We are here to discuss Philippe Sands’s remarkable and successful book *Lawless World: The Making and Breaking of Global Rules*. First I will introduce our panel: Sir Shridath Ramphal was Secretary-General of the Commonwealth from 1975 to 1990. I think one ought to pause and think: 15 years in that sort of job means that he is a very remarkable person. I knew him well at that time, and he is and was. He was also, I discovered this evening, an Attorney General once in his life, and that is a very special expertise, which we now look at with quite suspicious eyes. Boris Johnson is MP for Henley, as he has been since the year 2001, and editor of the Spectator. He is certainly the most famous editor the Spectator has ever had, but I am by no means sure whether he is the most famous MP that Henley has ever had, because he succeeds Michael Heseltine. If I wanted a room or a building searched for humbug, Boris would be the person I’d choose. He has a very fine nose for humbug, and roots it out pretty quickly. There may be odd bits of humbug hanging around international law: we shall certainly find out. Now I don’t think for once we are going to be cynical about him saying “As MP, I have a Division to attend”. I am generally very cynical of that; I think they are just going to the bar, and they want to leave and go home. But on this occasion we do know that there is a series of very important votes in the House of Commons this evening. Jesse Norman is a Research Fellow in Philosophy at University College, London. Not only is he a philosopher, but he has spent ten years as a corporate financier, which is a very unusual and impressive combination. I think it is always safer to have a philosopher on board, specially in this sort of subject. You remember the definition that philosophy is a peculiarly stubborn effort to think clearly, and I certainly think that is
what we need. Philippe Sands is Professor of International Law and a colleague of Jesse’s at University College, London, a practising barrister, and author of the book Lawless World, which was partly serialized in the Guardian. I don’t whether it’s going to be a bestseller to overtake the Da Vinci Code. But it’s going to feature on some bestseller lists I think. I have to confess that it’s the first book solely devoted to international law that I have ever read. But of course much of the material was very familiar to me: what I hadn’t done before was to connect the dots. I had failed to put many things with which I’m rather conversant under the same umbrella. If you look through the contents list of Mr Sands’s book, there’s Pinochet, there’s the Kyoto Protocol, there are trade rules, there’s foreign investment, and there’s Guantanamo, there’s the Iraq War, there’s torture: it is all part of the same subject. One of the merits of the book is to make that point. Another merit of the book is its style. It’s beguilingly written, with lots of anecdotes – admittedly the sort of anecdotes international lawyers tell each other, but nonetheless anecdotes.

What are we looking at? Since 9/11 we are looking at the establishment of that lawless limbo Guantanamo Bay; we are looking at the use of torture and British and American governments’ use of products of torture; we are looking at the dubious legality of the British decision to go to war; and we are looking at the United States and Britain unpicking the international system which they, more than any other nations, put together during and after the Second World War.

Sir Shridath Ramphal

Thank you, Mr Chairman. There’s one small distinction between me and some Attornies General: I wasn’t a member of the ruling party.

It is a little ironic, I think, that I’m on this platform tonight because a member of the British Parliament who should have been here is under a Three-line Whip in the House of Commons to vote on the Government’s Prevention of Terrorism Bill. As you probably know, Menzies Campbell is not here because he’s making a valiant effort to prevent Britain going down the path at home towards the kind of lawless world that Philippe Sands has so clinically exposed in this very timely book.

Menzies Campbell himself is quoted on the back cover of the book as saying (as I suspect he would have said here), “A powerful case for international rules as fundamental standards for legitimacy and acceptable behaviour could not have been better timed.” Well, the timing for him was pretty critical. I remember that the same back cover describes the
book as “a coruscating account of how the Bush and Blair administrations are breaking the law and trying to rewrite the rules.” Of course it is easier to do this abroad, but when you succeed in reversing global trends towards the rule of law worldwide, it becomes a little easier to trifle with rule of law traditions at home. And that is, in a sense, where we are in Westminster tonight.

