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Transcript

Britain and the International Rule of Law

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Remarks as prepared for delivery.

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Dominic Grieve:

Ladies and gentlemen, it is a pleasure for me to be here today, to discuss 'Britain and the International Rule of Law'. It is particularly appropriate to be addressing this subject in this place, famed throughout the world for its own rule, for its contributions to the development of the rule of law, and for providing a congenial environment for so many politicians and practitioners to take stock and consider the future development of the concept. I hope to offer a few thoughts on the matter, after which I think the floor will be opened up for what I expect will be a wide-ranging and free-flowing exchange.

Ladies and gentleman, before I address the subject, I want to ensure all of you are aware of the government's position on an important issue. There has been a lot of speculation over some time now, but it is right for me to confirm that the government has been engaged in the active supply of arms and related war materiel to a group of determined rebels operating against a foreign government overseas. Due to the complaints of that government, we were aware that these British-supplied arms materially assisted the rebels in their struggle. This supply of weaponry began as covert activity, but it is right that I acknowledge it now on behalf of the British government, echo an earlier expression of regret for the damage caused and confirm that the government position remains that international arbitration is the best means of adjudicating any remaining claims.

I am speaking, of course, of the CSS *Alabama*, a Confederate sloop-of-war which roamed the seas harrying Union merchant shipping during the American Civil War. This warship, secretly built on the Mersey in 1862 by expert British shipbuilders, armed with the latest cannonry and deck weaponry, and powered by sail and steam engine screws, was supplied to the Confederate rebels by the then-prime minister. It took over 65 prizes around the world at a cost to the Union of an estimated \$123 million in today's money. After the war, US outrage at this incident as evidence of general British perfidy towards the Union during the Civil War, led to pressure from the US for compensation. After discussions over several years, this led to the 1871 Treaty of Washington, which settled on arbitration as the means by which the Alabama Claims, and other bilateral disputes, would be settled. This arbitration, which led to the payment of an unprecedented sum of \$15.5 million and paved the way for a rapprochement between the US and UK, became the father of subsequent inter-state arbitrations.

While the Alabama Claims arbitration is perhaps the most famed example of its kind, its prominence sometimes obscures the fact that numerous US–UK arbitrations had preceded it, mainly arising out of border issues and

compensation claims from the War of Independence and that, after the Alabama case, Britain went on to arbitrate disputes with Portugal, the Netherlands and Venezuela. These instances, together with the UK's firm support for the Permanent Court of Arbitration in 1899 and 1907, have led Sir Michael Wood to describe Britain in those early years as a 'hesitant pioneer' of international dispute settlement.

The story thereafter, however, gets even better. After the First World War, Britain championed the establishment of a Permanent Court of Justice. Since 1930, the UK has accepted the compulsory jurisdiction of the court and its modern successor the International Court of Justice, almost without a break. This commitment to binding international dispute settlement is without parallel among the major countries; in particular, it remains the case that Britain stands alone among the permanent members of the United Nations Security Council in accepting the compulsory jurisdiction of the court.

Of course international dispute settlement is not by itself the only indication of a steadfast commitment to the international rule of law. In modern times, Tom Bingham, in whose shadow those of us who dare to speak on the subject of the rule of law remain, was clear that an essential element of the national rule of law was that a nation commit to comply with its international obligations. That remains the position of this government, a view which has been enshrined in the Ministerial Code for many years now. But it also stems from a long history of respect for our treaty commitments which, as many of us will again recall as we approach the centenary of the start of the First World War, led to the British Empire entering into hostilities to respect our treaty obligations to guarantee Belgian neutrality – what the German chancellor subsequently decried as 'a scrap of paper' – when Germany, in contrast, ignored theirs.

Back in the present day, deep in the bowels of the Foreign Office in dusty unlit corridors, a tiny gathering of dedicated people maintain a steady record of all the Britain's treaty commitments going back centuries. If you were to assume the modern era began in 1834, where regular recording began in what later became the Foreign Office, these treaty experts have told me that there are some 13,200 records of treaties and agreements which the United Kingdom signed and ratified. Many thousands of these agreements are still applicable, and they range in importance from the United Nations Charter to local treaties over fishing rights or maritime access.

Of these, perhaps around 700 treaties contain reference to the possibility of binding dispute settlement. Today, all treaties must be laid before Parliament,

where they may be debated, and if they involve the need to change UK law Parliament must scrutinize and enact any necessary legislation before the UK consents to be bound. In this age of globalization, activities previously considered of domestic scope often have an international component – whether on coordinated economic action, climate change or on the regulation of pesticides on bee populations. Without the UK's reputation for upholding its word and ability to act internationally to address regional or global problems, any government action to confront these challenges would remain partial or ineffective.

