



A World Without Law?

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Chair: The Rt Hon. the Baroness Hale of Richmond DBE

Speaker: **Professor Philippe Sands KC¹**

Frederick Alexander Mann was born in 1907 and studied in Geneva, Berlin and Munich, originally company law. He came to Britain in 1933, fleeing the Nazis, and it was through his friendship with Hersch Lauterpacht – and his lectures at the LSE - that he came to be interested in matters of international law. ('I continued my studies in the fields in which I felt a foreign-born and originally foreign trained lawyer could make the most valuable contribution, namely private international law and, later, public international law as well as their interrelationship.')

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The 1945 moment, defined the world in which FA Mann came of age, in a professional sense. I first studied international law in October 1980, a moment when FA Mann was in his prime.

Eighty years on, it is said that that we live in a moment of transition and acute challenge: global warming, pandemics, war, economic crises, mass migration and new technologies have given rise to a time of transition and great uncertainties. This gives rise to many questions about the writ of international law. Some say we now live in a 'world without rules', or even a 'post-rules world'. Others take a different view. 'We do not know, with every step we take, whether we are walking on a seed or on debris', wrote Alfred de Musset in his novel *La Confession d'un Enfant du Siècle*, published in 1836.³

In this lecture I would like to address international law at a time in which many feel a sense of acute anxiety, an anxiety of the kind that may not have been unfamiliar to Mann or Lauterpacht.

I begin with a single issue, to illustrate how rules – and maybe values – move across time and place. It relates to the immunity that may be claimed by a former head of state in relation to official conduct. It is an issue I have been much engaged with over the last few years, professionally, one that could be said to lie at the heart of a trilogy of books that began in Lviv in the years after the First World War, led to Nuremberg and Rome in the 1940s, then to London in the late 1990s and to Punta Arenas in current times.

In 1919, in the aftermath of the First World War, the victorious powers agreed that Germany's former ruler, Kaiser Wilhelm II, who had fled to The Netherlands, should be arraigned before an international tribunal on a charge of warmongering—a 'supreme offense against international

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² FA Mann (Wolfgang Ernst ed.), *Life and Cases* (Bonn University Press 2021), 55.

³ A de Musset, *La Confession D'un Enfant du Siècle* (1836).

morality and the sanctity of treaties,' in the words of the Treaty of Versailles.⁴ This was a first: immunity extinguished because of the gravity of the offense, an international crime. No tribunal was established, however. Prosecutorial enthusiasm waned, and the Dutch government made it clear that Wilhelm would not be extradited. He was never put on trial.

In August 1941, President Roosevelt and Prime Minister Churchill agreed the Atlantic Charter, a one page set of principles that committed their two countries to a new order premised on multilateral rules to prohibit the use of force, promote economic liberalization, and protect the rights of individuals and groups. That informed the creation of the UN, in April 1945, and the Nuremberg Statute, three months later.

A U.S. Supreme Court Justice, Robert Jackson, served as chief prosecutor of the Nuremberg tribunal. He also led the drafting of the tribunal's governing statute. In a letter to President Harry Truman, in June 1945, Jackson set out his thinking.⁵ Immunity was an 'obsolete doctrine' and 'a relic of the doctrine of the divine right of kings.' It was also 'inconsistent with the position we take toward our own officials'—a telling comment, because it seems to take for granted that the U.S. Constitution provided no immunity for a former American head of state. Jackson worried that giving immunity to former leaders would give rise to 'the paradox that legal responsibility should be the least where power is the greatest.' As Jackson saw it, an American president served 'under God and the law'.

In August 1945, four states adopted the Statute of the International Military Tribunal.⁶ Article 7 provided:

'The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.'

In other words, no person would be able to claim immunity for the Tribunal's exercise of jurisdiction. Official conduct offered no protection.

That principle likewise meant no immunity for Karl Dönitz (Hitler's successor as Reich head of state) and Hans Frank (Germany's head of state in occupied Poland). Both were tried and convicted, and Frank was hanged for his crimes, as were nine others.

The principle of no immunity before international criminal courts or tribunals has subsequently been widely applied. In the 1990s, the U.S. led the world in creating international tribunals for crimes committed in the former Yugoslavia and in Rwanda.⁷ Accordingly, former president Slobodan Milosevic of Serbia was indicted, arrested, and tried. He died before the verdict. When the International Criminal Court came into existence, in 1998, it dispensed with all immunities for international crimes over which it would have jurisdiction, not only for former heads of state or government (such as former President Rodrigo Duterte of the Philippines, who has been indicted, arrested, and transferred to The Hague for the murder of 41 narco traffickers, a crime against humanity) but also for serving ones.⁸ The ICC has since issued arrest warrants for President Omar

⁴ Treaty of Peace between the Allied and Associated Powers and Germany (signed 28 June 1919, entered into force 10 January 1920), Article 227

⁵ Letter from R Jackson to H Truman (6 June 1945).

⁶ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal 82 UNTS 279 (signed and entered into force 8 August 1945).

⁷ Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted and entered into force 25 May 1993, updated September 2009); UNSC Res 955 (8 November 1994) UN Doc S/RES/955.