In Lawless World, there are for me resonances of dangers that we face in the world at large, and of dangers that we face in every part of that world, in every country. The publishers, as I have said, describe the book as a “coruscating account”, and so of course it is. But as the Chairman has said, it is written with the incisive pen of a very eminent and respected international lawyer, and with the authority of one who has not merely taught international law in the classroom, but engaged and tested the practical implementation of international law rules and principles in the field. And that I think is an important dimension of the contribution that Philippe Sands has made in writing this account of what is really - I think many of you will agree - the dark side of these first years of the century. For him to have done so, not in the dull, rather turgid language that most people quite legitimately associate with international law – I’m not surprised, Mr Chairman, that you haven’t dipped into international law treatises – but in a way which brings international rules and principles, indeed international efforts and aspirations, brings this to the understanding of the wider public. That is a very great accomplishment.

I am personally glad (and I believe so will be most readers of the book) that the author has spent time in illustrating how different it might all have been, and (who knows?) might yet be. From the Atlantic Charter in 1941 to the Rome Statute of the International Criminal Court in 1998, those extracts in the appendices I think greatly enhance the value of the book, as of course does the chapter on the recent history of international law with which the book begins.

Both of those elements, the appendices and the recapitulation of the history of the last 50-60 years, revive for me memories of different personal landmarks. The first was when, as a young lawyer, I had my faith in internationalism restored at the time of the Suez Crisis in 1956 - restored by an American president, restored by Eisenhower and his virtual command to the British Prime Minister at the time, Anthony Eden, and to his allies in France and in Israel, that Cairo should not be bombed, and that the matter should be taken to the UN Security Council, where of course it was, and diffused.
The other memory was of a symposium at the Aspen Institute in the mid 90s when Sir Brian Urquhart and I found ourselves confronted by what we now can identify as the rising Vulcans, whose response to our joint pleas for a world order on the law was “America cannot be constrained in any way in pursuing what it perceives to be its national interest. But the world need not worry: we are the good guys, and our cause is virtuous.” It was for me the moment of full awareness of how close we were to a lawless world: America of the Atlantic Charter - America of the Project for a New American Century. And that was just fifty years apart.

I’m very glad that Philippe has broadened his exposé beyond what we normally think of as the domain of international law, by showing how the making and breaking of rules and principles has really become a central theme as well in relation to world trade, to foreign investment and to the environment. It is of course all one now, but we need to see it and read it in the round as Lawless World now makes possible (as the Chairman so aptly said) by connecting the dots.

Just a word of my own reflection. Clearly, I think, the 20th century has really not gone very well for humanity. Instead of going down the road to a new era of security, one that responds to law and to collective will, and to common responsibility, we are, I think, going backwards to the spirit and the methods of the sheriff’s posse dressed up to masquerade as global action.

Of course there should be no question of which way we go. But the right way requires the assertion of values of internationalism, including very specially the primacy of the rule of law worldwide and of international structures like the International Criminal Court, that secure and sustain those values. Lawless World, I believe, shows all too clearly that ambition for world domination, which when you think of it has ever been a curse of our human society, remains a curse still.

Is there anything on the optimistic side, anything we can cling to by way of hope? I think there is. I think the triumph of supremacism may yet prove to be elusive. World domination in the 21st century, when you really come to think of it, is wholly at odds with so much that is also part of the 21st century. It involves too sharp a turning away from the multilateralism that over the last fifty years has underpinned what, on any showing, must be regarded as the most intensive effort at global governance in all of human history. That is quite a record. It is surely too large a contradiction of the reality of global oneness, and the evolution of human values in the respect of life, liberty, justice, equity, mutual respect, a
sense of global care. It is too much the antithesis of democracy between nations and even within nations. Of course it struts the global stage with arrogance and even with revolutionary fervour. But my proposition would be that in truth it is really absurdly old-fashioned. But it’s worse than a throwback to an earlier fashions: it’s a terrible paradox, this reality of our time. We are a world community desperately in need of acting together, acting multilaterally in the interests of sustaining human progress. And yet we are a world community threatened with the emergence of a new imperium and with the ascendency of division, dominion, discord – a world really set on a course of regression.

