I am grateful for this opportunity to address an absolutely critical issue: the relationship between international law and security in a world threatened by the continued existence of weapons of mass destruction. While there are wide variations in the dangers posed by such weapons -- which today consist of nuclear, biological, and chemical arms -- they all share one deadly trait: they are indiscriminately lethal. They recognize no difference between military uniforms and mufti, between tanks and ambulances, between the old and the young, between the invalid and the healthy, or between man and woman, mother and child, even plant and animal. They are neither lightly nor inappropriately called "weapons of mass destruction."
While their possession and threatened use raise serious moral questions, such weapons also have profound implications for international law and security. There can be no doubt that the world’s hopes to eliminate such weapons will depend critically upon both the evolution of the law and the security perceptions of states. While disarmament will occur only if it advances security interests, the rule of law will have many significant roles to play in shaping perceptions of such interests and in ensuring the sustainability of disarmament as a global public good. This is the theme I wish to develop in my remarks today.

The fact that international law depends upon its wider environment is clearly reflected in the Preamble of the UN Charter, which records 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." These conditions are quite diverse and include opportunities for social and economic advancement, respect for the dignity and worth of the human person, and a variety of constraints on the use of force -- including the peaceful settlement of disputes, the avoidance of the threat or use of force, and measures for disarmament and the regulation of armaments.

In either context -- domestic or international -- when members of a society choose to place their relations within a system of laws and rules, they do so because they understand that the alternative of order based upon superior force is dangerous and -- as history has so often and tragically demonstrated -- unsustainable. This preference for legal orders as an alternative to the twin evils of unbridled anarchy or World Empire is probably grounded in basic human nature. As Mahatma Gandhi once said, "... there must be a higher law than that of destruction. Only under that law would a well-ordered society be intelligible and life worth living."

Though he was himself a victim of unjust laws, Gandhi understood that laws are enormously convenient for states. They add predictability to the affairs of nations and their citizens who trade and travel around the globe. They reduce dramatically the so-called "transaction costs" of doing business in an interdependent world, by setting agreed standards and rules that carry the force of law. While politics provides the sail of international relations, law provides the anchor -- and both can and do work together to serve common interests.

International law is unquestionably on its firmest ground when nations of the world widely view it as being fair and just -- fair, in that the process of negotiating agreed legal commitments is open to all, and just, in that the resulting law does not confer permanent advantages or benefits on one class of country vis-à-vis another. It is strong also when states implement it transparently and demonstrate their readiness to hold themselves accountable for their behaviour. International law is weakest when these conditions do not apply -- when countries view this law as discriminatory or unilaterally imposed by the powerful upon the weak, when states take the law into their own hands, when state actions or inactions are not subject to accountability, and when gross violations of global norms are met with inaction, impunity, or even rewards.

There have, of course, been many attempts to use the tool of international law to address
threats arising from weapons of mass destruction. We sometimes forget that the deeper historical and cultural roots of these efforts go back thousands of years. The ancient Indian epic, The Ramayana, for example, recounts a war between Rama, prince of Ayodhya in India, and Ravana, ruler of Sri Lanka. When Lakshmana offered Rama a new weapon that could "destroy the entire race of the enemy, including those who could not bear arms," Rama responded that such a weapon could not be used "because such destruction en masse was forbidden by the ancient laws of war, even though Ravana was fighting an unjust war with an unrighteous objective." 1

Somewhat more recently, the global effort in the last century to eliminate biological and chemical weapons culminated in the negotiation and entry into force of the Biological Weapons Convention (BWC) and the Chemical Weapons Convention (CWC). The states parties to these conventions concluded that of all the various possible alternative ways of dealing with the dangers from such weapons -- including military or civil defence measures, deterrence, threats of retaliation in-kind, regulation, and other such means -- a common commitment to total disarmament and de-legitimization was the approach that offered the best hope for meeting the security needs of all.

In the case of the CWC, the treaty established an intrusive verification system -- implemented by a new Organization for the Prohibition of Chemical Weapons -- to reinforce confidence in compliance with the disarmament obligation. In the case of the BWC, which is more difficult to verify for a variety of technical reasons, efforts to negotiate a new Protocol to verify compliance with that treaty have recently been suspended. It is reassuring that U.S. Under Secretary of State John Bolton, while alleging in a recent speech that BW-related activities were underway in three states, also added that "the vast majority of the BWC's parties have conscientiously met their commitments." 2

Though neither the BWC nor CWC has yet achieved fully universal membership, and acknowledging occasional accusations of non-compliance by some of their States parties, the treaties perform their primary function well in the international community: they create an authoritative legal norm that de-legitimizes the manufacture or possession of such weapons -- and thereby complement the 1925 Geneva Protocol which prohibited their use. As the membership in these treaty regimes grows, as the resources available for verification increases, and as individual States parties enact legislation to ensure that the prohibitions in the treaties apply to all of their citizens, these conventions will contribute even more to international peace and security.

