

**THE CONSEQUENCES OF THE UNITED STATES ABDICATING ITS
MORAL AND POLITICAL LEADERSHIP OF THE FREE WORLD**

Justice Richard J. Goldstone**

I. INTRODUCTORY REMARKS

MR. ROBBINS¹: It is a real pleasure for me to welcome Justice Goldstone and his wife, Noleen, to Arizona. It's a real honor to introduce the justice and a real challenge to do it in the allotted five minutes.

Justice Sandra Day O'Connor, in her foreword to Richard Goldstone's book, *FOR HUMANITY*², included this comment: "Justice Richard Goldstone of South Africa has been at the forefront of one of the biggest challenges facing emerging democracies today: how to address grave systematic human rights abuses committed by leaders of the previous regime."³

A little more than three years ago, my wife and I went to South Africa and found a peaceful and hospitable country, but without the vision and the courage of a remarkable group of South African leaders of all races in the last days of apartheid, the peaceful transition that allowed us to travel there would not have occurred. Richard Goldstone was one of those leaders.

On Sunday, February 11, 1990, Nelson Mandela was released from prison after 17 years. Less than two weeks earlier, Richard Goldstone, then a justice in

*. The J. Byron McCormick Society for Law and Public Affairs was formed to honor the memory of J. Byron McCormick, who served the State of Arizona with great distinction as President of the University of Arizona, as Dean of the University's College of Law, and as an advisor to the Arizona Board of Regents. Members of the McCormick Society foster dialogue about the critical issues of our time through an annual public lecture and a private dinner with the guest lecturer. Many of these lectures can be viewed at www.law.arizona.edu. The Society actively seeks members who are committed to lifelong learning through the exchange of ideas and perspectives.

** Justice Richard Goldstone's distinguished career in law, jurisprudence, and global policy gives him an exceptional perspective on the challenges of ensuring human rights around the world. Now retired as a Justice of the Constitutional Court of South Africa, his experience ranges from war crimes prosecution to fact-finding missions, from international investigations to human rights advocacy. He most recently authored *FOR HUMANITY: REFLECTIONS OF A WAR CRIMES INVESTIGATOR* (Yale Univ. Press 2001). Justice Goldstone's many contributions to the bar, the bench, the academy, and the non-governmental sector are profound and enduring. This speech was delivered by Justice Goldstone at the James E. Rogers College of Law at the University of Arizona on Sept. 10, 2007.

1. Mr. Phil Robbins, Esq., is with the Phoenix law firm of Jennings, Strauss, and Salmon.

2. RICHARD GOLDSTONE, *FOR HUMANITY: REFLECTIONS OF A WAR CRIMES INVESTIGATOR* (2001).

3. *Id.*

South Africa's highest court, had been asked by President De Klerk to conduct an inquiry into the hanging death, in the Johannesburg Central Police Station, of the boyfriend of the daughter of Nelson and Winnie Mandela, a potentially explosive situation.

His skillful handling of that inquiry led to his appointment, in 1991, as head of the newly created South African standing Committee of Inquiry Regarding the Prevention of Public Violence and Intimidation, which came to be known simply as the Goldstone Commission.⁴

Negotiations were underway in the country to hand power from the apartheid-era government to a democratically-elected one, but the legacy of apartheid hung over the land, threatening to plunge it into an era of violence.

The work of the Goldstone Commission in bringing to justice perpetrators of racial and political crimes was a key factor in enabling the remarkably peaceful transition that followed.

Archbishop Desmond Tutu said Justice Goldstone's contribution to South Africa's peaceful transition, from repression to democracy and justice, was indispensable.

The groundwork laid by the Goldstone Commission made possible the creation of South Africa's truth and reconciliation commission.

Our speaker then began yet another career as a prosecutor of some of the most egregious crimes against humanity. In 1994, he was selected by the United Nations Security Council as chief prosecutor of the Hague, of the UN War Crimes Tribunal for the former Yugoslavia.