The question we must ask, and I hope we ask it here, is whether history will show that we ultimately abandoned this course, and chose a path of sustainable progress; or will that history chronicle the beginning of a dark era of human decline towards - quite possibly - self-destruction? Will we have opted for global progress through multilateralism and the rule of law, or for going backward to a lawless world?

A new architecture of peace will only be developed by what I would describe as a ‘coalition of the many who are right’, even though they - we - are all separately weak. It will not be developed by a coalition of the few who are wrong, though they are of course singularly strong.

The world needs the ascendency of an ethic of survival, a kind of global morality worthy of the maturity of human society. That ascendency is of course the very opposite of acquiescence in the demise of multilateralism. It requires instead a refusal on the part of people worldwide - all of us - a refusal to go quietly.

*Rage, rage against the dying of the light.*

I think *Lawless World* does so with great dignity. Thank you.

**Boris Johnson**

Thank you very much, Andreas, and thank you very much, Sonny, for your very passionate thoughts, and congratulations to you, Philippe, on your brilliant book. It’s a coruscating book as Sonny repeatedly said, and I’ve read a coruscating chapter or two. I am very impressed with it, but I must confess I am slightly puzzled by your argument, Philippe, because you make this passionate attack on the legality of the Iraq War, but in the last six
years I've had direct personal experience as a reporter of one kind and another of two major Anglo-American military operations, and neither of them had full UN backing. I doubt that there is a lawyer in this room who would say that the Kosovo operation had full UN backing. You remember the Russians were against it, the Chinese were against it, and NATO was forced to go it alone. Individual NATO states may well have thought that the bombing of Kosovo and Belgrade was legal, but there are plenty of governments who thought that the operation in Iraq was legal, and actually, having read your account of the Attorney General's opinion, Philippe, it's not the worst piece of legal reasoning I have ever seen. It is pretty feeble, but it's not the worst argument. I can see how you could conceivably argue that Security Council resolution 1441 does revive resolution 678. I can see that there was a case to be made.

I am prepared for the purposes of a quiet life here in this room to accept that you, Philippe, are right, because you are a professor of international law, and I must bow to your authority, and that the war in Iraq was illegal in the Sands-Wilmshurst sense; that is, that it did not have proper UN authorization. But that was also true, of course, of the Kosovo operation, and whatever you say about the humanitarian justification for Kosovo, the fact was that we bombed that place for more than seventy days. I remember because I was in Belgrade. I got sent there by my paper for what was meant to be a long weekend, and I got stuck there because I was the only reporter there. It was claimed at the time that there were upwards of 1200 civilian casualties. I think the real figure was probably nearer 400, but if you bear in mind that when I went to Baghdad shortly after the war and I talked to the Red Crescent, the people who actually know about civilian casualties in Baghdad, they told me that the actual figures for civilian loss of life in Baghdad were under 200. So there was a comparable level of human loss of life in the early stages of those two operations, regardless of the subsequent huge expansion in the loss of life.

I think you are too glib, Philippe, in your assertion that the war in Kosovo against Slobodan Milosevic was justified under Chapter VII of the UN Treaty because it was all about a humanitarian effort. That is simply not the case. That’s a retrospective rewriting of history. That is not what the war in Kosovo was about. NATO’s bombing from 15,000-30,000 feet was entirely intended to kick Serb troops out of Kosovo. And far from averting a humanitarian crisis, it actually precipitated a humanitarian crisis in Kosovo, because it forced the withdrawal of the monitors, and it gave the Serbs the scope to set on their pogroms, and 1.3 million Albanians were kicked out. So your account is a complete rewriting of history. Of course, the action was ultimately successful in kicking out the Serbs, and in ultimately removing Milosevic. But my point is, and it is the sole point I'm really
going to make: it was no more legal than the war in Iraq, if we accept that all the eminent jurists here are right in thinking that the war in Iraq was illegal.