⁸ Rome Statute of the International Criminal Court (adopted 17 June 1988, entered into force 1 July 2002) UNTS Vol 2187 No 38544, Article 27.

al-Bashir of Sudan, President Vladimir Putin of Russia, and Prime Minister Benjamin Netanyahu of Israel. Like the U.S., none of these countries is a member of the ICC, and they reject the court's jurisdiction and argue that a serving head of state is entitled to immunity under general international law. That undoubtedly gives rise to an issue.

By the late 1990s, what remained, was the question of immunity before a national court, where it was alleged that a former head of state or government had, in official conduct, committed an international crime. Can a former national leader ever be arrested by another country and judged by its courts for crimes – such as torture or genocide - committed elsewhere while in office?

The answer to *that* question is 'Yes', or at least it has been. In recent decades, the vector of legal evolution has pulled international jurisprudence away from blanket immunity. To my mind, as an international lawyer who has been involved in human-rights cases, this is the right direction.

The idea that criminal law is applicable to any person - even a king or a president before national courts - is of course not new. In 1649, King Charles I was put on trial for a 'wicked design to erect and uphold in himself an unlimited and tyrannical power to rule according to his will, and to overthrow the rights and liberties of the people.'⁹ Convicted, he paid with his head.

In 1764, the Italian jurist Cesare de Beccaria offered a rationale for the idea that the criminal law should extend to rulers and why criminal sanctions should apply globally: 'The certainty that there is no place on earth where crimes will go unpunished may be an effective means of preventing them.'¹⁰

That said, for centuries the rule was clear: a foreign head of state could never be subject to the jurisdiction of the courts of another country, either while in office or subsequently, in relation to official conduct. The immunity from prosecution was absolute. The U.S. Constitution, which came into force in 1789, makes mention of immunity for some, but not the U.S. president, either while in office or afterward. In 1812, the Supreme Court recognised that a serving foreign head of state had absolute immunity while present on American soil.¹¹ It said nothing in that decision about immunity from criminal prosecution for the president. Indeed the U.S. Supreme Court said nothing on the subject until July 2024, a ruling discussed further below.

It took nearly another century and a half after the Supreme Court's 1812 ruling for the international legal regime to make a significant turn, with the Nuremberg Tribunal.

Following that ruling, most of the world's nations have also signed international agreements on genocide and torture, obliging countries to prosecute or extradite (to another country, wishing to prosecute) any person alleged to have committed such crimes. The agreements either explicitly exclude the right to immunity for any person (the 1948 Genocide Convention) or pass in silence on the matter (the 1984 Torture Convention).

By the late 1990s, one big element of the legal situation had become fairly clear: a former head of state enjoyed no immunity when it came to international crimes and international tribunals. What remained unclear was what would happen if a former head of state accused of an international crime was brought before a national court in a country other than his own. Enter Pinochet.

Augusto Pinochet, the commander-in-chief of Chile's armed forces, seized power in a coup d'état on September 11, 1973. As the head of a military junta and then as president, he led a regime that suspended democratic rule and due process, detained tens of thousands of people, and instituted a

⁹ The Charge against the King, presented before the High Court of Justice at Westminster (20 January 1649).

¹⁰ C di Beccaria, *On Crimes and Punishments* (1764) Chapter XXXV.

¹¹ *The Schooner Exchange v McFaddon* 11 US 116 (1812), 124-126.

widespread regime of kidnapping, torture, and 'disappearance' (including by the use of helicopters, from which victims were dropped into the ocean). At least 3,200 people were killed in Chile during the Pinochet years, and thousands were tortured. The whereabouts of more than 1,300 people remain unknown.

Pinochet was well aware of the potential danger he faced under national criminal laws, including those of the U.S. In September 1976, his regime murdered Orlando Letelier, Chile's former defense minister, by means of a car bomb near Dupont Circle, in the heart of Washington, D.C. Within a year of the assassination, Pinochet had promulgated a sweeping amnesty law to prevent Chile's courts from sitting in judgment on the crimes of his regime. When Pinochet left office, in 1990, he was appointed senator-for-life, a position that gave him the further protection of absolute immunity in Chile.

Eight years on, he believed he was immune from legal challenge. With the exception of the assassination of Letelier, there was no case before the Chilean courts on any human rights violations or crimes committed by the Pinochet regime on the territory of Chile. Pinochet came to London. He had tea with Margaret Thatcher. He dined at the River Café. He bought books about Napoleon from Hatchards, his favorite bookshop. He gave an interview to Jon Lee Anderson of the *New Yorker*, telling him: I want a gesture of reconciliation. Meaning? 'An end to the lawsuits!'¹² Although protected by his Amnesty Law and immunities, at least nine criminal lawsuits were pending against him. Mere talk of such matters agitated Pinochet. 'An end to the lawsuits!' He repeated the words, banged once more on the table. More than eight hundred lawsuits, he complained, some closed, others reopened. 'They always go back to the same thing, the same thing.'

A few days later, Pinochet checked into The London Clinic in Marylebone, for a minor operation on his back, as the *New Yorker* published Anderson's article. A photograph portrayed Pinochet as serene, powerful and untouchable, a civilian in a pale-blue tie to match his eyes.

On the evening of October 16 1998, while recovering from a minor operation on his back, he was arrested by Scotland Yard. The officers acted on a warrant issued by a judge in Madrid, who sought his extradition to Spain, charging him with genocide and torture. The case had started in 1996, after the killing in Chile of Carmelo Soria, a UN official, and other Spanish nationals.