He was thereafter asked to assume the role of chief prosecutor for the Rwanda War Crimes tribunal. Justice Goldstone also served as chair of the International Independent Inquiry on Kosovo and continued to serve as judge of the constitutional court of South Africa from 1994 to 2003. He's been a strong supporter of the International Criminal Court.

Justice Goldstone was born in South Africa. He received his legal education there, practiced law in Johannesburg, and served in judicial positions before commencing his remarkable odyssey.

He has received academic honors and has engaged in endeavors too numerous to mention. He was one of three members of a committee chaired by Paul Volcker to investigate the UN oil for food program in Iraq.

Among other activities, he is currently teaching at Fordham Law School in New York, having taught at a number of major institutions here and abroad.

4. The Commission submitted forty-seven reports to the State President. *See e.g.* Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation. First Interim Report (Jan. 24, 1992); Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation. Second Interim Report (Jan. 24, 1992); Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation. Final Report (Oct. 27, 1994), available at http://www.hurisa.org.za/Goldstone/Goldstone_Reports.html.

Justice Goldstone's service was often at great risk for his personal safety. In his book, Goldstone describes a low-level flight into Sarajevo.

Sitting on his flack jacket, to be protected by gunfire below and observing mile after mile of burned-out homes, he then wrote this, "The havoc and misery that humans are capable of inflicting on others continues unabated from century to century."⁵

Most of us lament this fact but have little opportunity to change it, but a few step up, meet the challenge and make a difference. Such a person is our McCormick lecturer, Richard Goldstone of South Africa.

II. SPEECH

This is our opportunity to be in Arizona for the first time and in Tucson in particular. We've had a wonderful weekend enjoying the hospitality of so many people in your community.

I must say the McCormick Society is unusual in my experience. It's a great, great idea for alumni to have this sort of activity, and I feel very privileged to be a part of it this morning. It's the twenty-seventh annual McCormick lecture, and it's a huge privilege to have been invited to deliver the lecture today. It's a particular honor and an additional responsibility because, when I look down the list of my predecessors who delivered this lecture, I'm the first foreign visitor to do so. The other McCormick lectures were delivered by Americans.

The topic that we agreed on, the consequences of the United States abdicating its moral and political leadership of the free world, I had first thought should be phrased as a question: Has the United States abdicated its moral and political leadership? But on further reflection, that seemed to me that that was splitting hairs because I think that short reflection would indicate that the assumption made in the title is regrettably, in fact perfectly correct.

The sad reality is that the United States is no longer providing moral and political leadership to the free world. Its moral influence has been diminished and its leadership is now more a consequence of economic and military power than morality and political leadership.

This is a huge and immeasurable loss to the democratic world and especially so because there is no other country in the world that can fill that position. The result is, the consequence is of the free world at the moment is pretty much leaderless.

What I propose to do this morning is to talk about my own -- the benefits that I have received from the United States in my career, in my legal career, in my professional and my international career and to talk about the ways -- the many ways in which South Africa benefited from the United States' leadership, and indeed

5. GOLDSTONE, FOR HUMANITY: REFLECTIONS OF A WAR CRIMES INVESTIGATOR.

apartheid wouldn't have come to an end relatively peacefully without that American intervention, not only American but primarily from the United States. And I want to then end with making some suggestions as to how the United States should consider taking back that leadership position.

The benefits I have received from the United States' intervention, in my own career and in my country's life, have put me perhaps in a better position than Americans themselves to appreciate the ripple effect of the United States' involvement in the affairs of foreign countries, particularly democracies.

Let me be subjective for a few minutes. In the early 1960s, I became involved in the antiapartheid campaign in South Africa as a student leader. In those dark days of apartheid, the government was set on excluding black students from my University in Johannesburg, the Witwatersrand University, and the University of Cape Town, which were known as the two open universities because, throughout their lives, they have admitted students and employed faculty regardless of color or gender. And that was bad news to the apartheid regime as they wanted to put a stop to that.