So the mystery that I want you to pause upon is why we care so deeply about the legality of the war in Iraq and our fidelity to this or that UN resolution, when we didn’t care about the UN in Kosovo and the so-called Rule of so-called International Law. I’m going to make some suggestions about why that discrepancy in our thinking might be there, and they may not be totally popular.

The first reason for this discrepancy is, I think, to do with our attitudes to America, and the character of the two different administrations that were responsible for each operation. I think this is something to do with the prejudices of the elite in Britain who are so amply represented in this room today. And I’m afraid it is a fact that there are some people in Britain, and there may be some of them in this room this afternoon, who simply cannot stand George W Bush, and the neocons in Washington. On the other hand, they found Bill Clinton and the Democrats altogether more feng shui and touchy-feely and to their taste. And I bet there are some people in this room who, if they scour their consciences, would admit that they answer to that description. Wouldn’t they?

And I’m afraid that I think – and this again is a sad and a harsh thing to say about any minds such as are gathered in this room - but I think there are people who thought and think that the war in Iraq was broadly in the interests of Israel. And I’m afraid to say that inclines a certain type of British mind to treat it with suspicion. I merely make that point.

But the most important reason why I think there is this discrepancy in our attitudes to illegality in Kosovo and in Iraq is of course to do with the way we were conditioned, and we were conditioned to treat legality in respect of the Iraq War as very important, because Tony Blair wanted us to think it was very important. And that was why he went through this whole rigmarole about the UN second resolution; that’s why we have had these endless debates now about what the Attorney General may or may not have said – because the whole question of legality was put to the forefront of our minds by Tony Blair and by the politicians.

And why did he do that? Because it was politically essential for him to do that, and it was politically essential because he had behind him scores of poor Labour backbenchers who hadn’t come into politics to bomb the children of Third World countries, and weren’t at all happy. And he had in his cabinet Jack Straw who was vacillating, and Robin Cook who
was downright hostile, and Clare Short who was vacillating but also hostile. And he had a very difficult job to get Parliament to vote for it. He had a political problem, and he tried to solve this political problem by appealing to legality. That’s the most important reason.

We must leave on one side the really big question which is ‘Why did he go down this route?’ ‘Why did he back Bush?’ And that’s the big question, the fascinating question of politics. As it happens, I did vote for the war, and if you look at things that are happening in the Middle East, while I wouldn’t say that it’s been an unparalleled success in Iraq, it is certainly clear that shares in that general venture are now rising.

So we must leave on one side whether it was right for Blair to back Bush. That’s not the point of our discussion today. The question is: why did he feel it necessary to put at the centre of the debate this whole question of legality? And why did he want to get this very clear legal endorsement, this second UN resolution? And of course it was all to do with the particular problems of the moment, some of which I’ve just mentioned – to do with his parliamentary position which was greatly exacerbated by the hostility not just of Germany but more particularly of France.

I think that the presence of Chirac constantly offered a sort of rival European pole of attraction for the anti-war tendency - they all chanted “Don’t attack Chirac” didn’t they? – or maybe I made that up. I seem to remember that Chirac was an important player in all this, and it was of course deeply embarrassing to the Government that, unlike in Kosovo where all the European powers were on side, you had Chirac and Schröder making complete and irretrievable nonsense, in my view, of the European Common Foreign and Security Policy. So it was a very big goal to get the French on side, and that’s why Blair was so desperate for this legalistic approach, and this second UN resolution; and that’s why, if Philippe is right (and I’ve no reason to doubt him) the poor Attorney General was chivvied hither and yon to produce satisfactory language.

