

ADDRESS ON ACCEPTING
NYSBA INTERNATIONAL SECTION 2025 AWARD FOR
DISTINCTION IN INTERNATIONAL LAW AND AFFAIRS

Dear Colleagues and Friends,

It is a great privilege and pleasure for me to accept the 2025 Annual Award of the New York State Bar Association's International Section for Distinction in International Law and Affairs. I am humbled to be counted among the distinguished women and men who have been honored by the International Section in this way over the past thirty years or more. I am especially honored to be the second former Chair of the Section to receive this award: in saying so it is my distinct honor to recall the memory of Lauren Racklin, who was the founding chair of the Section, serving in that capacity from the Section's founding in the summer of 1987 until 1989, and who remained an inspiration to the leadership and the membership of the Section for many years after his service as Chair. It is to him that the Section owes two of its most distinguishing institutions: The first is our annual worldwide conference that is held in important international centers the world over and is now known as the Annual Global Meeting. The second is the Section's worldwide network of chapters consisting of lawyers of virtually every nationality and jurisdiction and every tradition of law and jurisprudence, for whom connection to New York law and the New York legal profession and the wider United States is professionally and personally significant. I will have a little more to say that is relevant to our worldwide network of chapters in a few moments.

I would also like to take this opportunity to honor four previous award recipients with whom I have had the pleasure to work and learn: our 1999 recipient, Peter Pfund, former Assistant Legal Adviser to the U.S. Secretary of State for Private International Law; our 2001 recipient, Alice Henkin, former Program director of the Justice and Society Program of the Aspen Institute and Chair of the Committee on International Human Rights of the New York City Bar Association; our 2002 recipient, the late Arthur Helton, Director of the Asylum Project of the Lawyers Committee for Human Rights and then Director of the Forced Migration Project of the Open Society Institute; and our recipient in 2015, the late Honorable Judith Kaye, Chief Judge of the New York Court of Appeals and later President of the New York International Arbitration Center. With each of these distinguished leaders, I was fortunate to have the opportunity to collaborate in a distinctive area of international law and practice, including comparative private law and private international law treaties, the litigation of international human rights claims, the law of asylum and refugee protection, and the role of New York law as a leading source of law for cross-border transactions and the resolution of private international disputes. I like to think that the endeavors for which you honor me today owe much to the example and experience of these extraordinary experts and leaders.

In these early days of 2025, our country and our whole world - and our Association also - stand at an important crossroads. This Section, as I just mentioned, was founded in 1987, just two years before the epochal events of 1989, which saw the fall of the Berlin Wall, the transformation of the Union of Soviet Socialist Republics into the Russian Federation, and the liberation from Soviet domination of the countries of Eastern Europe and the Baltic, not least of which, Ukraine. On the other side of the globe, the world was alarmed by the violent suppression of protest in Tiananmen Square in that same year but, in the early 1990s, China appeared to have embarked on

a firm course to integrating a market economy into its social system and to emphasizing technical competence and economic growth over ideological loyalty and national expansion. The Kuwait War in 1990 was short, succeeded in restoring the territorial integrity and independence of Kuwait, and represented the type of concerted cooperation among the permanent members of the UN Security Council that President Franklin Roosevelt must have dreamed about when he and his colleagues first conceived of the idea of the United Nations - the dream that all the major powers could act in concert to preserve peace and uphold the rule of law internationally.

It was in the spirit of that time that we convened the first meeting of the India chapter of the International Section in New Delhi in June 2009. I had the privilege to open that meeting: In my remarks, I described “the exponential increase in travel, communication, sharing of information, cross-border commercial transactions and corporate affiliations among private persons, families and business entities,” which I called “international civil society,” and of which I said, our meeting in India was “a splendid reflection and example.” I went on to say that “the International Section of the New York State Bar Association stands firmly rooted and has its reason for existence in the vitality and broad reach of international civil society.” Our Section, I said, was committed to “the development and strengthening of legal principles, structures and policies that support each ... type of international civil relationship, transaction and project - from the ... world of complex international financings and corporate acquisitions to the lowly efforts of a migrant worker to access a bank account in a temporary place of work, and even to the more intimate sphere where lovers from different countries attempt to formalize their relationships in marriage or similar forms of personal union.” This did not mean, I noted, that NYSBA International overlooked the critical need to strengthen the rule of law in the relations between States and in promoting human rights internationally because, as I said, “these issues and needs still undergird the whole international system, including that of international civil society.” In those remarks, I went on to explain how our International Section contributes to the formation of international civil society through its worldwide network of chapters, the comprehensive missions of its standing committees, its global and regional meetings, and the other initiatives sponsored by the Section throughout the world.

