

**Launch of Vols IV-V Irish Yearbook of International Law
UCC, 9 November 2012**

**Statement by
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on behalf of Eamon Gilmore T.D.,
Tánaiste and Minister for Foreign Affairs and Trade**

Professor Lynch Fannon, Professor Mullally, Professor de Londras, Ladies and Gentlemen

The Tánaiste and Minister for Foreign Affairs and Trade, Eamon Gilmore, was honoured to be asked to launch Volumes 4-5 of the Irish Yearbook of International Law. He regrets that Government business means that he is unable to be here today and has asked me to convey his apologies and to deliver the following remarks on his behalf:

The Department of Foreign Affairs and Trade has been a supporter of the Yearbook since its launch in 2006 at Iveagh House and is pleased to continue that tradition today.

To quote the introduction to the current volumes, the Yearbook is intended to “stimulate further research into Ireland’s practice in international affairs and foreign policy, filling a gap in existing legal scholarship and assisting in the dissemination of Irish practice on matters of international law.” As such it is an invaluable research tool for anyone interested in international law as it applies in and to Ireland. It is certainly of great assistance to me and my colleagues in the Department.

This goal recognises that international law should not be seen as abstract theory, divorced from the realities of international affairs. Instead, international law provides the framework upon which international relations rest.

The concept of the rule of law is an essential element of that framework. In his report this year to the United Nations General Assembly on Strengthening and coordinating United Nations rule of law activities, UN Secretary-General Ban Ki-moon states that “At the international level, the rule of law accords predictability and legitimacy to the actions of States, strengthens their sovereign equality and underpins the responsibility of the State to all individuals within its territory and subject to its jurisdiction.”

At international level, the rule of law embraces the principle of *pacta sunt servanda*, or, as it is expressed in the Vienna Convention on the Law of Treaties, the principle that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

The conclusion of an international agreement is an exercise of the executive power of the State in connection with its external relations, which in accordance the Constitution must be exercised by or on the authority of the Government. The Constitution also provides that international agreements to which the State becomes a party shall be laid before Dáil Éireann and requires that the terms of all international agreements which impose a charge on public funds, and are not of a technical and administrative character, be approved by Dáil Éireann prior to the State becoming party. At first glance these provisions of the Constitution may appear to be no more than an expression of bureaucratic requirements. However, they may

also be seen as the expression of the principle of *pacta sunt servanda* in Irish law. The Constitution and Irish treaty practice ensure that it may not be claimed that the Government was not aware of treaties entered into by the State and that the Dáil may not disregard our international obligations in the adoption of legislation. International agreements are now also published in the electronic Irish Treaty Series, which may be accessed on the Department of Foreign Affairs and Trade's website, www.dfa.ie.

One important feature of the rule of law at international level is the extent of the recourse that States have to international adjudicative mechanisms to settle their disputes peacefully. As far back as 1930 the then Irish Free State accepted the jurisdiction of the Permanent Court of International Justice. Article 29.2 of the Constitution affirms our adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination, yet Ireland did not accept the compulsory jurisdiction of the International Court of Justice until 12 December 2011. So why did it take so long for Ireland to accept the Court's compulsory jurisdiction? For many years, the key issue was Northern Ireland, which the Constitution proclaimed to be part of the national territory. This issue was settled in 1998 with the British/Irish Agreement and the amendment of Articles 2 and 3 of the Constitution.

Nonetheless, even then it took more than a decade for Ireland to accept the Court's jurisdiction. One of the main reasons for this was a feeling that not accepting the Court's jurisdiction was not doing us any concrete harm. There was also a degree of caution about accepting the jurisdiction of a judicial body which, though distinguished, was not very familiar to policy makers.

Ultimately two main factors led to the lodging of the declaration recognising the Court's compulsory jurisdiction:

- First, increasing familiarity with international settlement of disputes in various fora, as well as familiarity with the Court itself – including through our own participation in a number of advisory proceedings - the two nuclear weapons cases (1996), the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (2004) and the “Accordance with International Law of the Unilateral Declaration of Independence of Kosovo” (2010).
- Secondly, recognition that a broad-based acceptance of the Court's jurisdiction provides greater opportunities for the peaceful settlement of disputes than a purely ad hoc recourse to arbitral and judicial bodies – it may be difficult, in the midst of a dispute, to agree with those with whom one is having the dispute what issues should be put forward for settlement and before what forum. Coupled with this was the realisation that acceptance of the Court's jurisdiction adds another tool to the tool-kit available to the State, but does not preclude it from utilising other means of dispute settlement where appropriate.

Against this background, one of the Tánaiste's first actions after being appointed Minister for Foreign Affairs and Trade was to bring a memorandum to Government in April 2011 seeking agreement in principle that Ireland would accept the Court's jurisdiction by the end of that year. This was a concrete manifestation of Ireland's support for the rule of law at international level.

