Good afternoon. This has been an extraordinary three days of conversation. My thanks and gratitude to everyone involved in the organization. Rarely does a conference run this smoothly – and provide this level of sustained intellectual engagement. I’d like to offer a special word of thanks to our interpreters, who have made it possible for the conference to be fully bilingual – a rare treat, even in the international law field.

We have been asked to reflect on these three days, and to bring them together in conclusion, in the key of “legal humanism.” We began the conference, as you will remember, with a meditation on “European international law” – Is there such a thing? What is it? We might well wonder, looking back, whether our vision has narrowed or expanded after three days when we come to conclude in the vocabulary of “humanism.” Is humanism larger or smaller than Europe?

Let me begin with some propositions – slogans, if you will, about legal humanism. First, humanism is a political project. It is the political project of an elite in a specific time and place. And this is my response to our Chair’s third question, “what is the relationship between humanism and power?” Not humanism against power, talking to power, advising power, restraining power, but humanism as power. Not humanism as the modest handmaiden of force, but humanism as the motive and method of force.

Humanism is the political project of a profession – our profession. And as professional humanists, we have more in common with our professional colleagues in the military, in the economy, and in the world of statecraft, than we are accustomed to imagine. We are all humanists now.

Second, humanism is a professional experience. The experience of ruling – or perhaps, more modestly sometimes, of not ruling, of advising rulership – in the name of an appealing grab bag of ethical commitments. A commitment to engagement with the world, by our governments, and, perhaps more importantly, by citizens – at least those citizens who find themselves mobilized in civic organizations with a transnational will to visibility. A commitment to multilateralism and to support for intergovernmental institutions. A broad renunciation of power politics, militarism and the aspiration to empire. A commitment to moral idealism and to projects of moral uplift, religious conversation, economic development, democracy, and a commitment to attitudes of tolerance, moderation of patriotism, and respect for other cultures and nations – an aspiration that we might rise above whatever cultural differences divide our common
humanity. And the idea that the “international plane” is precisely that high space, above
differences, where humanity might find common ground.

Well, of course, like any other attractive professional self-image, the experience
of ruling the world in the name of these laudable commitments must be sustained. And
yet tensions among them – engage the world, but in the name of a cosmopolitan
tolerance, reform the world, while renouncing the tools of power politics, rule the world,
but live in an international community of modest humanist consensus --- have gotten
built into the legal and institutional tools we have constructed to give them expression.
These tensions have left us ambivalent about rulership. And ambivalent rulership is often
rulership denied. This is my third slogan: we sustain the experience of humanism by
denying ourselves the experience of our own rulership.

Fourth, and finally, humanism is a language, a language of governance, spoken by
experts, the experts who rule. It is spoken in different dialects – and I will describe three
such dialects this afternoon.

But before I do, let me say that I come to the rulership of humanist expertise with
skepticism. No, I wrote skepticism, but that is too weak. I come with outrage.

Outrage not only at the violence, injustice and emiseration our humanist rulers
have not yet managed to address, but outrage at their role – our role – in reproducing,
refurbishing, legitimating and apologizing for all that violence and all that injustice.

I want to be clear at the start that I do not think our legal order is up to the task of
governing us wisely – or humanely. Our interpretive tools do not even give us a good
picture of the world around us – or a good map of our own powers. We do not know how
we are governed, any more than we know how we govern. It is unlikely we will be very
good at it.

Moreover, I am not persuaded by the humanist sound of the language our rulers
speak, and I worry that there are only the most marginal opportunities for engaged
political contestation over what they could possibly mean – and over the terms by which
we are governed.

I worry that we have a legal order that obsesses about a few hundred detainees
held here and there, about the state’s authority to torture and humiliate this or that
individual person, all the while wrapping the violent deaths of thousands of others in the
wartime “privilege” to kill and the comforting reassurance that all the “collateral
damage” was proportional, necessary, and reasonable.

I worry that we have a public legal order that obscures the whole world of private
order --- legitimating the governance decision that millions should be denied access to
life saving medicines to protect legal rights.
Yesterday, I attended a panel on poverty. Excellent papers. Engaged discussion. But it was hard not to be struck by the absence of any shared vocabulary in our profession for talking about poverty. And that is not surprising. If you eliminate economics, politics, and anything “private” from the debate, you can expect poverty to elude our grasp.

A great deal must elude our grasp. A great deal must not be seen to sustain our professional experience of humanism.

We know that humanism can blind us to pluralism. It will come as no surprise that an American international lawyer like myself, arriving at a conference such as this one, will be struck immediately by the thought, for better or worse, “I’m not in Kansas anymore.” To be an international lawyer in Europe and America is a different job. And all the more so in Cairo or Beijing or Santiago.

In the nineteenth century, for American international lawyers, the key issue to understand was national independence and sovereignty. How had the Declaration of Independence worked to create a nation? It would not be surprising to find that for Canadians, the preoccupation was altogether different. Their Vattel was not our Vattel.

To be an academic international lawyer in France today is to have a relationship -- at least in fantasy -- to the Quai d’Orsay. To be an academic international lawyer in the United States is now – as it has been for a generation – to be unfit for government service.