But of course the key point – and I come back to this point: there was no reason in what I understand to be “international law” why the objections of France to the war in Iraq should be taken any more or any less seriously than the objections of Russia and China to the war in Kosovo. Both operations therefore ended up *stricto sensu* being equally illegal if we accept Philippe’s analysis. And I think we are driven to conclude that the difference, the marked and staggering difference in our response to these two illegal ventures must suggest that this is not about law: it suggests to me that “international law” may sometimes
be a convenient fiction to legitimate the actions of the great powers, and sometimes it may be conveniently forgotten.

The hoo-ha about legality in Iraq and the apathy about legality in Kosovo suggest to me very powerfully that this has nothing to do with international law and everything to do with politics. And the ultimate criterion – alas – will not be law but success.

And Philippe, I’m sure that your book will do very, very well whatever happens, but if, as we must all hope, Bush is right and the ripple of change in the Middle East is indeed fanning out from Iraq - if that is correct then we must all hope, Philippe, that your wonderful book *Lawless World* will come to be seen not as an irrelevance, but as an interesting oxbow lake in the great course of human history.

**Jesse Norman**

Thank you, Mr Chairman, for that very kind introduction.

I’d also like to thank the other panellists, Philippe Sands for his marvellous book, and above all Elizabeth Wilmshurst for bringing us all here today. It’s a privilege to be able to address such a distinguished—and if I may say so formidable—gathering, and especially so on the topic of States and Rules, on both of which Chatham House is such an institutional authority.

*Two conceptions of the state*

Our topic is international law, and the making and breaking of international rules by states. I want to approach this subject backwards, in a sense, by looking slightly more closely at the nature of the state itself. What is a state, in relation to its rules?

We can start by comparing two rival conceptions of the state, in a way first fully articulated by Michael Oakeshott.

The first conception might be called that of the civil state. This is the state as an association of citizens—that is, of individuals formally equal in their rights before the law. They are united, not in having any common purpose or plan, but in their recognition of a system of rules, and of a single civil authority behind those rules.
We can compare this to the state conceived as an enterprise in and of itself—not merely as capitalistic, or business-friendly, but as a project in its own right. In this case, individuals are not viewed as citizens. Rather, they are seen as contributors to a common undertaking, who come together to promote a recognised set of substantive goals—goals such as national prosperity, productivity, or a cultural or religious unity.

Now the nature of the rules involved is radically dependent on the nature of the state. In a civil state, the rules will tend to be procedural, universal and categorical in character. The function of government is, here, not to do anything as such; it’s just to govern. The enterprise state, by contrast, exists to achieve certain social or political objectives—it is, as it were, ambitious. So the rules here will tend to be more managerial, specific and instrumental in character.

These are idealised categories, of course. Though elements of each can co-exist together, they are formally exclusive of each other. They thus form the poles of a political spectrum, depending on which one is uppermost at any time. And we can readily see both conceptions at work in British government—the civil state in Magna Carta, due process, voting rules etc.; and the enterprise state in, for example, Great Britain PLC, the No. 10 ‘Delivery Unit’, five year plans, public service targets, and the national bid to host the Olympics in London.

The danger of the enterprise state

So why does this distinction matter?

First, Great Britain is increasingly an enterprise state, and not a civil one. The government has never been indifferent to economic or social well-being. But for the state itself to be used as economic engine, safety net or service provider is a modern, and specifically a 20th century, innovation.

Secondly, the growth of the enterprise state abridges our freedom before the law. For the enterprise view is always to judge people, not as citizens, but by their contributions to some over-arching corporate goal. That is, the rights of individuals become logically subordinate to the overall corporate project. So that the good citizen is, in effect, a Stakhanovite: a star worker, a star entrepreneur, parent, saver, taxpayer etc.
Thirdly, taken to its furthest logical limit, the enterprise state ends in a kind of fascism, in which all individual or group interests are subordinated to the interests of the state itself. Hence Mussolini’s slogan—I will spare you my Italian—“Everything in the State, nothing outside the State, nothing against the State.”

Now this contrast is especially relevant to a nation’s decision to go to war. For what is war, at root? It is a massive gathering of energies, with the common goal of repelling, subduing or conquering an enemy. This is, of its essence, an enterprise. After a war, government is rarely if ever fully demobilised. And so going to war generally involves, at the very deepest level, a further, and long-term, move along the spectrum I have identified.

