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Louis Henkin

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Jonathan I. Charney—Mourning and Celebration

Louis Henkin

*Professor Emeritus, Special Service Professor, and
Chair of the University Center for the Study of Human Rights
and of the Human Rights Institute at Columbia Law School*

It has become the practice to celebrate a life, rather than to mourn its end. The Charney family, and Vanderbilt Law School, did well to separate mourning from celebration. But I am not yet wholly ready for celebration. I mourn.

I knew Jon since before he was born; his parents were my oldest friends. I continue to be his mother's old, perhaps oldest, friend. Later, long ago, Jonny and I became friends and remained warm friends to the end. I have watched the family grow, with Sharon, and the next generation.

I mourn with them all.

The program for today lists, as scheduled to be present, Jon's family and special guests, and today we are seated as "Family and Friends." I am here as both family and friend, but also as a colleague and special guest.

Here, today, I wish to speak with you about Jon Charney, his good life, and his remarkable achievements. On this occasion I am pleased to add that I knew Jon Charney "professionally" before he began on the road to eminence. I was "present at the creation," as Jon Charney took his first steps toward becoming a world authority on the international Law of the Sea, and an eminent, prominent, lawyer and scholar in international law generally.

Jonny was still a law student when he spent a summer as my research assistant, when both of us learned that there was an international Law of the Sea. We pooled our ignorance, but Jonny went on to become one of the very few scholars, practitioners, advocates, public servants on that subject in the United States—and beyond. And he did it largely from that less-than-obvious "sea-port"—Tennessee. (Perhaps, like some others, he began with a New Yorker's view of the map of the United States and of the world.) Surely, Jon Charney put the Vanderbilt Law School, and Nashville, Tennessee, at the forefront of U.S. commitment, expertise, and contribution to the growth and development of the international law and of U.S. policy on the sea.

Jon Charney left the rest of us behind, in expertise, prominence and eminence in Law of the Sea scholarship. (For several years he was—among much else—Chairman of the Senior Advisory Committee of

the Marine Policy Program at Woods Hole.) Then, Jonny's eminence spread from the international Law of the Sea to the whole of international law. He rose high in the councils of the American Society of International Law. He was a highly successful co-Editor-in-Chief of the *American Journal of International Law*, the principal publication in international law in the United States (and, many think, in the world).

You will hear today from Professor Richard Bilder, a prominent member of the International Law community (and Jon Charney's teacher), and from Professor Michael Reisman, who served with Jon as co-Editor-in-Chief of the *American Journal of International Law*. Present here also is Professor Mary Ellen O'Connell, a younger star in the international law firmament, who worked with Jon on a project near to his heart.

To her regret, and mine, you will not hear from Professor Lori Damrosch, my colleague at Columbia and co-editor of a prominent casebook on International Law. Professor Damrosch could not come to Vanderbilt today, but she has written about Jon and his achievements for this occasion. (I have authority to draw on her paper and to speak for her and from her "brief.") I commend Professor Damrosch's appreciation of Jon Charney.

What sometimes happens to someone who becomes expert and prominent in a field happened in Jonny's case. Jonny became an expert on the Law of the Sea, and people could not think of him in relation to anything but the Law of the Sea. That was a grossly mistaken impression, as you might have gathered from what you heard from his students and from his colleagues here. Jon Charney early moved beyond the sea, became interested in other important subjects, such as the law governing the environment. He became deeply interested in international law generally.

Jon Charney was committed to international law. He knew that there is international law; that it is important, essential; that world affairs and human affairs generally depend on it. Jonny began to ask anew, afresh, all the questions that those of us longer in the field had stopped asking. We took international law for granted; Jonny did not. He wanted to know: Is there international law? Is it law?

In her tribute, Lori Damrosch writes:

Among the themes that preoccupy Jon as his scholarship blossomed, I would like to single out two that are fundamental and pervasive. First, he asked the deepest questions about the creation of legal norms for a diverse and changing international community: Can there be a genuinely *universal* international law? Is international law ultimately grounded on the consent of states, or could legal obligations take hold even if states have not consented to them? Second, he was concerned with the institutional framework in which international law is applied and international disputes are adjudicated: Are international courts capable of ruling effectively on the kinds of disputes that litigants have sent them in the last few decades? And now that we have a veritable constellation of international tribunals will their jurisprudence fit together for a coherent, rather than a fragmented international law?

Among much else, Professor Damrosch tells us that Jon Charney tackled some of the most ambitious subjects in the theory and practice of international law, questions that are fundamental and pervasive. Jon Charney thought, taught, wrote, about all the difficult subjects of international law and international relations.

- Is there an international law?
- Is it universal?
- Is it law?
- How is international law made?
- How is it enforced? Is it adjudicated?
- Are international courts available, and capable of determining and enforcing the law?
- Is international law today threatened by multiple international tribunals?

Those of us who are in, or near, that field would be wise to continue to ask the questions that Jonny asked: Is international law law? Is it universal? And the question that most of us have to face these days with unhappiness and difficulty: What has happened to international law? Something good and noble and ambitious happened to international law, back in 1945, when the U.N. Charter was written. Jonny was interested in what the U.N. Charter was designed to achieve—principally, an end to war and to the use of force between nations. He was interested in what the Cold War did to international law, and what happened to international law when the Cold War was over.

Jonny was intent on asking those questions as he moved away from the Law of the Sea. He was interested in the uses of law and of international law generally. And he believed that countries, governments, and many people, including some of the skeptics, even some around the halls of a fine law school, were asking even more generally: What is law? What is law for?

Jonny began to ask those questions late in his professional career. And he was beginning to find answers, preliminary answers, to his own satisfaction and to the satisfaction of many of us.

Jonny believed in law. He believed in international law. He believed international law was necessary, was essential, for world peace, for human welfare, for human rights, for all the good things that those who seek a good society believe in. I like to think that if Jonny had had another decade, or two, or three, as some of the rest of us have had, he would have made the kind of contribution to those issues that he made to the Law of the Sea. His students, I hope—from some of whom you have heard today—will carry on that work.

Jonny was a top-flight international lawyer. In a skeptical world, he believed in international law. He saw international law as essential to peace, to justice, to human rights, and to human welfare. And in all his writing and teaching he sought, and strove for, resolution,

accommodation, settlement, justice. I think those are things for which Jonny will be remembered.

The world will remember and miss him, as we do, as we will.