The National Union of South African Students was the national student body of the university that opposed apartheid. Its leaders were considered, by the government, and especially by the security police, to be unpatriotic and worse, and that only on the grounds that they were publicly opposed to the immoral and oppressive policies of the apartheid government.

Crucial support for our opposition to apartheid came from around the free world, but principally from the United States. It was primarily the United States government that took the lead. The opposition to racial repression in South Africa, from successive United States governments since the Second World War, has been a little bit uneven and sporadic.

It's been dictated not only by moral opposition to racial oppression, but it has at times and understandably, if not regrettably, been influenced by economic reasons. For economic reasons and particularly during the Cold War, the United States was concerned about Russian and later Chinese influence in African countries, and, for that reason, didn't want to abandon even the apartheid government in South Africa because it was seen as a bastion against the threat of communism in our part of the world.

So the leadership came, and more importantly from the universities, from the churches, from the Bar and Bench, and from individual politicians, both at the state and federal levels.

I could speak for hours about the efforts of so many Americans who helped bring down racial oppression in South Africa; the likes of Erwin Griswold, when he was dean of Harvard Law School and later as the solicitor general of the United States without his very significant funds for the defense of those charged with apartheid crimes; federal judges such as Leon Higginbotham, a federal judge; and Thelton Henderson inspired black South African lawyers to use their skills in fighting the evil system, leading foundations help create public interest law firms, the legal resources center, Lawyers for Human Rights, that did so much work to

assist those charged in our courts with apartheid crimes; the Reverend Leon Sullivan, who influenced leading U.S. firms to use their economic muscle and influence to fight discrimination on their factory floors in South Africa and in their employment practices; more importantly, the annual state department reports on human rights, reports that still come out each year, criticizing human rights violations in just about every country in the world.

There is only one country that the United States State Department reports don't deal with, and that's, of course, the United States.

There were many important American student boycotts and efforts to isolate South Africa and help turn it into a pariah state. It was a pariah state.

I can assure you that, for most of my life, it was a great embarrassment and worse to have to travel abroad with a South African passport. Nothing was worse than having to hand a South African passport at JFK or Heathrow or any country, and I would always anticipate some negative response from the passport official about South Africa, and that often happened.

I was tempted to say I share your views about South Africa, but that obviously wasn't the sort of thing that would have gone down well with them in those days.

There was divestment and disinvestment at the insistence mainly of students and faculty in many universities around this country. All those efforts—and there were many more that I haven't referred to—strengthened resistance and reinforced the conviction of those of us who opposed the system, that we were correct in doing so and that the route taken by the United States to outlaw racism in this country was the appropriate way for South Africa to go.

Now to become even a little more personal, as a student leader, my inspiration--first inspiration-- came from Americans I had the privilege of coming into contact with as a student.

I think of Father Theodore Hesburgh, who visited South Africa when he was the comparatively young president of the University of Notre Dame, and Clark Kerr, who was already then the embattled president of the University of California.

As a young boy, I had the privilege of meeting and listening to Robert Kennedy when he visited South Africa not too long before his death. And I witnessed at firsthand the tumultuous reception that he received from many thousands of black South Africans who correctly saw him as their champion.

I'll never forget the day outside of our bar building in Johannesburg when he arrived to meet with us. He arrived outside the building, and there was a huge gathering, a spontaneous gathering of thousands of black South Africans screaming his name in adulation. And he climbed spontaneously onto the top of a motor vehicle that was parked in front of the building and gave a wonderful extemporaneous to the gathering throng.

I've mentioned the foundations, the Ford and Carnegie in particular, that helped set up the legal resources center, which is a public interest firm based really

on the legal defense fund of the NAACP, the so-called Ink Fund, which did so much good work during the civil rights years in this country.