International lawyers in New Delhi and Washington and Beijing and Paris have different jobs, different professional sensibilities, different relationships to statecraft, and different interpretations of a common professional vocabulary. Take the significance of Courts. It might be reasonable to develop a whole academic theory about national courts as the vehicle for transnational legal ordering if you lived in the United States, where courts do all sorts of things and the executive focuses rarely on the restraints of public international law. But surely we would expect the theory would reach some kind of a limit where courts play other roles. Or take international courts. In London, perhaps even in Paris, it is reasonable to encourage law students to think of a career in the bar which has grown up around the now innumerable transnational judicial bodies – but is this reasonable in Chicago? Or Tokyo? Or Lima? Adjudication -- and the same is true of NGO advocacy, statesmanship, military and security work – is a game played by some powers and not others. This is not a universal humanism – it is patchy, splotchy, plural.

Attention to legal pluralism can give us a window onto the blind spots and biases of the experts who rule us – they are all humanists, but they are all different. This is easy to see when the profession is another one – take economists. When all economists think the economy is a Keynesian input-output cycle, they focus on macroeconomic management and worry about getting distribution right. When some economists start thinking of an economy as a market of private exchange, they focus instead on “getting prices right” and eliminating what to them seem inefficient “distortions” of a natural
economic order. When we look at them together – when we experience the pluralism of economic expertise, we also experience the rulership of expertise.

As international lawyers, how can we be fit to govern a plural world if we cannot be comfortable with our own differences? Would it not be wiser for us to treat them as opportunities to understand, even model, heterogeneity? And to confront one another’s biases.

Such a conversation between American and European international lawyers would not be an easy one, I am sure. Could we discuss the ethically self-confident passivity of the European international law profession? Or how the European Union has come to set the outer limit for the profession’s geo-strategic imagination?

Our profession is divided across the Atlantic not by differing interpretations of Article 51, nor even by alternate mixtures of formalism and policy science, realism and idealism, positivism and naturalism. These are the small differences of narcissism. Nor are we divided by American hegemony and European weakness. Europe private – and public – power is engaged across the globe – it is simply unwilling to experience things that way. And American is hardly hegemonic, however much it likes to call itself the one indispensable nation and equate military hardware with the capacity to get things done. But we can’t, in fact get things done. About the most we can do it start wars – dramatic, but hardly the stuff of hegemonic rule.

We are all eclectics now --- just as we are all humanists, and all global rulers. But none of us know the way forward. And we are divided far more profoundly by European blindness to its isolated complacency. Its hesitance to engage, intervene and act in the world, and the comfortable racisms and exclusions of its European humanism.

Just as we are divided by American blindness to the wages of engagement wrought with the conventional tools of diplomatic and military power, and the peculiar hubris that seems to accompany American humanism.

If only America could change regimes the European way – and if only Europe could act, balance, partner in global rulership.

Were we to begin such a conversation, we would surely find these first stabs inadequate. Just as we would find our doctrinal differences of opinion easy to brush out of the way. Such a conversation would take us quickly to talk about Turkey, and nuclear warheads, and economic power and debt and racisms foreign and domestic. To social exclusion and economic dualism, and our collective inability to even to imagine a sustainable economic and social justice on a global scale. Were we to talk about such things, all our legal vocabulary of rights and millennium development goals and benchmarks and targets for development would sound preposterous. Confronting our differences would take us closer to our weaknesses and limitations.
It is with that in mind that I would like to turn to three quite different “humanisms” we find in our common profession today.

First, the humanism of traditional public international law doctrine, the world of human rights and adjudication and the UN Charter.

Second, the humanism of public law managerialism, which we saw this week in the remarkable presentations by Foreign Minister Hubert Vedrine and Director General Pascal Lamy – but which we might associate in our profession with the legacy of Dag Hammarskjold.

And third, the revolutionary humanism we might trace to Margaret Thatcher – or Leo Strauss or Anne Rand – but which I associate with that elegant piano soloist and ex-university administrator Condoleezza Rice.

The first is the most familiar. The humanist project of norm creation, adjudication and enforcement. The “gentle civilizing” voice of rules – and standards -- that arose with German legal science in the late 19th century and was shaped by the visions of solidarity, community and “the social” it encountered in the French legal science of the early 20th century.

This is the legal humanism of Lou Henkin, whose “almost all of the rules are obeyed almost all of the time” was so eloquently juxtaposed to Minister Vedrine’s more skeptical vision on our first evening together here. This is the humanism that blends public international law with ethics and mistakes doctrine for moral consensus.

If we are honest, we must recognize that international law’s contribution has not always been laudable. I am struck, as a teacher, by the routine presentation of international law in textbooks as offering solutions to one after another global problem – environment, human rights, peace. As if international law had nothing to offer the person – or the sovereign – who wished to despoil the environment, torture their citizens or make war.

In fact, international law tolerates – and legitimates – a great deal of suffering, often in the name of universal rights of property or local self-determination. As a global community, when we balance the importance of property rights against the needs of sick people for access to effective medicines at reasonable cost, we choose property. We allow “sovereignty” and non-interference and local control to become powerful ethical counterweights to social justice, environmental stewardship and mutual responsibility. And, of course, we have allowed national self-defense and security to legitimate ethically and normatively, the suffering and death of many thousands in war.