The arrest was unprecedented: the first time ever that a former head of state of one country was detained in another on charges of international crimes. 'I know the fucker who's behind this,' Pinochet said to Jean Pateras, the interpreter who informed him of his rights, referring to Juan Garcés, a lawyer in Madrid, who had indeed initiated the process.

Pinochet's legal team argued that the former president had absolute immunity before the English courts. They maintained that the acts alleged came under the rubric of official conduct, and so Pinochet could not be detained or extradited. The court proceedings, in which I was involved as counsel for Human Rights Watch, an intervener in the case, were convoluted. A panel of three judges ruled that Pinochet had absolute immunity under English law because he was a former head of state and all the acts in question were official conduct.¹³ Sir Thomas Bingham CJ maintained that there was no exception for international crimes. The Nuremberg precedent was irrelevant, he explained, because that was an international court, not a national one. Bingham and his colleagues had been unable to find a single case anywhere in the world in which a national court ruled that a former head of state had no immunity for international crimes.

¹² Jon Lee Anderson, 'The Dictator' *The New Yorker* (12 October 1988).

¹³ *Re Augusto Pinochet Ugarte* [1998] 38 ILM 68 (QB)

The Crown appealed the decision to the House of Lords, the highest court in Britain. Eventually, in March 1999 – an earlier ruling of November 1998 was set aside - seven judges of the House of Lords ruled by a majority of six to one that Pinochet had lost his immunity once the 1984 convention against torture had come into effect in Britain, Chile, and Spain.¹⁴ Because the treaty obliged parties to prosecute or extradite torturers, the necessary implication was that they had a right to do so. Lord Hope of Craighead, one of the judges in the majority, concluded that any pre-existing right to immunity under international law could not ‘survive’ torture on ‘such a scale as to amount to an international crime.’¹⁵

The ruling – premised on a world of rules and laws - had immense significance, because it set a precedent that could in time be followed by national courts in other countries. Henceforth, any former head of state who engaged in torture was on notice that, once out of office, he was at risk of arrest anywhere in the world. Pinochet was allowed to leave Britain, ostensibly on grounds of ill health (although this was always challenged), and upon his return to Chile was stripped of all relevant immunities by the country’s supreme court. He was indicted on multiple charges, and at the time of his death, in 2006, was under house arrest.

The Pinochet precedent, although not without its critics, has taken hold. In 2011, former President George W. Bush cancelled a visit to Switzerland after Amnesty International filed a legal complaint there concerning the Bush administration’s use of waterboarding, widely recognised to be a form of torture. It was the basis, recently, for a French court’s ruling that Syria’s ex-president Bashir al-Asaad could be indicted in France for his presidential role in authorizing torture.¹⁶ Although the French court in its decision threw out existing charges against Assad - and that part of the decision got the headlines - it did so only because those indictments had come down when Assad was still in in office. Now that he was no longer serving, the court decided, new indictments could be drawn up.

This was the context to consider the case that former (as he was at the time) President Trump brought to the U.S. Supreme Court in 2024. The federal grand jury that indicted him on various counts of conspiring to overturn the 2020 presidential election result was not focused on international crimes. But I watched the case closely because the issue of immunity was involved. In particular, I wondered whether the Supreme Court would follow the line taken by Robert Jackson, 80 years earlier, and offer any sort of a carve out for international crimes. Or would it instead give a former U.S. president some sort of immunity even for international crimes, either explicitly or by necessary inference.

The lower courts rejected former President Trump’s arguments for a blanket immunity, or any immunity. As they saw it, he had no criminal immunity as a former president for any acts, whether private or official. Though unstated, the lower court rulings left it clear by extension that a former president who tortures or commits genocide or disappears people in a manner that constitutes an international crime has no immunity. I would be told that a draft pleading that referred to international crimes should be changed.

Trump appealed to the Supreme Court, which in *Trump v. United States* overturned the lower courts.¹⁷ The Supreme Court had never previously addressed a former president’s immunity from a criminal suit. Back in the Nixon era, it had ruled on a former president’s immunity from a civil suit. There was no direct precedent on which to rely. As with the Pinochet case, all nine justices

¹⁴ *R v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte* (No. 3) [2000] 1 A.C. 147

¹⁵ *ibid*, 246.

¹⁶ Cour de Cassation Pourvoi No. 24-84.393.

¹⁷ 603 US 594 (2024).

agreed there was no immunity for private acts. 'Like everyone else, the President is subject to prosecution in his unofficial capacity,' wrote the Chief Justice, John Roberts.

But for all official conduct, by 6 to 3 a majority concluded that the president was, unlike everyone else, protected by a general principle of immunity. This was because—in the view of the majority—the case had 'profound consequences for the separation of powers'; Article II of the Constitution was to be interpreted to protect the president's executive powers from the risk that criminal law would be weaponised and used to constrain those powers. The 'nature of Presidential power' required 'some immunity from criminal prosecution for official acts during his tenure in office,' Roberts wrote, without any real explanation as to why that should be.

What this meant in practice was that where the president exercised 'core constitutional powers' under Article II of the Constitution - powers that may involve military action, foreign affairs, and national security more generally, among other matters - he will have absolute immunity, and which extended to matters of evidence. In the view of the majority, without such immunity a president might be deterred by fear of criminal prosecution from taking the 'bold and unhesitating action' which the 'public interest' required. Even if, in exercise of these powers, he committed genocide or torture, the majority seemed to be saying, as a former president he would be immune from the jurisdiction of U.S. criminal courts. That is a far-reaching conclusion, at odds with the approach taken by the House of Lords in *Pinochet*.