We now face, I regret to say, a very different atmosphere and environment in which to continue the work of our Section in this second quarter of the 21st century. Today, instead, we see Russia waging a brutal war of attrition and aerial terrorism against Ukraine and what is now called “hybrid warfare” in Europe and elsewhere. Today, we see persecution of lawyers in China who defend the civil rights of Chinese citizens, the suppression of free speech in Hong Kong, and an apparently state-tolerated effort to hack and pilfer the technology of foreign industries and businesses. We see the religious, spiritual and ethnic divisions within the Middle East now rent apart by seemingly apocalyptic levels of violence, destruction and reprisal. Even in our own country, we see, in important quarters, official resistance to diversity and inclusion; indiscriminate backlash against many immigrants who sustain key components of our economy; amnesia about the long-term importance of free trade in building lasting economic conditions for peace, and a “dumbing down” of discourse and debate about matters of international as well as national importance.

This all raises the question of how our Section and our Association can continue to pursue our initiatives and projects to build up international civil society and promote the rule of law at all levels of international life. The challenge is great because we are not a political party able to take part in partisan advocacy, and we are certainly not a government with the power or authority to

control the geo-political factors that now put at risk international civil society and the international rule of law.

First, we must seek and fight to maintain what I will call “free discourse” about matters of national and international life - especially but not limited to those to which law is relevant. I say “free discourse” as distinguished from “free speech” because we are an international organization consisting of members from almost every country and culture of the world, and therefore we must always maintain the level of respect and civility that is the hallmark of diplomatic communication and correspondence - whether we speak in condemnation and reproof or in praise and advocacy. We express that respect and sensitivity most deeply by making sure that the facts of which we speak are correct and are vigilant not to ourselves become agents of disinformation and distrust. Speaking with respect and sensitivity to others is I realize more and more criticized or lampooned in some parts of our country as a form of “political correctness” or “wokeness.” But let us not forget that speaking with sensitivity and respect for others is a fundamental moral habit supported by the Scriptures and wisdom of all the great religious and ethical traditions of the world, which helps nurture the ability to listen and hear as well as to speak and advocate and makes possible true meetings of the minds and mutual understanding.¹ Thus motivated, we must not be afraid to avail ourselves of communication in social media but we must also strive for the recognition internationally of a right to articulate opinions and express views on social media without fear of reprisal or persecution by any country, whether by the country from which the speaker originates or by any country to which the speaker’s message is relevant – no recrimination, no shaming, no extraterritorial warrants or vendettas, and no retaliatory cross-border assassinations and attacks.

Second, we must do all we can to preserve and promote the ability of individuals to move and visit other countries and locales for the purpose of building understanding and cooperation at all levels of civil society. For a time, fifteen years ago, it seemed that one could travel to almost any country in the world without fear of being restrained, persecuted, or evicted because of one's nationality, political affiliation and views, or personal background. We now see the welcome mat, effectively if not always formally, being pulled up in many important jurisdictions and we see persecution for unpopular or inconvenient opinion also serving as an effective barrier to free movement and travel.

We know that it would be premature to imagine at this point of time a totally free international market for knowledge, skills and “know-how” or the right of any person to unilaterally choose their own country of residence and work. Nonetheless, I submit that a healthy market for skills, expertise and professional service around the world can, with skillful and informed regulation, be balanced with protections for local labor forces through wage and salary thresholds and workable tests of the labor market. In the long run, promoting a diverse and talented workforce comprised of the best of domestic labor and foreign labor in every economy is likely to promote worldwide prosperity and build a more resilient international civil society.

Third, a hallmark of international civil society is the ability of persons and countries to exchange goods, products, and services, as well as ideas. In the current debate, one often hears that the so-called “liberal” or “capitalist” international order principally serves only the profitability and marketing strategies of major international corporations at the cost of local industry and

¹ See for example, <https://scripturesavvy.com/respecting-others/>.

business. May I remind you of some history: In the nineteenth century, the United States maintained high tariffs against foreign imports to protect nascent American industries from the dominance of English manufacturing. But the pattern of hiding behind a high tariff wall began to break as the United States economy matured and the United States became a major exporting country. Nonetheless, in the wake of World War I, the United States retreated to the old policy of high tariffs and, thereby, in the opinion of many experts, severely strained the economies of Europe exactly when they were supposed to be recovering from the ravages of war, destabilized the German economy in particular, and helped to pave the way for the rise of fascism in Europe. That is why the victorious Allies in the wake of World War II favored free trade and open markets in their plans for rebuilding the international economic order after the end of that War.

Of course, like any other worthy long-term objective, the road to enduring structural change is often littered with potential difficulties and setbacks; certainly it can be argued that the shorter-term effects of free trade and open markets connected with NAFTA and with China's membership in the World Trade Organization failed to adequately factor the likely effects on the labor force in rural and industrial centers of the United States and other countries. Jonathan Weissman, recently in the New York Times, has argued that the failure to expand the social safety net at the same time as American markets became more open to products manufactured in the world's emerging economies left millions of workers in the American heartland at risk.² But I submit that the larger lessons of a century ago are still valid and that fostering a world of efficient exchange and fluent commerce between countries as part of carefully considered national industrial policies is still an essential for building a long-lasting international civil society and enduring peace.

I would now like to suggest some modest steps the Section, building on past achievements and initiatives, could take to help to support the growth and development of international civil society, even in the fractured and divided world in which we now live.