This last step offers the prospect of ensuring that the basic legal prohibitions will apply to activities of non-state actors, an especially important goal in light of the heightened global security concerns following the terrorist acts in the United States on 11 September 2001 and the growing public awareness that terrorists might one day acquire weapons of mass destruction. The effort to address these threats from non-state groups will present new challenges for both national and international law that states can ignore only at their peril.
Yet with respect to nuclear weapons -- the deadliest of all -- the world has fallen several steps behind. Some 56 years after the first use of such weapons in Japan, there are still no negotiations underway on a nuclear weapons convention in the Conference on Disarmament, the world's single disarmament negotiating forum. Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), however, does obligate its parties to "pursue negotiations in good faith on effective measures" relating to nuclear disarmament. In 1996, the International Court of Justice issued its historic Advisory Opinion that unanimously interpreted this obligation as extending to the need to bring negotiations on nuclear disarmament to a conclusion. The 2000 NPT Review Conference further reaffirmed this goal by including in its Final Document an "unequivocal undertaking" by the nuclear-weapon states "to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament." Today, there are also treaties establishing nuclear-weapon-free zones in Latin America, Africa, Southeast Asia, and the South Pacific -- which together now cover virtually the entire Southern Hemisphere.

Building on this progress, the specific contribution of "disarmament" -- as distinct from "arms control" -- is that it offers the benefit of extending the scope of the international legal obligation to the total physical elimination of nuclear weapons, rather than just their reduction or management. It offers real security benefits that nothing else can offer. In the Final Document of the 2000 NPT Review Conference, the participating States parties underscored this point by reaffirming that "the total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons." In short, no weapon system -- whether defensive or offensive in orientation -- offers this kind of guarantee. Whenever I hear that disarmament is naïve or idealistic, I can only wonder about naiveté or idealism of those who dream that a perfect defence or superior offense will forever guarantee the peace.

Rejecting such reveries, the NPT Parties were able to recognize the unique security benefits from disarmament because they understood that disarmament does not take place in a vacuum. It unfolds as part of a confidence-building process that combines both the dynamics of politics and the stability and predictability of the rule of law. Signed treaties alone do not suffice to generate the level of confidence needed to relinquish the deadliest of arms. Even the most perfectly-drafted multilateral disarmament treaty is doomed to failure if it does not reinforce human perceptions of enhanced security, and this is always a risk if the treaty is not backed by sufficient political will to ensure its effective implementation. In the words of Oliver Wendell Holmes, "The life of the law has not been logic; it has been experience."

While this experience is still somewhat limited in the field of disarmament, the positive contributions of the rule of law to international peace and security are still quite impressive. First of all, the rule of law offers states a framework for collective action to meet common challenges. Despite the increased competition they face from diverse non-state entities, states remain the primary units of international relations. The steps they take with respect to the domestic laws and regulatory policies are absolutely vital in signaling to other countries the
government's determination to fulfill national promises. Cooperation across borders among national regulatory authorities is already giving rise to a phenomenon that Ann-Marie Slaughter, a professor of law at Harvard, has termed "transgovernmentalism" -- a process harnessing the state's power to solve global problems. Domestic laws and regulations are strengthened when they reflect multilateral legal norms -- such legislation does not just provide an anchor for one state's policy, but also contributes to strengthening a global framework for collective action.

Universality is another important contribution from the rule of law, particularly as represented by global multilateral treaties. The events of 9/11 served as a sober reminder to everybody of the indivisibility of peace. Who would have thought that political developments and decisions in the impoverished state of Afghanistan could have such an impact on two Superpowers -- one in 2001, and another in the decade of the 1980s? The advent of a truly global market has led to a situation where various dangerous weapons or their components can be purchased virtually everywhere, a world in which illicit shipments or re-exports can link buyers and sellers literally anywhere. The closer multilateral treaties reach to achieving universal membership, the greater the likelihood that governments will be able to control the production or sale of commodities that inspire or sustain arms races and wars.

The rule of law also contributes significantly to the processes of verification by establishing the ground rules for states to reassure themselves that others are living up to their treaty obligations. States can -- and of course do -- undertake some verification measures unilaterally, through their own "national technical means." Yet as good as such measures may be, they cannot match the unique verification benefits from on-site inspections performed by human beings, and these in turn can only occur within a set of agreed guidelines that the relevant parties regard as binding. It is noteworthy that shortly after South Africa chose unilaterally to eliminate its nuclear weapons, it decided to accede to the NPT -- a treaty whose safeguards inspection regime offers the world a credible means to verify that country's status as a non-nuclear-weapon state, and offers South Africa greater confidence that other states parties are also abiding by their commitments.