Although the French and the Dutch might disagree, there is plenty of evidence to demonstrate that the concept of the rule of law is at its heart a British one, and our commitment to that principle on the world stage is central in us being able to deal with those issues. While we should remain intensely proud of our islands roots and traditions, no country can stand alone as an island in the 21st century. This self-evident truth is recognized across the world, and has only grown in power alongside the re-emergence of global economic giants like China, Russia, India or Brazil.

These countries profess a strong commitment to the international rule of law, and their ability to influence others in the world will continue to be measured by how their actions live up to those words. But what is clear is that every country, even those outside the fold of respectability, adopts the language of international law and tries to frame their arguments using the parameters of international rules. Few, except the most ardent of right-wing academics, assert that there is no such thing as international law, or that it should be ignored. And for emerging powers like China, India or Brazil, international law is still seen a cloak of protection to safeguard them from the previous doctrine of 'might is right'. More than ever in international forums like the United Nations, the debate about what can be done in respect of a given international problem is driven by principles of international law, and the options (and restraints) provided for by the applicable legal framework. This international trend is set only to continue, particularly as we encourage the active development of international criminal law, and its stated aim to end impunity for the most serious crimes of international concern.

When we review Britain's situation right now, we should bear in mind its pedigree on dispute settlement and respect for treaty obligations, and the increasing importance of international agreement as a means of dealing with problems ranging far beyond traditional notions of foreign affairs. Against this background, it should be no surprise that William Hague has made the international rule of law a central plank of his new, focused approach to

British foreign policy. If we are to remain secure and prosperous in this new century, the British body politic has to ensure it does not lose sight of the value in being a central player in developing the international system of mutually binding rules that determine how we as countries, companies and individuals conduct ourselves on matters that affect each other's interests.

It is crucial that we should be frank with ourselves what this means. We should not sign up for every obscure international agreement or organization available – Britain has no need to burnish its international credentials. In the context of international adjudication, our commitment to dispute settlement should remain tailored to ensure that frivolous, long-forgotten or inappropriate claims cannot be made. We should view foreign policy with a hard-edged but enlightened self-interest, and vigorously pursue what we think is in our interests and will serve to confront the most serious global challenges.

However, even with a first class diplomatic service and the involvement of top class minds among government, not everything is always going to go our way. Whereas our successes will be confined to the worthy pages of legal journals, our legal failures will continue to be emblazoned on the tabloid front pages. In recent decades, we have succeeded in defending our position in international tribunals on nuclear power, in securing continental shelf claims in the Bay of Biscay and in defending the UK's position on VAT from the European Commission. We have been less successful in some other areas: in the Strasbourg Court in dealing with terrorist suspects, in arbitration with the Eurotunnel over border security, or at the UN with our claims around Ascension Island.

Despite the prospect of such setbacks to important immediate interests, as a government and as a body politic we need to ensure that a clear-eyed assessment of the national interest continues to focus on the medium to long term. The economic and physical security of the United Kingdom remain rooted in international engagement, and the fact that the decisions of the institutional infrastructure do not necessarily always favour our approach and can be politically unwelcome and irritating, but should not deter us from the path to maintain Britain's strategic advantage.

In fact, if we are to convince those that will join us as the powers of tomorrow that it is in their interests to work within this system, we need to ensure we are not in fact loosening the bonds of the rule of law. This does not mean, however, that we cannot continue to actively seek reform of institutions that need to reform, evolve or even be killed off to ensure that the institutional framework keeps pace with the needs of the modern world.

Britain continues to work with its closest partners in leading the charge for strengthening and deepening the international rule of law across the board. We are doing this politically by championing reform of the UN and expansion of the Security Council, to changing the EU to focus on trade and to more closely reflect the views of its citizens, to ensure the ECtHR in Strasbourg remains a beacon of freedom in Europe and does not interfere in what should be decided by democratic parliaments. We are doing this in the economic sphere by working to ensure the global system delivers prosperity and protects those in the most need in the G8, G20 and EU.

In dealing with specific global problems, we are leading the way toward global solutions on climate change, free trade and the arms industry. Where we think that the answer to a problem with an international dimension is international action, often the tools of international law can help us to deliver and implement such action. And of course, international law should not stand still. Where international regulation is hampering current activities, whether it is human rights courts not having the proper judicial deference to local democratic decision-making or international rules which are no longer fit for purpose, we should certainly be looking at cutting through this international red tape, just as we would do domestically. But where we need to do this and our efforts as reform and renegotiation had failed, we should in the last resort not take any actions which would disregard treaty obligations which continue to bind us.

