its ability to adapt to new challenges.

I also said that our national interests lie in our commitment to the rule of law. We must continue our work in the furtherance of a robust, international rules-based order that underpins our long-term security and economic interests.

This is not only the most rational course of action for our country. It is also consistent with our proud legal tradition that respects and guarantees individual rights and freedoms.

And, critical to our policy approach is our continuing close cooperation in the legal field with the US- a country with which we share the same values and commitment to the rule of law.

We deeply appreciate the honour which you have bestowed upon us – thank you.

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