The terms of the declaration accepting the Court's jurisdiction make only one exception – namely with respect any dispute with the UK in regard to Northern Ireland, reflecting the excellent relations between our two countries and the considered opinion of the Government that the institutions and mechanisms established by the Good Friday Agreement provide the best framework for settling any differences that might arise.

At national level, the rule of law includes the establishment of effective legal and judicial systems, which are important elements of good governance. Ireland's development programme, Irish Aid recognises that without good governance and respect for human rights and the rule of law, long-term sustainable development is not possible. Last year, at an international meeting on effective aid in Busan, Republic of Korea, it was recognised that aid, no matter how effective, is only one part of the solution to under-development and poverty. At that meeting, international agreement was reached to move beyond the mechanics of aid delivery, towards a broader focus on the drivers of effective development. Such drivers include tackling inequality, improving transparency and combating corruption and may also be seen as aspects of the rule of law in its broader sense.

Ladies and Gentlemen,

The rule of law requires that crimes do not go unpunished. In recent years, great progress has been made in bringing to justice persons responsible for the most serious international crimes.

The conviction this year by the Special Court for Sierra Leone of the former President of Liberia, Charles Taylor was the first conviction of a former Head of State by an international criminal tribunal since Nuremburg. I should note here that Judge Theresa Doherty, from Northern Ireland and a member of the Yearbook's Advisory Board, was one of the trial judges in this case.

Also this year, the International Criminal Court, in its first verdict, found Thomas Lubanga Dyilo guilty of the enlistment, conscription and use of children under the age of 15 to participate actively in hostilities in the Democratic Republic of Congo and sentenced him to 14 years imprisonment.

There are now 121 States Parties to the Rome Statute of the International Criminal Court and the number of situations before the Court continues to grow, although unfortunately so too does the number of indictees at large. The Rome Statute's principle of complementarity means that national authorities bear the primary responsibility for bringing perpetrators of international crimes to justice. Therefore, States Parties must ensure that they have national legislative and institutional frameworks in place to investigate and prosecute these crimes.

As you know, Ireland implemented the Rome Statute through the International Criminal Court Act 2006, following a referendum to amend the Constitution to permit Ireland to ratify the Rome Statute of the ICC in 2001. The challenge of national implementation is being successfully addressed by practical measures of co-operation.

One of the most innovative features of the Rome Statute is in the area of victim assistance and participation and in particular the establishment of a Trust Fund for Victims and the opportunity for victims to participate in trials. In addition to its conviction and sentencing of Mr Lubanga this year, the ICC also issued its first decision on reparations for victims,

establishing principles relating to reparations and tasking the Trust Fund for Victims to collect proposals for reparations from victims. Ireland has contributed over half a million euro to the Trust Fund since its establishment and continues to support it.

A perhaps less obvious example of the rule of law is presented by the international law of the sea. The oceans and seas around us serve many functions – as transport routes, fishing grounds, a source of oil and other natural resources. But the world’s seas and oceans have also been used for less enlightened purposes – as dumping grounds, for instance. The enormous improvements in technology, particularly since the Second World War, meant that human activity on the seas, much of which had historically been confined to coastal areas, could now extend far out into the oceans. The rights and duties of states were often either outdated or unclear, and the potential for conflict had increased significantly. By the 1960s it was widely acknowledged that the oceans’ resources were not infinite. It was clear that new, comprehensive, global rules were essential – on the extent of coastal state jurisdiction, freedom of navigation, protection of the marine environment and the exploitation of the oceans’ resources and on the settlement of disputes relating to such matters. These rules found expression in the United Nations Convention on the Law of the Sea which opened for signature 30 years ago.

Ireland participated actively in the negotiations leading up to the conclusion of the Convention and has benefited in numerous ways from its provisions. As a consequence, the rock of Rockall is now essentially irrelevant for the purposes of boundary delimitation and has long ceased to be a contentious issue – as a matter of international law. Ireland’s continental shelf has been greatly extended. The “Irish formula” set out in the Convention (so-called because it is based on Irish proposals made during its negotiation) has been successfully used to help extend the State’s continental shelf by 39,000 square kilometres in the area of the Porcupine Bank. Together with France, Spain and the UK we have jointly extended our shelves by an additional 80,000 square kilometres in the Celtic Sea and Bay of Biscay. We continue to work to extend the shelf in the North East Atlantic Ocean, with the United Kingdom, Denmark (in respect of the Faroe Islands) and Iceland.