Yet this civil/enterprise state contrast is not only relevant to war, or to terrorism. The growth of the enterprise state should be of general public concern—regardless of people’s party affiliations, and of left- or right-wing political tags.

The challenge for the UK and the USA

So what does this line of thought imply for the UK and the USA?

In the case of the UK, there is a familiar, and quite genuine, cause for concern. Our majoritarian model of democracy has historically accorded huge powers to the executive—powers which centralisation over the years has only increased, while at the same time many constitutional safeguards have been eroded. The general public is at once less willing to defer to established authority, and yet less willing to engage in the political process itself. So we should embrace the present trend towards a more explicitly constitutional democracy, through steps that invest basic substantive rights in the citizen. And we should repudiate, as the Law Lords have recently repudiated, the claim that this is somehow intrinsically anti-democratic.

In the US, the problem is not the centralisation of domestic power as such. Rather, it concerns the conflict between domestic rules and foreign conduct. The US was founded, explicitly, as a “republic of laws, not of men”, in reaction to what was seen as the arbitrary personal power of the decadent and quarrelling European monarchies.

But this has always raised the question: how should America conduct itself abroad? Washington himself was in no doubt. As he said in his Farewell Address of 1796, “Observe good faith and justice toward all nations… It will be worthy of a free, enlightened,
and ... great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence."

As was widely recognised from the outset, the US was itself the great exemplar—THE great constitutional experiment in government by law across an extended land mass. Like other Founders, Washington was aware that the moral influence of this example was intensely motivating to other nations and individuals, and could not be limited to America itself. Dedicated to the rule of law as it was, America—above all—could not morally inoculate itself against the effects of its own unlawful action overseas. America was not, in this respect, a closed harbour of privilege. It was a beacon for other nations to steer towards.

There is, then, something not merely ironic but actually contradictory in the present US attitude towards international law. While it continues, it is undermining a 200 year experiment in the rule of law, not of men. It therefore constitutes, in a sense, a kind of slow suicide of the American project.

When we consider American constitutionalism, we look above all to Madison. So let me close by recalling that it was Madison who said: “In framing a government, which is to be administered by men over men, you must first enable the government to control the governed, and in the next place oblige it to control itself.”

Thank you.

Philippe Sands

Jesse has triggered a whole raft of thoughts, and in particular a thought which actually is a theme which runs through the book: What is America’s engagement with rules? And in particular: What is America’s engagement with rules in the international context? It’s very easy to paint black-and-white pictures, and to talk about America-this and America-that, but in fact, I think, and I hope this book explains, the picture is rather more complex.

It’s not right to say that America has turned against international rules in respect of a whole raft of rules, particularly rules which promote economic interests very directly. I’m thinking of rules on free trade, rules on foreign investment, rules on intellectual property rights. There is no country in the world which is more strongly attached to rules of international
law, so we can swat away pretty quickly the idea that the United States has moved inherently towards a sort of anti-international-law type of position.

Secondly, it's also the case that there are many, many lawyers and many, many international lawyers in the United States at the highest levels of the Administration who are horrified by some of the excesses that we've seen over the last three or four years. When I think of the issue of Abu Ghraib, I describe what is a direct line from appallingly bad legal advice to the pictures that we saw at Abu Ghraib; to tell the full story one does need to know that there were many lawyers in the Justice Department, in the State Department and at the Pentagon who fought tooth-and-nail to override that bad legal advice. The bad legal advice was given by a small number of neocon political appointees who carried the day. But it wouldn't be right to think that there aren't people in the United States batting for precisely the principles that Jesse has described, but at this political moment they are not carrying the day.