Legal agreements also offer the means for states to advance their goals of transparency, an important confidence-building measure in all disarmament and non-proliferation regimes. Most states do not reveal data about their weapons programmes lightly. They have strict domestic laws and regulations that determine what types of information may be made public and what types may not. Multilateral disarmament treaties also offer various systematic means for the reporting of information. Some data are provided routinely to the relevant treaty regulatory organizations, such as the Organization for the Prohibition of Chemical Weapons and the International Atomic Energy Agency. Germany has recently proposed the creation of an inventory of all nuclear weapons and stocks of fissile materials usable for weapons purposes, while Canada -- at the recent meeting of the preparatory committee for the 2005 NPT Review Conference -- has proposed the creation of a systematic format for the reporting of NPT-related data during the treaty's review process. The success of these efforts would substantially improve the transparency of state behaviour under the NPT. Yet Germany, Canada, and many other countries are not simply seeking to obtain more transparency, but to achieve this goal as part of
Increased transparency through such arrangements improves **accountability**, another benefit from the rule of law. When the NPT was extended indefinitely in 1995, the Canadian ambassador, Chris Westdal, stated that the decision package that permitted this to occur amounted to "permanence with accountability."

This package included a Decision on "Strengthening the Review Process for the Treaty," a separate set of "Principles and Objectives for Nuclear Non-Proliferation and Disarmament," and a resolution calling for specific actions to create a zone free of weapons of mass destruction in the Middle East. The 2000 Review Conference further strengthened the review process by reaching a consensus on thirteen "practical steps" for the implementation of the nuclear disarmament language under Article VI of the treaty.

While not all of these steps are now acceptable to all the nuclear-weapon states -- the United States has recently indicated that at least two, dealing with the ABM Treaty and the Comprehensive Nuclear-Test-Ban Treaty, are no longer acceptable -- they remain a set of useful benchmarks for gauging progress in achieving the NPT's disarmament goals and thereby promoting accountability.

The various treaty review processes also offer **rules and procedures for debate and dispute resolution** -- together, they provide a vehicle for the candid expression of views about the operation of the respective regimes, and in so doing, they offer a useful basis for assessing the health of the underlying norms of those regimes. There is no question, for example, that many of the States parties to the NPT have doubts about the readiness of the nuclear-weapon states to live up to their disarmament commitments. By serving as a forum for debate, the NPT review process has helped to address some of these concerns by leading to a consensus on new measures to strengthen accountability. This process is more vital than ever, given that the treaty -- unlike the Chemical Weapons Convention or the still-pending Comprehensive Nuclear-Test-Ban Treaty -- lacks its own implementing organization. These debates have also generated new information, such as a thoughtful study circulated at the 2000 Review Conference by the British Government on the challenges of verifying disarmament commitments and of accounting for past production of plutonium. Non-nuclear-weapon states have also used this forum to voice their concerns about the need to strengthen security assurances against the use of nuclear weapons against such states.

Perhaps the weakest area of the rule of law now concerns the issue of **enforcement**. It is a truism that international law lacks the police functions that are found in domestic legal systems -- it is instead a system that still relies largely upon self-help when it comes to enforcement. The ability of the UN Security Council to perform its enforcement responsibilities under the Charter is limited by its need to operate in consensus and by its practical inability to order enforcement actions -- especially involving the use of military force -- against one of its permanent members.

Yet the price for the past violations of global norms pertaining to weapons of mass destruction has nevertheless been considerable, as attested by the consequences for Iraq of its invasion of Kuwait and its violation of the NPT. The price for the DPRK's safeguards violations was the...
freezing of its domestic nuclear programme as part of a commitment to eliminate specific
weapons-related facilities before receiving proliferation-resistant, light-water reactors. While the
two cases are unique and offer no model for resolving future enforcement problems, they do at
least show how the international community can come together to enforce global norms within
an agreed legal framework.

Where relevant treaty commitments do not exist, however, it becomes much more difficult to
mobilize multilateral support to enforce global norms. This was most apparent in the world
community's inconsistent reactions to the Indian and Pakistani nuclear tests in 1998. While the
UN Security Council unanimously condemned the tests in Resolution 1172, there has been a
significant flow of arms into that region ever since, and those countries that did impose sanctions
following the tests have now largely lifted them.