But as we look beyond the headlines of today and focus on delivering these ambitious goals for the future, we can draw on the rich traditions of our past. Just as the world once had an insatiable appetite for British manufactured goods and textiles, and our methods were sought by fair means or foul by countries across the globe looking to advance their own development, there is now a great demand for us to export the principles and practices of British justice, whether taught here to those that will practice abroad, or delivered directly by British practitioners. In order to do that, we must ensure that the rule of law industry can continue to thrive and adapt here in modern Britain. But we should not forget that there is effectively a hungry overseas market crying out for those educated and experienced in British justice.

The government is involved in supporting, encouraging or just appreciating a great number of projects where experts on aspects of British justice, trained in this country and steeped in what that bastion of British rule of law Rumpole of the Bailey might have called the 'golden threads' running through our system, have ventured abroad to offer their services to communities in need. Let me give you a few examples.

One is the British co-prosecutor at the Khmer Rouge Tribunal in Cambodia. Andrew Cayley has been labouring in Phnom Penh for four years, working in a system that is certainly not accustomed to British standards of independence or evidential rigour. Despite this, he has managed to secure a high-profile conviction, and commence proceedings against some of the most serious suspects.

On the other side of the court room sit people like Judge Howard Morrison QC. Currently a judge in the case of Radovan Karadzic at the Yugoslav Tribunal in The Hague, Howard has spent years toiling in countries such as Rwanda, Iraq and the south Pacific trying to secure the fair administration of trials and engender respect for principles of justice in the most hostile and challenging of environments.

Another practitioner who is at the top of his game is Sir Michael Wood. Building on his years at the helm in the Foreign Office, Sir Michael has developed an impressive practice at the international bar, where there is rarely a new case that does not feature him on one side or other. The same might easily have been said for Vaughan Lowe, Philippe Sands, Alan Boyle or other notable expert counsel from all parts of the UK, or individuals who are eminent in deciding cases like Judge Greenwood in The Hague, Judge Vajda in Luxembourg or Judge Mahoney in Strasbourg.

Away from individuals, there is clearly a lot of good work going on among British law firms. In terms of international *pro bono* work, Herbert Smith Freehills have been identified among the market leaders in London, in offering more than £1 million of billable time to the government of Sierra Leone, in what must be one of the most laudable examples of international *pro bono* work in the City today.

Moving away from the private sector to people working directly for government or seconded from it, the International Division of the CPS continue to be a self-funding entity designed to make available the expertise of British prosecutors to places as far afield as the Seychelles or the islands of the eastern Caribbean, to deal with issues such as piracy or the drugs trade.

For myself, as Attorney General I had on assuming office expected to be confined to my desk in Westminster, focusing on domestic legal issues. But the reality of the job has been rather different, in that it has involved a significant amount of international engagement and travel. What has been marked as I have talked to foreign counterparts is their attitude and approach to British justice. My varied and diverse discussions have included talks with

Afghan politicians in Helmand Province, Palestinians working for justice in the occupied Palestinian territories, Israelis dealing with the threat of terrorism on their streets, Gulf countries looking to reform and develop their own systems, and other close allies such as the US, Australia, Canada and New Zealand. What all of them have in common is a deep sense of respect for the British system and our traditions, a desire for help or to share experience in this field, and often a specifically professed desire for explicitly British assistance in this area. While the government is engaged in a serious way in significant direct assistance, what is particularly pleasing is that a lot of the assistance that we can and do provide, particularly to less-well-developed countries, does not drain the public purse, as it is delivered with expertise and enthusiasm by the host of voluntary actors in the field.

So we have established that the rule of law is central to our international policies, and that there are a number of bold men and women who have gone out and offered a quality supply to meet the ready demand. Part of this is of course, self-interested – an interesting living can be made in this way and British practitioners can use their international work to get instructed on a commercial basis. But part of it too is a pride in the way we work in these areas, and a feeling that we can offer much to those overseas as they build and develop their own traditions of the rule of law. Getting into this area has never been easier, with institutions like Chatham House providing valuable forums where these issues are discussed, and groups like the Attorney General's International Pro Bono Committee helping to coordinate assistance and maximize the impact of the aid given.

Looking back to the Alabama Claims arbitration it is clear that Britain has come a long way since those early pioneering days. We have continued to be at the heart of the developing infrastructure which supports the international rule of law. Looking into the future it remains in our core long-term interests to ensure that respect for international law and institutions endures – even when it is politically inexpedient.

In addition to that core foreign policy interest, British people from all backgrounds and professions continue to export our values and traditions on the rule of law overseas. In these times of intense international competition, British expertise in the administration of justice is a commodity which we should do our utmost to ensure market overseas. As Attorney General, it gives me great pride to stand as part of a system that many people throughout the world so closely associate with what makes us uniquely British. Thank you.