Sadly, I think, we've had the revelation of the fact this week which indicates that, contrary to the hope of many including myself, George W Bush's second administration will not adopt a different approach. I am referring to the news as to who is going to serve as the United States Permanent Representative to the United Nations: John Bolton. A man whom I quote very extensively in the book, a man who believes that international law is not binding, that treaties are essentially reflections of political aspiration, that the Geneva Conventions don't even reach the level of "quaintness" in terms of their significance. So I don't think we can allow ourselves to assume that the moment which came to a head post-9/11 has gone, and will now be replaced by a softer version of the Project for a New American Century.

I think quite the contrary. I wrote this book because I came to the view that those who had taken office in the United States – in particular in the administration of George W Bush in 2001 but the roots go much further – were committed to a wholesale remaking of the international order, including the system of international rules, and that they would keep in place only those rules which essentially promoted direct American interests. You can't force people to buy Coca Cola at the end of the barrel of a gun. Coca Cola needs to be manufactured, it needs to be protected by intellectual property rights, it needs to be transported. The system which allows Coca Cola to be sold all across the world is a system premised on international law – you need international law to make that happen. That is the "good international law". But then there's the "bad international law", the
international law which was good once, and for which we have to give the United States credit.

In a sense this book is a plea for the United States to return to the types of values that Jesse talked about. The system of rules which was put in place was a system that was largely designed and pushed by American initiative in the period 1941-1950 under the administrations of Roosevelt and Truman. It reflected, if you like, a desire to export American values. It wasn’t altruism at play. The new rules which were created – the Nuremberg Tribunal, the Genocide Convention, the Geneva Conventions, the International Trade Organisation, the Bretton Woods agreements, the United Nations Charter, the Universal Declaration of Human Rights – the modern architecture of international law: these rules would promote American values and American interests in the context of a crumbling British Empire.

The support for some of these rules remains very strong, and I’ve mentioned the economic rules in particular. But what of the other rules? In the Atlantic Charter there were essentially three pillars:

the pillar which supported economic development and economic liberalism, including free trade and investment protection;

a second pillar: the dignity of the human individual - self-determination was pushed very strongly by President Roosevelt, against the wishes of Churchill and Beaverbrook who were intimately involved in the drafting;

a third pillar: prohibitions on the use of force.

But even before 9/11, between January and September 2001, we saw the Bush administration’s wholesale attacks on the Kyoto Protocol and the Statute of the International Criminal Court. (Just to be clear, I’m not saying that the United States should ratify these treaties; that’s not my position – my thesis is the United States like a sovereign state is perfectly free to decide not to join these treaties as Russia has done, or as China has done in relation to both of them – but what the United States can’t do is then target and victimise smaller countries using economic and military sanctions to force them not to ratify. And that is what has been happening.)

So by September 11th, the efforts to undermine the “Anti-American” international law, the “bad” international law, the international law which would not promote American values but constrain sovereignty and constrain American freedom were well under way. You can go
back (and I’ve set out the materials in the book which tracks to 1996 and 1997 the work of Mr Wolfowitz, the work of Mr Cheney, the work of Mr Rumsfeld and others): there was a clear plan, and that plan was able to be executed all the more easily after September 11th. September 11th was a wonderful pretext; I had no trouble finding the most astonishing quotes from senior American officials saying that they would remake the rules of international law. We’ve seen what that led to in the short term: it led to Guantanamo; it led to Iraq; and it led to Abu Ghraib, all of which are characterized in my view by gross illegality. Notwithstanding opposition internally within the United States, it was part of a systematic effort to remake the global order.

Now the United States could not quite do this alone, which brings me on to the second part of the book. (It’s rather interesting in publishing terms to me that the book’s original subtitle was going to be “The US, Britain and the Making and Breaking of Global Rules”. But the book has found a market outside the United Kingdom, and indeed the United States, and Penguin’s publishers in Australia, New Zealand, South Africa and India all said “You’ve got to get Britain out of the subtitle. People won’t buy it: fewer people will buy it if it’s got Britain in the subtitle.” So Britain isn’t in the subtitle because we do want to sell the book also in all of those countries, but the book is equally about Britain.) It tells a story that I feel very sad to have lived through – a story of an administration in this country which has become a handmaiden to the worst excesses of American illegality.