The most revered texts in the human rights canon are vague and open to interpretation As a result, it is unlikely that any articulation of a global normative consensus will escape being perceived by those who disagree --- and people will disagree
– as partial, subjective, selective. These are the wages of speaking universally in a plural world.

They are compounded where the spokesman is also a diplomat and civil servant. Think of the UN Secretary General – how tempting to play the norm entrepreneur, articulating the global ethical consensus. But we must remember that the Secretary General is also a statesman and civil servant. He works for the Member states and will be needed for a range of complex diplomatic initiatives. It is difficult to speak ethically in the morning and diplomatically in the evening. So also for the international lawyer who serves sovereignty before lunch and justice after tea.

Indeed, the crisis in confidence that has crashed on the UN Human Rights Commission is not only about the appalling human rights record of governments that have served on the Commission. It also reflects the limits of turning the articulation and development of human rights over to governments in the first place. That governments would want to judge one another, to chastise their enemies and praise their friends, in a widely shared ethical vocabulary is not surprising. What is surprising is that the human rights community has been so enthusiastic about their taking up the task. The limits of a diplomatic ethics parallel the limits of any established church: not good for the government, not good for the church.

There are, moreover, real dangers to universal normative entrepreneurialism, regardless of who steps forward as spokesman. Expressing the ethical conviction of the international community can suggest that there is, in fact, an “international community” ready to stand behind one’s pronouncements. It can lead people to intervene, multilaterally or otherwise, where there is no stamina, in fact, to follow through. It can crowd out other local or religious terms for articulating global justice concerns – or consign them to opposition as the “other” of a universal civilization.

The ethical self confidence of this first doctrinal humanism can encourage political elites to start projects, launch interventions, for which there will be no follow up. It can suggest that those who disagree with this elite – and many do – are somehow outside the circuit of “civilization.” It can lead us to imagine that we know what justice is, always and everywhere --- but of course, we do not. Justice is not like that. It needs to be made anew in each time and in each place.

So let us say no to the promises – and the blind spots and the biases – of the gentle civilizer. Let us become policy makers, managers, in the grand style of the grand ecoles – with Minister Vedrine, Director General Lamy, or our own Dag Hammarskjold. Doing so takes us to the pragmatism of Myres MacDougal (who Ros Higgins reminds us trained something like half of today’s ICJ judges). This is the pragmatic policy managerialism of careful balancing, antiformalism, proportionality and the “margin of maneuver” which Oscar Schachter celebrated in his post mortem on the Hammarskjold era. It has a politically skeptical face – Minister Vedrine – for whom management precedes regulation, and political reality grounds legal rule. And it also has the more technocratic face we saw last evening in Pascal Lamy – careful assessments of
institutional capacity, legitimacy, limits, casting the order we have as “coherent” precisely so that it may also be legitimate.

This is an attractive vision – and can sustain a brilliant career. The common vision is “judgment,” the common project the status quo, looking down from a great height at a world to be managed by a cadre of wise rulers.

If only the rulers were wise. If only their professional language brought them in contact with those they would govern. If only their blind spots and biases could be glimpsed behind their collective confidence. If only they were, as we say in the States, the “best and the brightest.”

We can see the limits of this pragmatic humanism in the ICRC’s century long effort to infiltrate the world of military force with a vocabulary of proportionality and necessity. I was struck in reporting on the Iraq war by reports of soldiers overcome by remorse at having slaughtered civilians. Out on patrol, on mission, on target, they had taken the shot and seen women or children fall wounded or dead, and their response was remorse, responsibility, anguish. And they would be counseled back to duty by their commanding officers, and by their chaplains, in the legitimating and privileging language of the law in war – what you did was proportional, necessary, legal and just. This is the sensibility which transforms human decisions into judgments, assuring that all the relevant factors have always already been taken into account, dulling the human experience of freedom and responsibility.

Well, what of our third humanism – the revolutionary vision of a world remade. The makers of markets, the changers of regimes, releasing the energy of human individuals in freedom. Theirs is also a humanism. We can see the limits easily enough from here, and I won’t rehearse them. The hubris through which missions are not accomplished, institutions and routines neglected, bravado and swagger substituting for the difficult project of human transformation.

But I bring Secretary of State Rice to the discussion not for easy criticism, but to affirm her humanism. A humanism of strict rules, a neo-formalism about law, with narrowly interpreted obligations and expansively interpreted powers. A humanism of intention and objective, with the élan and the ruthlessness which can accompany revolutionary zeal. This is also a hard humanism to embrace with confidence, even it it too can sustain a brilliant career.

Three humanisms. Three modes of professional experience. Three political projects and rhetorics of rulership.

It has been an enormously interesting few days. I am honored to have been asked to help bring some themes together here, in the key of humanism. It is a fitting theme for our last plenary together, for we are all humanists now.
But the project of humanist governance is broken, and it is time for a new politics, a new professional expertise, and new approaches to international law.

Thank you.