The Legal Resources League, the second organization set up with Ford and Carnegie funds -- and later South African funds were added to them --, was for human rights, an organization that provided many, many thousands of pro bono defenses for black South Africans suffering under apartheid laws.

The successful efforts of those two organizations, in particular, made it just possible for some of us, who opposed apartheid and were successful lawyers, to accept appointments to the bench in the 1980s, a difficult decision. Fortunately, I have no reason to regret my decision to accept such appointment, as difficult as that decision was.

In 1984, it was my good fortune to be invited by the Aspen Institute to attend a seminar on the international violation of human rights that it had arranged for federal judges in Mobile, Alabama.

The seminar was funded by the Ford Foundation, and they suggested to the Aspen people that they should invite one South African judge to the four seminars on that topic that year, in 1984. I had the privilege of being one of them, and I made lifelong friends at that seminar. Two of the judges who attended the seminar -- there were about thirty federal judges; I was the only non-American judge -- two of them came from federal courts of appeals, circuit courts of appeal, one from the Ninth Circuit in California, and one from the D.C. circuit in Washington, D.C. They were Anthony Kennedy and Ruth Bader Ginsburg, and we have maintained that friendship for the last twenty-three years.

In that same year, 1984, I spent three months in the United States on an American government international visit program meeting many academics and leading American lawyers.

It was those American contacts and experiences that helped to shape my views and many other South Africans' who opposed racial discrimination and oppression. Certainly I and we learned from American lawyers and American judges how the law should be used to establish rights, even in a country like South Africa, where there was no written constitution and parliament was supreme.

I hope I've said enough to help you realize that, when apartheid came to an end, South Africans had a great deal to be thankful for to the United States. Americans were recognized, by the vast majority of our people in the South Africa, as having been instrumental in bringing apartheid to an end. It was a small wonder that Nelson Mandela, when he was released from twenty-seven years in prison, paid a visit to this country to thank its people for their role in bringing freedom to his people.

It was mainly because of the United States' influence that I came to be appointed, by the security council of the United Nations, as the first chief prosecutor in the UN ad hoc tribunal for the former Yugoslavia, and later Rwanda. From personal experience, I can assure you that neither of those important war crime tribunals, for Yugoslavia or Rwanda, would have been established without the efforts of the United States and its leadership.

In particular, I mention in that regard, the tremendous amount of work and time and effort that was put into it by the lady United States ambassador to the United Nations, Madeline Albright, and that continued when she became the secretary of state.

I can assure you, too, from my experience in those positions, that, without United States' political resolve and financial assistance, those two tribunals would never have very gotten off their feet. They wouldn't have functioned. And there would have been consequences. The international criminal court is one of them. Without the United States' push, without successes of the ad hoc tribunals, the international criminal court would not be up and running as it is today in the Hague.

More recently, since my retirement from the constitutional court, I have been teaching almost full time at United States law schools. This is the fourth year in which I'm doing that. It is really a new career and one I'm enjoying more than any other in my life.

I've given you this largess objective account in order to qualify myself as someone who is not only indebted to the United States, but someone who has both respect and admiration and definitely has affection for its people.

The influence of the United States and the careers of leaders from so many countries can be multiplied many times. I'm one of thousands of people from countries right around the world, in five continents, who have benefited, to a greater or lesser extent, from that sort of United States' influence, and the ripple effect of this involvement cannot be overstated.

The United States, in these respects, leads by example. The crumbling of racial discrimination in South Africa and the encouragement of democracy in many parts of world was a consequence of your civil rights movement and the values enshrined in your constitution. They proved to be important catalysts for change.

I would emphasize that the example the United States set came from those values. Your power and your influence were incidental. It was the values that led the way. The United States was truly the moral leader and the political leader of the free and democratic world. The United States' influence in international law and international institutions is nothing new. It's something, I think, that's shared by all powerful states.