1. The Section's network of chapters around the world constitutes a very practical and visible way of forging relationships and endeavors that are a hallmark of international civil society. We must continue to strengthen and sustain our chapters in the many countries of the world where dialogue, exchange, and cooperation among members of the bar and of civil society in general is still possible. In this regard I recall that our Association, over the past fifteen years or more, has entered into an impressive series of Memoranda of Understanding with the bar associations of countries in which we have chapters or in which we have had important meetings. It may be worthwhile for a subgroup of the Section to review these Memoranda and to ensure that at least one important meeting, project, or undertaking derives from each such Memorandum each year.³ In this way, we can help to ensure that these agreements have practical significance, and to increase in concrete ways interaction and communication with our partners throughout the world in the endeavor to promote international civil society and the international rule of law.

²New York Times, "News Analysis," January 6, 2025, p. 1, col. 5-6.

³ In this regard, may I point to the Memorandum that the Association, at the urging of the Section, signed with the Singapore Management School in 2009 in connection with our Annual Global Meeting in Singapore that year? An implementation committee was established, and that committee, active for almost a decade from its inception, was able to organize valuable internship exchanges between firms in Singapore and New York as well as engage the faculty of the School in several of our conferences in Asia and Latin America.

2. In 2009, the Executive Committee of the International Section formally recommended to the Executive Committee of the entire New York State Bar Association that the Association as a whole (not just the Section) seek observer status at the United Nations. We very quickly obtained observer status at the United Nations Commission on International Trade Law, which has led to many fruitful interactions between UNCITRAL and NYSBA.⁴ In 2012, the Section participated in the High-Level Meeting of the General Assembly NYSBA on the Rule of Law Nationally and Internationally. Finally, the Association, following the recommendation of our Section and after a more lengthy and challenging process, also achieved observer status before the Economic and Social Council of the United Nations. However, to the best of my knowledge, NYSBA has not yet adopted a plan of action to implement this status.

I appreciate that, at this particular time in our history and politics, the United Nations may seem a less significant forum to which we should focus attention, and we can all sympathize with the strong critique by President Zelensky of the U.N. Security Council to halt Russia's aggression in Ukraine. Nonetheless, the United Nations is still a place where representatives of virtually all the countries in the world conduct continuous conversation and dialogue on a wide array of topics that are important to international civil society. and the specialized agencies of the United Nations continue to cover key needs and concerns of the world that are of strong interest to other Sections of our Association as well as our Section. Accordingly, I hope that the Association would consider designating a working group to study the opportunities for activating the Association's status as an observer before the United Nations Economic and Social Council and make good use of this privilege.

3. In addition to our own vanguard International Section, many other State Bar Associations have active sections or committees dedicated to international law and practice. In 2009, we were able to identify about thirty State Bar Associations that had international sections or committees of varying size and engagement, with whom we made an effort to create a coordinating mechanism to facilitate communication and cooperation across the States of the United States. However, we encountered some practical difficulties due to the different time cycles for selecting leadership among the State Bar International Sections and due to challenges in setting up a common vehicle of electronic communication. Fifteen years later I would suggest that it is worthwhile to investigate again whether these obstacles can be overcome so that we can continue to encourage communication and coordination among the international sections and committees of the State Bar Associations and, together, advocate at the State level as well as the national level for policies that sustain international civil society and peace through the international rule of law.

In conclusion, I want to acknowledge that there may seem to be some irony in the ambition of a State Bar Association such as our Association to aspire to play a significant role in the development of international law and the international order. Indeed, in the first couple of decades of this Section's history, the focus of this Section seemed to be puzzling and even a bit exotic to

⁴ Examples are the prominent role our Section and its Brazil Chapter played in promoting the ratification by Brazil of the Vienna Convention on the Sale of Goods and the very successful interchanges that took place during the Section's Annual Global Conference in Vienna in 2014.

other members of the Association and even to the Association's leadership. Over the last twenty years or so, we have educated the larger Association that thousands of members of the New York bar live and practice law not only outside New York State, but also outside the United States, in practically every significant jurisdiction of the world. We have also helped to educate the larger association that the law of New York is not only law for New York but also one of the most prominent sources of law for the private structuring of transnational finance, commerce, investment, and wealth preservation throughout the world. In the circumstances that we now find ourselves, it would be easy to let the events of recent years paralyze us with a sense of defeat or discouragement and let us slip back into a mindset where we are content to let the impact of New York law and the New York bar stop at the State's geographical boundaries.

Lest we become too discouraged or pessimistic, I want to remind you again, as I mentioned earlier, that in 2012 our International Section participated in the first high level Meeting of the United Nations General Assembly on the Rule of law at National and International levels. In our Section's written intervention, we identified ourselves as "one of the civil society organizations active in the field of the rule of law" and we stated our profound belief that our Section and our Association "can contribute to develop further the linkages between the three main pillars of peace and security, human rights, and development." Dear colleagues and friends, let us rise above the current obstacles and roadblocks before us to carry out in as many ways as we can imagine and realize this worthy and solemn vision.

Michael W. Galligan,
January 15, 2025