In relation to Guantanamo, whatever may have gone on behind the scenes, publicly it has been complete silence. And I find that silence shameful. It is abundantly clear to all international lawyers in this country that setting up a facility outside your territory explicitly to circumvent the application of constitutional requirements of the United States and the international obligations of the United States is a grotesque departure from the types of values which, Jesse has reminded us, caused that extraordinarily important country to participate in formulating the rules of international law after the Second World War.

And what did we get from Britain, which had been a partner in that effort? Publicly just a deafening silence..No condemnation of the rewriting unilaterally of the Geneva Conventions concerning combatants and non-combatants, in which British nationals were involved. “We don’t do things that way,” it was said. “We just do things behind the scenes; we don’t like megaphone diplomacy.” But the treatment of humans and the treatment of your own nationals surely reaches a point at which you feel bound to say: “This is just not on.” The silence of the United Kingdom in relation to Guantanamo provided legitimacy in
the eyes of some people whom I’ve talked to in Washington, coupled with what was to come in relation to Iraq.

Boris has raised a really interesting question: why is it that people do care about these issues? People don’t care about the legality of the war in the United States, I should say. I’ve spent just about as much time since 2001-2002 in the US as here. It’s a non-issue in the United States. There is no constituency in the United States that is batting for international law on that issue. The media’s not interested; the community of international lawyers, frankly, are not interested, or if they are interested they don’t get a voice, though there are many international lawyers who’ve spoken very bravely, in very difficult circumstances. But for some reason in this country these issues resonated, which is why the circumstances of the going to war which relate to the legal arguments strike me as being of such significance in this country, because in a sense it was a moment of crystallization in which international law entered the public consciousness. This is the great mystery to me. I will have conversations with taxi drivers about Resolutions 678 and 687, which I would not have ever expected when I first studied international law 20 years ago. The simple point is that international law has crossed a threshold, and that generally, I think, is a good thing.

The purpose of this book is not to say my vision of international law is right or wrong, but really to promote a discussion and a debate about the importance of international law, its relevance at a time when Britain appears to have been dislodged from its very strong commitment to a rules-based international order. I think there are direct analogies between what happened in terms of the giving of the legal advice and the presentation of the view in March 2003 and the types of arguments we are now exposed to, whether it be in the Belmarsh case or tonight in the House of Commons and the Houses of Parliament in relation to the circumstances in which a government feels entirely free to say “Well the time has come when we need to suspend all these well-established principles – we’re in a different situation now”. Boris has made the point very eloquently.

So something has changed in this country, that is clear. I’m not sure whether this is a fundamental change, or whether we are reaching a point where the backlash will cut in, and people will say “Actually we’ve reached a point where we can go no further.”

I’m amazed that it hasn’t become more of a political issue that this country went to war without a formal written legal advice which was consistent with the view that was put out in Parliament purporting to express the view of the Attorney General. I find that astonishing –
that it hasn’t become more of an issue. It resonates very significantly at the highest levels of the judiciary. And it’s perhaps the complexities of the issue that mean that it takes a little more time, but we see bit by bit the issues are unravelling; the story is being told; the facts are emerging. And the story is not a happy one.

So to cut back to a conclusion: we have a situation in which the established international order with its system of rules is threatened, fundamentally, by the very countries that put it in place. And that is something that we need to think about. The purpose of the book is to generate further debate and discussion about the place of international law and the steps that we want to take to transform the international legal order into one which is more structured, more democratic, more accountable, more effective. But we face a moment where even beyond that challenge I think we have other challenges to face at home and in the United States.

That’s the story that the book tells, and I’m delighted that you’ve come to talk international law, because in a sense my purpose is no more than that. It is to take international law outside the rooms of the universities, foreign office legal advisers and barristers’ chambers and make people think more about what these international rules are, and where they are going.