Small states can afford to subject themselves to international law, to international rule of law. Powerful states prefer to be free to do as they wish. So there's always been an ambivalence amongst many and most United States leaders that they recognize the necessity and benefits that flow from a well-ordered international community, on the one hand, and yet they have resistance to being bound themselves as a member of that order.

The United States was primarily responsible for the founding of the United Nations and the International Criminal Court. It was the strong support from this

country that lead to the United Nations calling the diplomatic conference in 1998, in Rome, that gave birth to the International Criminal Court.⁶

Take the Law of the Sea Treaty of 1982: the United States is one of the few important nations not to ratify that treaty.⁷ It doesn't want to bind itself to the rigors and rules set out by the international treaty, which controls the use of the sea, both the surface of the sea and what lies beneath it.

Of course, all of a sudden now, because of global warming and the discovery of huge deposits of oil and minerals in the Arctic and probably too in the Antarctic, all of a sudden, the big powers are rushing to make claims to rights to minerals and other rights in the Arctic. The Russians sent down an American flag to the bottom of the Arctic Ocean. The Canadians are making claims and the United States too obviously had an interest.

Under the Law of the Sea Treaty, those interests have to be decided upon by an international commission that's set out by the treaty.⁸ And, out of the blue, President Bush is now suggesting to the Senate that it ratify, that the United States should ratify the Law of the Sea Treaty.⁹ All of a sudden it's fallen within the interests of the United States to do so.

So there is this ambivalence. Let me hasten to add that, of course, no country should be expected or should be called upon to ratify international treaties that are not in its own interests. Countries don't and shouldn't have to join with other countries unless it's in their own interests. What is the problem is determining the interest of a country in this regard.

The International Criminal Court is an example of this. I believe it's in the interest of all countries to have a strong international criminal court that can withdraw impunity for war criminals. The people of this country don't approve of war crimes. The people of this country want war criminals to be punished, but the United States doesn't want to subject itself to the rigors and to the discipline of such an international court.

6. Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, 2187 L.N.T.S. 3 (*entered into force* July 1, 2002), *available at* <http://www.un.org/law/icc/index.html>.

7. United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF.62/122, 21 I.L.M. 1261 (*entered into force* Nov. 16, 1994), *available at* http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

8. *Id.*

9. See Law of the Sea Treaty Resources, <http://www.asil.org/resources/los.html> (“[I]n May 2007 President George W. Bush urged the U.S. Senate to ratify [the treaty].”); William Scally, *Law of Sea Treaty Revived with Senate Hearings*, CQ GREEN SHEETS, Sep. 24, 2007, *available at* <http://public.cq.com/docs/gsgreensheets110-000002591199.html>; Richard D. Lugar, *The Law of the Sea Convention: The Case for Senate Action*, Address at the Brookings Institution (May 4, 2004), *available at* http://www.brookings.edu/speeches/2004/0504energy_lugar.aspx.

There is all this ambivalence to which I have referred. The international criminal court has now garnered the support of 105 nations, about half of the members of the United Nations.¹⁰ They include most of the democracies. There are only two democracies that haven't joined in the Rome treaty for the international court today: India and the United States of America.

Japan is the most recent to ratify it. Only in July of this year--July 17th--Japan joined in.¹¹ The countries that have joined in include every member of the European Union, twenty-seven African nations, many Latin American nations, and it's a great regret that the United States is not there leading the International Criminal Court as it should be.¹²

It's a great tragedy that there is no American judge on the International Criminal Court.¹³ It's a great tragedy that the International Criminal Court prosecutor's office isn't better staffed with the United States experts, lawyers, computer technicians.

It was certainly my privilege, with the Yugoslavia tribunal and the Rwanda Tribunal, to have the full support from the United States, and what a huge difference it made. Slobodan Milosevic would not have been in the Hague except for the United States' pressure. Croatian generals wouldn't have been brought to trial, in the Yugoslavia tribunal, except for the United States' pressure.