Ladies and Gentlemen,

I have listed a number of examples of how international law can contribute to international peace and security, by ensuring that States fulfil their international obligations, through the peaceful settlement of disputes, the punishment of international crimes and the regulation of States’ activities in our oceans. However, peace and security sometimes breaks down and in such circumstances, international law also has a role to play. The four Geneva Conventions of 1949 remain at the centre of modern international humanitarian law. They have been supplemented by two Additional Protocols concluded in 1977 and a third in 2005. Between them, these instruments constitute a very significant body of law that has played a vital – and continuing - role in limiting the horrors of warfare. They rest on respect for the inherent dignity of the individual. Without them, the barbarism and brutality of armed conflict would be unmitigated.

It is important to bear in mind, moreover, that the rules set out in the Conventions and Protocols are not mere pious aspirations but concrete standards. Two central principles of modern international humanitarian law are –

- first, the obligation to protect the defenceless in war, namely civilians, prisoners of war, and the wounded and shipwrecked; and
- secondly, that the rights of parties to an armed conflict on how they conduct operations, and on their choice of weapons, are not unlimited.

Although the general rules of international humanitarian law prohibit the use of indiscriminate or inhumane weapons, new, specific rules are often required. Ireland has consistently promoted the development of new instruments to prohibit or regulate the use of these weapons. In 2008, Ireland hosted and chaired the diplomatic conference that negotiated, and adopted by consensus, the Convention on Cluster Munitions. The Convention entered into force on 1 August 2010 and now has 77 States Parties.

Regrettably, the rules agreed by States on the conduct of armed conflict and the protection of human rights are often breached. The current situation in Syria presents an ongoing example of this. The rule of law requires not only that laws are adopted, but also that they are implemented. The Tánaiste believes that the people of Syria deserve the full support of the international community for the efforts to bring about an end to their suffering and to achieve an early political transition.

The rule of law cannot be established and respected when crimes and gross violations go unpunished. We must combat impunity and insist there should be full accountability for human rights abuses committed by all parties to the conflict. That is why Ireland supports the call by the UN High Commissioner for Human Rights, by Switzerland and others, for the UN Security Council to refer the situation in Syria to the International Criminal Court.

The Tánaiste believes that if the events in the Arab world over the past two years have taught us anything, it is that leaders who deny legitimate demands for greater political and economic freedom, and who instead resort to waging war on their own people, will inevitably lose the right to rule. The systematic denial of human rights and suppression of democratic liberties has fuelled a profound desire for change. In Tunisia, Egypt, Libya, and other countries in the region undergoing transition, Ireland has supported the will of the people, peacefully expressed, to bring about long overdue democratic reforms.

Ireland's support for democratic reform and human rights has been reflected this year in our chairmanship of the Organisation for Security and Cooperation in Europe. The Tánaiste is hopeful that, by the end of our term in office, we will have been able to make progress in some key areas, including in the so-called "Human Dimension" of the OSCE and on some conflict issues, while we have also prioritised internet freedom.

The Government also looks forward to assuming the Presidency of the European Union Council of Ministers in the first half of next year and is committed to bringing to that role the same energy and commitment that has been devoted to discharging our OSCE responsibilities.

Ladies and Gentlemen,

To summarise, international law provides us with a system of rules to guide States both in their international relations and their domestic action. However, its implementation is subject to complex political realities and is ultimately a product of political will. The variety of

issues to which international law applies is demonstrated by the current volumes of the Irish Yearbook on International Law. I think all the issues I have raised today and more arise in some way in the current volume.

I was particularly interested to see the article by Patricia O'Brien, UN Legal Counsel and former Legal Adviser at the Department of Foreign Affairs, and also on the Yearbook's Advisory Board, on the Legal Challenges facing the United Nations. Some of the issues mentioned in her article are similar to those that I have listed today, including respect for the rule of law and international justice. While these are important developments in themselves, they also serve to bolster confidence in the multilateral system, which has always been central to Ireland's foreign policy.

Also of particular interest to the Department of Foreign Affairs and Trade is the article on the International Law Commission's Draft Articles on the Protections of Persons in the Event of Disasters by Dug Cubie. I note that Ireland's statement delivered to the UN General Assembly in 2010 has also been included in the current volume. We continue to take a keen interest in this topic and delivered further statements on subsequent reports of the ILC on this issue last year and again at this year's meeting of the General Assembly – in fact last Friday.

Ladies and Gentlemen,

Let me conclude by thanking you again for the invitation to the Tánaiste to launch the current volume of the Irish Yearbook on International Law. On his behalf, I hope I have been able to provide you with some insight into how international law shapes Irish foreign policy. The current volumes of the Yearbook provide useful analysis on current issues in this field that will be of benefit to researchers and practitioners, including in the Department of Foreign Affairs and Trade and we look forward to the publication of future volumes.