The majority adopted a slightly different stance in relation to official conduct that lies outside 'core constitutional powers,' where responsibility is shared with Congress. Congress has shared powers to criminalise certain conduct by the president, and it has legislated in relation to torture and genocide. But even in such cases, a former president enjoys 'at least a *presumptive* immunity from criminal prosecution' in order to enable him to act 'without undue caution.' Immunity would only be lost if the application of 'a criminal prohibition' to the president's conduct posed no danger of 'intrusion on the authority and functions of the Executive Branch.' The application of this limitation was not explained. From the decision it is not knowable, and its interpretation will have to be litigated, probably on a case by case basis.

It could well be that, if a president were ever to be charged with international crimes, the Court would find that the conduct fell outside core constitutional powers and that the president thus enjoyed only a presumptive immunity. But even so, as the three dissenting justices pointed out, it would be 'hard to imagine' a prosecution for official acts that posed 'no dangers of intrusion' on presidential authority' - making it impossible to reach the threshold where immunity would be lost. Chief Justice Roberts brushed away that concern. The limitation was needed to avoid prosecutions of ex-presidents from becoming 'routine.' He offered no evidence of past practice to support that proposition.

The Supreme Court remanded the particular facts of the case back to the district court, to determine which of former President Trump's acts subject to the grand jury indictment were to be treated as unofficial conduct, and where a claim to a presumptive immunity would not be sustained. Years of litigation and uncertainty would have followed, save that Trump was re-elected to the Presidency.

Generally, the ruling has not been well-received. Jack Goldsmith, who headed the U.S. Department of Justice's office of legal counsel during the Bush administration, has concluded that the immunity ruling was a 'mess,' one that has a 'made-up feel' and goes 'too far,' creating an 'entirely new law' that is replete with 'ambiguities.'¹⁸ He is not alone in this critique. I spoke recently

¹⁸ Goldsmith, Jack Landman, *The Presidency After Trump v. United States* (March 02, 2025). Harvard Public Law Working Paper Forthcoming, at

with Lord Hope (formerly of the UK Supreme Court). Among other things, he found the idea that immunity was needed to allow a U.S. president to take necessary decisions to be 'absolutely ridiculous.' He acknowledged that the Court had not explicitly addressed the issue of immunity for international crimes, but also noted that uncertainty in this regard was damaging in itself. The ruling left in him a lingering doubt and a worry that, if pressed, 'the majority would say that its judgment applied to everything.'

The follow-on consequences of the Supreme Court's decision outside the U.S., and for international law, are not hard to imagine. For one thing, even without mentioning international law, the decision moves American domestic law on immunity in the direction of that taken by authoritarian states. The majority judgment leaves, at best, a serious question mark when it comes to taking action against international crimes. It will make prosecutors hesitate to bring charges — putting in place obstacles to success – and serves to encourage copycat rulings in other countries.

The judgment may also short-circuit future American attempts to hold other former leaders to account for international crimes. What Lord Hope called the 'foggy' nature of the ruling makes it more difficult, if not impossible, for the United States to argue against immunity for former leaders charged with international crimes and facing proceedings before national or international courts. If a former U.S. president might have immunity for everything—as the current president would undoubtedly argue—then why shouldn't Milosevic or Al-Bashir or Assad or Duterte?

A former head of state of another country who turns up in the U.S. and is charged with an international crime would be able to assert that he should have no less immunity than that accorded to a former U.S. president for such a crime. The highest courts in other lands - in countries such as Germany and Argentina that until now have not allowed far-reaching immunities for a former head of state—could be encouraged to follow suit. If the highest American court is receptive to immunity for a former president with respect to international crimes, as this judgment suggests, and as Russian law already mandates, then why can't the courts of other countries?

The uncertainties generated by this ruling undermine the values that have been advanced by the United States since 1945, including by conservative administrations. The approach and tone adopted by the words of the Chief Justice in the 2024 Supreme Court decision invite us to image the very different kind of letter that might have been sent to President Truman if it had been John Roberts rather than Robert Jackson, who was invited to draft the charter of the Nuremberg tribunal back in 1945.

I have focused on this issue of immunity in part because juxtaposition of the House of Lords judgment of March 1999 – which may be said to reflect the same principles articulated by Justice Robert Jackson in his June 1945 letter to President Harry Truman - and the Supreme Court judgment of July 2024 offers a point of comparison. The recent judgment may be seen to reflect a broader change that is taking place, in relation to the place and role of law in matters international law, a desire to limit the constraints placed by international law on executive action in the domestic sphere, and on the actions of States in the international sphere.

Indeed, it is increasingly being said that we are living through a moment of great change, to a

world that is without law.

On 12 September 2025, the *Financial Times* published an editorial with the titled 'A World Without Rules'.¹⁹ The headline came with no question mark. That newspaper's view was premised on two recent incidents that occurred within 24 hours of each other: Israel's launch of a missile strike on a building that hosted Hamas officials in Qatar, described as an important non-Nato ally of the US; and the flight of nineteen Russian drones into Polish airspace, several of which were destroyed by Polish and NATO aircraft. These incidents, the FT editors noted, highlighted an 'accelerating US retreat under Donald Trump from its global policeman role', and this was creating a 'no-rules world', one that marked a 'shift from a rules-based order to one based on transactions and unilateral force'. This, the FT worried, was now producing 'a kind of anarchy and a proliferation of violence'.