Of course, that is not completely absent in the case of the International Criminal Court. In fact, to the contrary, during the present administration, Congress has passed almost bizarre statutes making it a criminal offense for anybody in the United States to assist the International Criminal Court without a special exemption from the president; The so-called Hague Invasion Act, the American Service Members Protection Act¹⁴ that gives power to the United States military to go and rescue any American who might be brought before the International Criminal Court in the Hague, almost one hundred so-called Article 98 agreements¹⁵, between the

10. Ratification Status of the Rome Statute (Treaty database), <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/part1/chapterXVIII/treaty11.asp>.

11. *Id.*

12. *Id.*

13. During its first resumed session held in New York Feb 3-7, 2007, the Assembly of States Parties elected eighteen judges of the Court for a term of office of three, six and nine years. These judges are from Bolivia, Brazil, Bulgaria, Canada, Costa Rica, Cyprus, Finland, Germany, Ghana, Italy, Republic of Korea, Latvia, Mali, South Africa, Trinidad and Tobago, and the United Kingdom. See <http://www.icc-cpi.int/chambers/judges.html>

14. 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, American Service Members Protection Act, Pub. L. No. 107-206, §§ 2001-2015, 116 Stat. 820, 899-909 (2002) (codified at 22 U.S.C. §§ 7421-7432).

15. See generally Article 98 Agreements, in International Criminal Court – Article 98 Agreements Research Guide, Georgetown Univ., http://www.ll.georgetown.edu/intl/guides/article_98.cfm.

United States and some of the least powerful, least impressive nations who are members of the United Nations, agreements that solemnly oblige these countries not to hand over American citizens to the International Criminal Court, as if that's likely to happen.

But it's these acts, I think, which have brought a great deal of embarrassment and has had the effect of lowering the esteem of the United States in, I think, many democracies around the world.

The history of the annual State Department reports, to which I referred, and the public effect that it had in many countries -- I've referred to their effect on South Africa. The South African apartheid government was embarrassed year after year when it was criticized in forthright terms in the annual human rights report put out by the State Department, and many other oppressive leaders were similarly embarrassed.

Not so today. Their response now is to throw, in the face of the United States, its own disregard for fundamental human rights, and especially the respect for dignity of all people.

Abu Ghraib, Guantanamo Bay, indefinite detention, withdrawal of habeas corpus rights to non-Americans detained by the United States, the sanctioning of inhumane treatment to those in its path, and the extraordinary rendition of some of those people to countries where they would inevitably be victims of torture. The extraordinary rendition program was, again, reconfirmed only this week by a leading member of the administration.

It is sobering, I suggest, that the American Psychological Society, at its very recent annual meeting, in San Francisco, unequivocally condemned the use of twenty distinct interrogation methods that are reportedly being used by the CIA, including mock execution, forced nakedness, stretch positions, water boarding, and stress to the families of detainees.¹⁶

The American Psychological Society is not some crazy left-wing organization. It's a very serious organization representing psychologists throughout the country. It has called upon the defense department, the CIA, and other agencies to prohibit these twenty tactics and admonish psychologists to not participate in planning, designing, or carrying them out.¹⁷

The attitude of the administration to global warming and its disdain for the evidence that it is causing anguish in so many countries; of course the invasion of Iraq and the disastrous effect it is having on the status of the United States especially, but not only, in the Islamic world; and then there is the vitreous and racial

16. American Psychological Society, *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Application to Individuals Defined in the United States Code as "Enemy Combatants."* August 19, 2007, available at <http://apa.org/governance/resolutions/councilres0807.html>.

17. *Id.*

profiling that is leading to visa refusals of persons who in no way would harm the interest of the United States.

I can give you a South African example. In recent weeks, South African Muslim Professor Adam Habib has frequently visited this country. He has a Ph.D. from the City University of New York. He is the executive director of South African Human Sciences Research Council's program on Democracy and Governance, and a professor at the school of Development Studies at the University of KwaZulu in Natal Province.