I have now discussed just a few of the many ways that the rule of law serves the security
interests of all members of international society. It is good to remember, however, that people
represent the ultimate units of this society. It was, for example, the "peoples of the United
Nations" who resolved in 1946 to create the Charter of that great organization. Let us not forget
that the decisions to manufacture or to use weapons of mass destruction are made by people,
and that the consequences of the use of the weapons fall indiscriminately upon all people -- in a
poignant demonstration indeed of the "majestic equality" of the effects of such weapons. We
must also not forget the untold thousands of human deaths and illnesses caused by radioactive
and other toxic materials associated with the manufacture or testing of such weapons, and the
hazards such materials have added to our natural environment.7

Consistent with this new people-centered dimension of disarmament, the states parties to the
BWC, CWC, and NPT have in recent years been making some progress in opening up their
deliberations to various forms of participation by non-governmental groups and individuals -- this
openness helps in building the public support that is so essential in maintaining the legal norms
of these treaty regimes.

Other developments offer hope for further progress in bringing democracy to disarmament. In
the year 2000, several significant events took place at the United Nations to commemorate the
new millennium, including the first-ever gathering of the presiding officers of the world's national
parliaments. These parliamentarians met at the UN from 30 August to 1 September and issued
by consensus a Declaration affirming their resolve to introduce, in their words, "a more
manifestly democratic dimension into international decision-making and cooperation." They also
stressed that "the principle according to which no one is above the law and all are equal before it
must also hold true for relations between sovereign States." They specifically stressed that
States must ensure that their conduct "conforms to international law, especially human rights
and international humanitarian law." And quite appropriately, they also called for the elimination
of all weapons of mass destruction, in particular nuclear weapons.8

In his Millennium Report to the United Nations, Secretary-Kofi Annan also had much to say
about both the rule of law and the need to eliminate weapons of mass destruction. One of the
key goals of the organization, he said, must be "to strengthen respect for law, in international as
in national affairs, in particular the agreed provisions of treaties on the control of armaments, and
international humanitarian and human rights law." On 18 September 2000, the largest-ever
gathering of heads of state -- assembled together in the Millennium Assembly -- issued a
Declaration that echoed these twin historic themes.

Today, the primary responsibility for guaranteeing the protection and well-being of the individual
citizen still rests with the State, and there is no substitute for concrete State action to ensure that
those who violate international law are brought to justice. It is of course impossible to predict
how international law will evolve over the next decades of the 21st century. With respect to the
international law of disarmament, it may well evolve both in an outward and a downward
direction. Its outward evolution may find expression in the further development and
strengthening of transnational law, tightening the bonds between all the peoples of the world and
placing their relationship to our common natural environment on a more rational and responsible
plane.

The downward evolution of this law may follow from the slow but progressive attention to the
needs of the people of this world, a world in which individual citizens can make a great deal of
difference. With respect to weapons of mass destruction, this downward evolution may one day
-- perhaps soon -- reach to the level of personal accountability of national leaders for ordering
the use of weapons of mass destruction. The creation of an International Criminal Court has
marked an important step forward in establishing personal responsibility for genocide, crimes
against humanity, war crimes, and (eventually) the crime of aggression.

Coupled with this incremental move toward individual responsibility is another interesting trend
toward the empowerment of individuals -- a move that may increase the standing of natural
persons to seek judicial remedies from harmful acts of state relating to the production,
mismanagement, or use of weapons of mass destruction. We may well be headed for the day
when the "majestic equality of the law" has real meaning -- not just for those who sleep in warm
beds at night, but for all the peoples of the world.

In accepting his Nobel Peace Prize on 10 December last year, Secretary-General Kofi Annan
commented on a phenomenon known as the "Butterfly Effect" -- according to scientists, the
world of nature is so small and interdependent that a butterfly flapping its wings in the Amazon
rainforest can generate a violent storm on the other side of the earth. He noted that, for better or
worse, the world of human activity also has its own "Butterfly Effect" - human actions can either
save the world or destroy it.

I have shown in my remarks today how international law is working, and can in the future work,
to enhance the security of all. I urge you, as international lawyers, to make your own
contributions not just among your peers but also among the wider public.
In light of the Butterfly Effect, who knows where this motion will lead? As lawyers, you now have the task of working on behalf of the majestic equality of a law that can and must serve the interests of human security, rather than just the interests of particular states. More precisely, you must convey the message that the advancement of the interests of human security is the best way to advance the interests of all states. I cannot imagine how this will be possible to achieve in a world without the rule of law -- a truly majestic law, with equal rights and equal protection for all. You have my best wishes in all your efforts to reach this goal, and you will not regret the journey.

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1. This story was recounted by Judge Weeramantry in his dissenting opinion in the 1996 Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons.
7. On 28 February 2002, the newspaper USA Today reported on a study prepared by the US Centers for Disease Control and Prevention and the National Cancer Institute which estimated that about 15,000 American citizens died from cancer as a result of nuclear tests, another tragic legacy of the Cold War. Peter Eisler, "Despite Clamor,Fallout Study Still Unreleased," USA Today, 28 February 2002, p. 10A.