The FT is certainly not alone in identifying a fundamental change, or expressing concern as to where the change might take us. Others have adopted what appears to be a more sanguine – or accepting - view. I am thinking here of an article published a year ago, before Mr Trump took office, by Professor John Bew, published in the *New Statesman*.²⁰ Professor Bew is professor of history and foreign policy at Kings College London, and served as a foreign policy adviser at 10 Downing Street, initially appointed by Boris Johnson. He is a scholar I admire – not least the author of a fine biography of Clement Atlee, British Prime Minister from July 1945 until October 1951, a champion of a move to a multilateral world.

In his *New Statesman* article, Professor Bew addressed the 'rules-based system', as he called it, and challenged the attitude of those who advocated its continuing role, including me, as being imbued with a 'sentimental' view. It is certainly true that I am, on occasion capable of sentimentality. I might cry during a film or at concert, say of the Mattheus Passion, if I think of Hersch Lauterpacht finding solace through Bach's while preparing for the arguments at the Nuremberg trial. So I have no problem with a bit of sentimentality, but those who know me well know that when it comes to matters of law and the world I am as hard-headed and realist as anyone. As I put it to the judges of the ICJ in February 2024, in the Advisory Opinion hearings on the Legal Consequences Arising from Policies and Practices of Israel in the Occupied Palestinian Territory, 'No one in this Great Hall of Justice is starry-eyed about international law, but it is what we have', and it was the role of the Court's judges 'to affirm the place and the power of international law', which included the obligation to confirm that Palestine met the criteria of statehood under international law, and this they did.²¹

Professor Bew believes that Britain's historic support for the rules-based system is motivated by 'a strong element of self-interest'. I have no problem with that. Britain has been a champion of a 'rules-based international system', he explains, in part 'because this system was built in our image, designed to benefit our commercial and diplomatic interests, and enforced by our closest ally, the US.'

But, he now counsels, Britain - and no doubt other countries too - should not bet on a 'retrospective sentimentality' of respect for that system. 'Much as we may wish it to be the case, we are not in a rule-of-law era today', he believes. No, in his view 'raw power is being asserted everywhere we look', and those who operate on the global stage are willfully flouting the rules of the post-1945

¹⁹ 'A world without rules' *The Financial Times* (12 September 2025).

²⁰ J Bew, 'The rise of machinepolitik' *The New Statesman* (5 December 2024).

²¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for advisory opinion submitted by the General Assembly of the United Nations)*, Verbatim Record of Public Sitting on 19 February 2024, pp. 94-5.

legal international order. He references Russia's February 2022 invasion of Ukraine - 'as flagrant a violation of the fundamental principles of the UN Charter as is possible to imagine', he calls it - and contrasts Britain's 'negligible' and 'comparatively minor historical transgressions'. I note that he passes in complete silence on Britain's role in the occupation of Iraq back in 2003, which many, including myself, to be manifestly illegal, and the justifications for which - no weapons of mass destruction in our neighbourhood - were seized upon by President Putin to justify his Ukrainian flagrancy.

No, Bew argues, today is different. It is all about 'raw power', which is coupled with technological change and the arrival of an artificial intelligence, which, with 'its own rules-based systems', will ultimately consign us humans - and our rules - to a lower tier.

In this era of 'raw power', he asserts, 'fortune favours the brave'. 'It is an era in which muscles will be flexed', and whilst recognizing that some 'deals may also be made', he calls for 'a statecraft that goes beyond the maintenance of a rules-based international system'. No, he urges, 'we must be able to walk and chew gum with a bit of spaghetti-western swagger', not fester in the 'sentimental education' or 'nobility' of a rules-based of a world-view that believes in rules.

Well, that is certainly one view. But is it the case, as Bew puts it, 'raw power is being asserted everywhere we look'? I wonder. Allow me to make six points.

First, there is nothing new about 'raw power'. The assault on international rules has been more or less continuous since 1945. Long before Ukraine or Qatar or drones over Poland there was Hungary, Czechoslovakia; Vietnam, Laos and Cambodia; Afghanistan; the DRC; and Iraq. We have known a multitude of acts of manifest lawlessness, and moments of acute lawlessness. That was why I published a book in 2005 with the title *Lawless World*.²²

Second, it is undoubtedly the case that there is rampant lawlessness today, at least in respect of certain rules of international law. I think of the rules governing the use of force, and the rules on international humanitarian law. Given what is happening in Ukraine, and in Israel/Palestine, and in Sudan, amongst other places, it is hard to disagree with the point made by Yale's Professor Oona Hathaway in the pages of *The Guardian* that the protection of civilians under international humanitarian law is being 'eroded to the point of threatening to lose all meaning'.²³ The same may be said of the tariffs policy of the current US administration, which manifestly violates the rules of the World Trade Organisation, not least the most-favoured nation principle that is the beating heart of that multilateral system, and requires trading partners not to act in a discriminatory manner. And the same might be said of China's refusal to give effect to the ruling of the Annex VII arbitral tribunal in the dispute with the Philippines on the South China Seas.²⁴

Third, a Lawless World is not a world without law, or a post-rules world. The fact that certain laws are being violated does not, as such, mean that they cease to exist. As far as I am aware, the rules governing the prohibition of the use of force - Articles 2(4) and 51 of the UN Charter - did not disappear with the invasions of Iraq and Ukraine. The rules set forth in the 1949 Geneva Conventions and their 1977 Protocols on the protection of civilians in times of armed conflict did not cease to have their writ in the face of attacks on civilians in Ukraine, in Israel on October 7th, or in Gaza subsequently, or in parts of Sudan. These rules continue to exist and to be in force. They are

²² P Sands, *Lawless World* (Penguin 2005).