He was turned back at Kennedy Airport in New York.¹⁸ No reasons were given. Since then he applied for a new visa. No decision was given to him: silence, neither a grant nor a refusal.

Professor Habib came to New York on that occasion to speak at the annual meeting of the American Sociological Association, and it issued the following statement:

[T]he ASA expresses its deepest disappointment and profound concern about the Department of State's de facto denial of a visa, which has barred Professor Adam Habib from participating in the Association's Annual Meeting. Such actions undermine the willingness of numerous scientists and academics from many nations to visit the United States and collaborate with their American colleagues. The ASA believes this limitation on scholarly exchange erodes our nation's reputation as the defender of the free and open search for knowledge.¹⁹

The consequences of these policies are pretty obvious. Within the past, the United States was a powerful force for the spread of democracy and the respect for human dignity. It is now perceived as having double standards. Oppressive leaders around the world scoff at U.S.'s criticism of their violations of human rights.

When, in the past, the U.S. was seen as a powerful and influential supporter of international justice and it abhorred impunity for war criminals, it is now perceived to tolerate such impunity rather than submit itself to the rigors of international law. When, in the past, Americans took leading positions in most international institutions, they're finding it increasingly difficult to work for those bodies.

18. Craig Timberg, *Prominent S. African Denied Entry Into U.S.*, WASHINGTON POST, A20, Oct. 26, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/25/AR2006102501645.html>.

19. American Sociological Association Press Release. *Political Ideology May Be the Cause of the U.S. Government's Failure to Admit World-Renowned Scholar Adam Habib to Participate in the 2007 ASA Annual Meeting*. Aug 10, 2007, available at http://www.asanet.org/cs/press/view_news?pressrelease.id=181.

So the picture today is not a happy one. Of course, the fight against international terrorism is a difficult one. I'd be the last person to understate. Unfortunately, however, it necessitates serious inconvenience to all of us. It has also become necessary to confer power to law enforcement authorities that are invasive of fundamental privacy rights. I think it's something we have to accept and most of us do accept it. We put up patiently with the inconveniences that are imposed to protect all of us, and we understand that.

The point I would like, however, is that other democracies are too are under threat. The United Kingdom, other Europe powers too are under threat from international terrorism, but they've succeeded in introducing some of the unpopular measures without authorizing or condoning the use of inhumane treatment, violation of the rule of law, racial profiling, or other methods that have reflected so badly on the United States.

Allow me to bring this address to an end on an optimistic note. The leadership that the United States has traditionally given to the free world can and I'm confident will speedily be restored.

Referring to my life, it changed over night. Nelson Mandela was released from prison after twenty-seven years, and all of a sudden, I was very proud to hold a South African passport. And when I handed it in to that same passport official, I was welcomed, and people would ask me how Nelson Mandela was getting along.

So things can change very quickly. It is dangerous to assume, I would say, that criticism of the present policies of the United States is the result of anti-Americanism. Far from it. The United States and United States citizens are popular in most countries of the world. Those of you -- and I'm sure many in this audience -- who travel outside your own country will be aware that you are welcome certainly in my country and many others around the African and other continents.

I would suggest that the steps that the United States should take -- and this is some of them -- in the coming years would include, firstly, I would suggest convening a meeting of leading democratic nations in an attempt to reach agreement on appropriate measures to combat international terrorism.

I think it's a problem common to all democracies, and it could be a good step forward if the United States led the democratic world in finding acceptable means, even if inconsistent with privacy rights, to efficiently fight terrorism.

Speedily close Guantanamo Bay because it's become a varying point for those attacking the United States. Speedily restore respect for the rule of law and fundamental human rights of all people subject to the authority or power of the United States.

Abandon its opposition to the International Criminal Court. Even if it doesn't ratify the Rome Treaty, even if doesn't become a party, at least the United States would publicly assist the International Criminal Court at least in those circumstances where the United States sees it to be in its interests.