²³ P Wintour, 'Willing states must act to save international legal order, warns top academic' *The Guardian* (11 November 2025) <<https://www.theguardian.com/law/2025/nov/11/willing-states-must-act-to-save-international-legal-order-warns-top-academic>>

²⁴ *The Republic of the Philippines v The People's Republic of China* PCA Case No. 2013-19, Award, 12 July 2016.

relied upon to generate responses. They can be – and in some case are - invoked to hold the violators to account, and that is not nothing or meaningless or without consequence.

To take but one example, the United States is currently using military force to destroy boats – and human beings – said to be involved in narco-trafficking in the Caribbean Sea and off the Pacific coast. On its face, and according to the material that is in the public domain, that policy and practise appears to be in manifest violation of the rules governing the use of force, and it has produced consequences. The media has reported that the United Kingdom is ‘no longer sharing intelligence with the US about suspected drug trafficking vessels in the Caribbean because it does not want to be complicit in US military strikes and believes the attacks are illegal’.²⁵ Admiral Alvin Holsey, the commander of US Southern Command, will leave his post next month, just a year into his tenure, reportedly after raising questions about the legality of strikes that have reportedly now killed more than 80 individuals.²⁶

Fourth, whilst some rules are undoubtedly being flaunted, and gravely so, the vast majority of the rules of international law continue to be respected and to operate and apply in a manner that is fully effective. My train journey, from London to Paris and back, was made possible by the operation of a host of international treaties. So were my flights to and from the United States. So are the phone calls I make on my mobile phone, and the purchases I make over the internet, and the foods I eat, and the medications I take, and the air I breathe, and the music I listen to, and the films I watch. So are the treaty-based rules on intellectual property rights, on double taxation, and I could go on. Every aspect of our daily lives are informed by the writ of international laws. They operate behind the scenes – unseen, silently, seamlessly, effectively. Is this raw power? Is this a post-rules world? Is this a world without law?

Fifth, in a post-rules world you would expect international law-making to have ground to a halt. Has that happened? It has not. Examples abound, and not just in the technical field. In recent months states have agreed, under the auspices of the UN, to negotiate a new UN Convention on the Prevention and Punishment of Crimes Against Humanity, to fill the gap that exists alongside the 1948 Convention on Genocide; and they have actually adopted, under the auspices of the Council of Europe, a new treaty to create the first international tribunal on the crime of aggression since Nuremberg, in relation to Russia’s illegal occupation of Ukraine.²⁷ It was announced in May by the foreign ministers of forty countries, who met in Lviv, to honour the work of eight decades ago of two former residents of that city, Hersch Lauterpacht and Rafael Lemkin, who gave the world the legal concepts of ‘crimes against humanity’ and ‘genocide’. Since 2022, nineteen new bilateral investment treaties have come into force.²⁸ Two years ago, in June 2023, 145 states signed the Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.²⁹ The third implementing agreement to UNCLOS has already been ratified by 75 states, and will enter into force on 17 January 2026, less than three years after it was signed. UNCLOS itself was signed in 1982, and took 22 years to come into force.

²⁵ Natasha Bertrand, ‘UK suspends some intelligence sharing with US over boat strike concerns in major break’ (CNN, 12 November 2025) <<https://edition.cnn.com/2025/11/11/politics/uk-suspends-caribbean-intelligence-sharing-us>>.

²⁶ *ibid.*

²⁷ Agreement Between the Council of Europe and Ukraine on the Establishment of the Special Tribunal for the Crime of Aggression Against Ukraine (signed 25 June 2025).

²⁸ UNCTAD, ‘Investment Policy Hub’ <<https://investmentpolicy.unctad.org/international-investment-agreements>>.

²⁹ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (adopted 19 June 2023, opened for signature 20 September 2023, entry into force 17 January 2026).

A post-rules world? I don't think so.

Which brings me to my sixth point. In a post-rules world you might expect international courts and tribunals to be in a state of collapse or disappearance. It is certainly the case that some have disappeared. The ICTY and the ICTR have completed their work, amongst others, and the investor—state arbitration provisions that existed in the NAFTA have not been taken up in the agreement that succeeded it. It's also the case that investor-state arbitration aspect of the Energy Charter Treaty has caused the disintegration of that agreement, and that some countries are leaving some courts, but the numbers are few and far between. The Conservative Party would like the UK to join Russia and leave the European Court of Human Rights. The US (along with Russia) has sanctioned individuals associated with the ICC. Have these courts disappeared. They have not. Will they? We shall see.

Many of the other courts and tribunals are busier than ever. When I learnt my international law in the 1980s, the PCA had precisely no cases. Today it has a full docket of inter-state and investor-state cases. Its neighbour in The Hague, at the Peace Palace, is no less busy: the ICJ currently has 23 contentious cases on its docket, which is more than at any time I can remember, or in its history. The Court's advisory opinion function has attracted unprecedented engagement in recent years, its output significant. 37 states participated in the advisory opinion proceedings on Chagos, which led to the February 2019 decision.³⁰ In November 2022 Mauritius and the UK opened negotiations on a treaty to give effect to the opinion, and three years later, in May 2025 the treaty was signed, recognising Mauritian sovereignty over Chagos, allowing the military base at Diego Garcia to continue, providing for conservation of a remarkable marine environment, and allowing the Chagossians to return from their forced deportation. President Trump signed off on the agreement.

In 2024, 52 states participated in the advisory opinion proceedings on Palestine and self-determination.³¹ And this year, 98 states participated in the advisory opinion on climate change, along with 13 international organisations.³² The request to the Court was by consensus at the UN General Assembly, a historic first. That is the highest level of participation in any case in the history of the court, or its predecessor. The Court's advisory opinion has been widely welcomed by almost all states, and indeed has gone very far in making clear that you do not have to be a party to the relevant treaties to be under obligation to protect the global climate system.

A post-rules world? I don't think so.

So what is happening? I do not ignore the assault on some parts of international law that is underway from some quarters. The greater truth, I suspect, is reflected in the view articulated by Giuliano da Empoli, in his recent and compelling book *The Hour of the Predator*, which assesses the dual impact of the new populist class of political predators and digital conquistadors.³³ What these two communities have in common, writes da Empoli, 'is both an enemy and a strategy: kill all the lawyers.' In drawing on Shakespeare, or rather Dick the Butcher in *Henry VI*, he concludes that working together the political predators and digital conquistadors 'have decided to wipe out the old elites and their rules.' And the principle target are the lawyers, because they are 'the henchmen of power, devoid of morals and ready to support anything and everything. They do not solve problems, they create them, they always have a loophole at hand to further complicate matters. They are

³⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep. p. 95.

³¹ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (Advisory Opinion) 19 July 2024.

³² *Obligations of States in Respect of Climate Change* (Advisory Opinion), 23 July 2025.

³³ G da Empoli, *The Hour of the Predator: Encounters with the Autocrats and Tech Billionaires Taking Over the World* (Pushkin Press 2025).

interested in form, not substance; they speak an incomprehensible language for the sole purpose of deceiving the poor and uninstructed; in the end, they care only about their own business.'

And it is not just the lawyers who are the target, it is also their rules and Institutions, their courts and their judges, the ideas aired in the 1941 Atlantic Charter and the 1945 settlement that followed, with its commitment to rules on free trade, on the rights of individual and groups, and on the use of force.

Da Empoli offers a clear warning: if the political predators and digital conquistadors 'succeed in achieving this goal, it will not only be the parties of lawyers and technocrats that will be swept away, but also liberal democracy as we have known it until today.'

That is the challenge he identifies. There is an overlap here with the ideas of Professor Bew, which you will surely have noted. He embraces this change, and he invites us to be less sentimental and to accept it, to chew the gum and eat the spaghetti of the world as he sees it. That is where we part ways. I do not take it as a given, that henceforth these are the sunny uplands to which we must be drawn.

We have been here before. Is there really anything so new?

As I schoolboy I read and now remember Orwell on the subject of weapons, although he might as well have been talking about technologies, or access to the printed word.³⁴ 'Though I have no doubt exceptions can be brought forward', he wrote, 'I think the following rule would be found generally true: that ages in which the dominant weapon is expensive or difficult to make will tend to be ages of despotism, whereas when the dominant weapon is cheap and simple, the common people have a chance. ... A complex weapon makes the strong stronger, while a simple weapon — so long as there is no answer to it — gives claws to the weak.'

As an adult I have read and now remember the novel by Eric Vuillard, *The Order of the Day*, which won the Prix Goncourt in 2017.³⁵ The book opens with an account of the meeting on 20 February 1933 between the recently appointed President of the Reichstag and the Chancellor of the Reich and Germany's twenty-four top industrialists. 'They are called BASF, Bayer, Agfa, Opel, IG Farben, Siemens, Allianz, Telefunken', writes Vuillard. 'By these names we shall know them. In fact, we know them very well. They are here, beside us, among us. They are our cars, our washing machines, our household appliances.... They are here, there and everywhere, in all sorts of guises. Our daily life is theirs. And the twenty-four gentlemen at the palace of the President of the Reichstag that 20 February are none other than ... the clergy of major industry And there they stand, affectless like twenty four calculating machines at the gates of Hell.'

Goring goes around the table, with a word for each and seizing each hand. He mumbles a few words. The twenty-four sphinxes listen closely. Time to get rid of that wishy-washy regime once and for all, Göring tells them. The twenty-four gentlemen nod solemnly Hjalmar Schacht rose to his feet, smiled at the assembly, and called out, 'And now gentlemen, time to pay!'

To anyone who watched the inauguration of President Trump, and the tech moguls assembled, that will seem rather familiar. To those who have paid attention to the large law firms, or to certain universities, cutting deals with the new administration, it will look rather familiar.

Twelve years later Göring and Schacht sat alongside each other in the dock at Nuremberg.

Plus ça change, plus c'est la même chose.

³⁴ G Orwell, 'You and the Atomic Bomb' *London Tribune* (19 October 1945).

³⁵ E Vuillard, *The Order of the Day* (Pan Macmillan 2017).

Not long after, in 1936, Hans Frank, who had served as Hitler's lawyer for five years, from 1928 to 1933, and now presided over the annual congress of the Deutsches Akademie für Recht, dismissed the idea of an international penal tribunal, as proposed during the Congress by a French professor of criminal law, Professor Henry Donnedieu de Vabres. It will never happen, Frank told the gathered academics. Ten years later, on November 20th 1945, Hans Frank entered Courtroom 600 as defendant number 7 in the famous Nuremberg trial. One of the judges who entered the room a few minutes later, and would later convict him, and sentence him to death, was Judge Henry Donnedieu de Vabres.

So it seems tempting today to cast aside the 1945 settlement. That, in effect, is what Professor Bew proposes, a position that President Trump's Administration at times appears to embrace. A bit of swagger can allow you to boycott COP 30 on climate change, or – for a year or maybe a bit longer - the adoption by the IMO and MARPOL of new international rules for the emissions of carbon dioxide from ships, or to embark on a policy of killing narco-traffickers in the Caribbean Sea. But these are not policies that will be sustainable over the longer term. They produce reactions from others. The UK was – last week - reported to have ceased certain intelligence support to the US in the Caribbean, for fear of being complicit in criminality. 'We have observed with concern the military operations in the Caribbean region, because they violate international law', declared the French Foreign Minister, in respect of actions reported to have caused more than 80 people to be murdered in more than 15 attacks (it is worth noting that Mr Duterte, the former President of the Philippines, was indicted by the ICC and recently transferred to the ICC for the murder of 41 individuals, which is said to be a crime against humanity).

No, we are not in a world without law, or in a post-rules world. We are, however, in a world in which some would like to strip back or do away with certain international rules, and that is the struggle which is underway. No doubt it is a difficult moment, one in which acute expressions of lawlessness are on the rise, and in which some would prefer raw power to prevail – on tariffs and trade, on the acquisition of territory, on the targeting of civilians in times of conflict. No doubt it may yet get worse before it gets better.

But history shows a pattern over the centuries – the elaboration of international rules and institutions is followed by their partial destruction, and that is then followed by a reconstruction, and the reconstruction generally builds on what came before. And so it will be once more, as some seek to replace multilateral arrangements with a bilateral show of political or economic power or even military force.

Which brings us back to the issue of immunity, with which I began this story. The two judgments provide a point of reference, the worlds of 1812, 1919, 1945, 1998, 2024. There was a rule of international law. It evolved over time and place. No doubt it will continue to do so, as will other rules of international law, as values and priorities change, as power shifts. Imagine the letter that John Roberts might have sent: 'We have decided to maintain the idea of immunity for former leaders, to ensure that they are not enfeebled or made overly cautious by the fear of criminal prosecution after they leave office. We have concluded that immunity is not an obsolete doctrine or a relic of the doctrine of the divine right of kings. It is a vital, necessary, and living thing. It is fully consistent with the position we take toward our own former presidents. We accept the paradox that legal responsibility should be the least where power is the greatest, including in relation to crimes under international law. Where official conduct is concerned, we accept that a president's is under God, but not that he is under the law.'

These are not words to quicken our hearts.

As a litigator, not so long ago, in December 2019, I sat alongside Aung San Suu Kyi, in proceedings

brought by The Gambia against Myanmar, alleging violation of the 1948 Convention on the Prevention and Punishment of Genocide. She appeared as Agent for Myanmar. I did not agree with much that she said on that day, but I have often returned to one thing she did say in addressing the judges: 'International law may well be our only global value system'.³⁶ I think she was right. International law isn't about to disappear. No doubt it is far from perfect, or effective, and it will be informed by expressions of raw power, but it is not about to be replaced by 'raw power'. The world is simply too complex and too interdependent for that to happen. No doubt some will 'walk and chew gum with a bit of spaghetti-western swagger'. There is nothing new in that. Hans Frank swaggered once, so did General Pinochet. Swaggering and gum gave us Iraq and the palava over the Northern Ireland Brexit Protocol. And then, over time, such people encounter other realities - political, diplomatic, economic, military, ecological, human, legal - and they learn that accommodations have to be made, which will lead to agreements, and those agreements will be governed by international rules, in one form or another.

I can put it no better than Lord Bingham, writing back in 2010:

'If the daunting challenges now facing the world are to be overcome, it must be in important part through the medium of rules, internationally agreed, internationally implemented and, if necessary, internationally enforced. That is what the rule of law requires in the international order.'³⁷

That is, after all, how it has always been, a local lesson I learned many years ago. In the mid 1980s, as a very junior legal academic working with Eli Lauterpacht, I came to know the professor of English legal history at Cambridge University, Sir John Baker. He would occasionally invite me for lunch, and inquire what aspect of international law I was working on. I would offer a response, he would reflect, and then he might say, 'Ah yes, we had a similar problem in English law, at some point in the fifteenth century, and it took 275 years to sort out.'

So it is with the rules of law that straddle our globe. One step forward, a step sideways, one step back, another step forward. In the meantime, there may be plenty of mayhem and bloodshed. It's a long game, and we might as well prepare to hunker down.

³⁶ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* Verbatim Record of Public Sitting on 11 December 2019, p. 19.

³⁷ T Bingham, *The Rule of Law* (Allen Lane 2010), 129.