The United States, I have no doubt, wants to bring war crimes to an end in the Darfur region of the Sudan. It's that sort of situation where the United States

should be assisting, as it did, in my experience, in respect to Yugoslavia, the former Yugoslavia and Rwanda.

The United States should lead nations in taking steps to reduce global warming. It's a concern to many millions of people around the world.

The United States, I suggest, should join those nations that seek to strengthen international law and so reduce the proliferation of international and civil wars.

I've suggested five or six areas where it would not be difficult for the United States to take the lead, and I'm sure there are many others and I'm sure members of this audience can think of many other steps the United States can and should take to restore its leadership of the free world. But in a perfect world that yearns for strong leadership from the United States, as I said, I'm confident it will come. I hope sooner rather than later.

The vast majority of people in this country want that to happen, and if it does not, let me end by saying, the prospects of the future of humankind, are bleak. Thank you very much.

MODERATOR: It's interesting, when Shirin Ebadi, the Nobel laureate, was here a few years ago, her comments about the future path of the United States were almost identical.²⁰

If there are questions from the audience, we have microphones to assist. Juan has one and Tammy has another. Raise your hand if you have questions for Justice Goldstone and go to the one of the microphones.

II. QUESTION AND ANSWER SESSION

QUESTION: Can you identify a moment when you believe this moral decline occurred and possibly even a reason?

JUSTICE GOLDSTONE: Can I identify what?

QUESTION: When the moral decline began?

JUSTICE GOLDSTONE: What decline are you talking about?

QUESTION: Well, I think --

JUSTICE GOLDSTONE: It's been -- it certainly began before the 9-11. I think the -- it began certainly, in my personal experience, with the International Criminal Court.

Until the middle of 1998, the United States was fully behind international criminal justice. As I've indicated, it was the main prop for the United Nations tribunal for the former Yugoslavia and Rwanda.

20. Shirin Abadi, Current Issues at the Intersection of Religion and Governance in the Middle East, Public Lecture at the University of Arizona. Feb. 7, 2006, <http://law.arizona.edu/events/Ebadilecture.cfm>.

It was the leading nation in calling the meeting in Rome. It was the Clinton administration that encouraged Kofi Annan to call that meeting in Rome in June and July of 1998. The change came literally on the way to Rome. The change came, I have no doubt, because leaders then in the Pentagon; military leaders didn't like the International Criminal Court. Military leaders in the Pentagon didn't want a court that would have jurisdiction over America citizens and particularly be in a position to second-guess the decisions of the military.

And they brought huge pressure on President Clinton to reverse course on the International Criminal Court. And the United States was one of only seven nations to vote against the Rome Treaty in July 1998. It joined with countries like China and Qatar and Yemen and Syria in voting against the International Criminal Court Treaty.

It distanced itself, in Rome, from all of its traditional allies in the democratic world. I think that was the defining moment, and I think became exacerbated, obviously, as a consequence of 9-11, when the United States adopted an isolationist policy, and I think squandered the tremendous support and the tremendous empathy which it had around the world immediately after 9-11.

I'm sure many of you can remember those days when just about every country in the world rallied to the support of the United States.

The United Nations, without trouble, passed anti-terrorism conventions as proposed by the United States, but that didn't last long. The United States decided to go it alone, to stop having regard for the views of other democratic nations. I think these were the defining moments. I think that caused this split between the United States and the rest of the free world.

QUESTION: Judge, hi. Thanks for coming to speak with us. I'm wondering if you see the U.S. as a world leader in the way it's dealt with or worked with indigenous people?

JUSTICE GOLDSTONE: Well, you know I've got no doubt indigenous people should be treated in no way differently from other people.

I think one thing I've learned, in my own country in South Africa, is that the primary value of any democracy is to recognize the dignity of every person who lives in it.

It's human dignity that has been said to be at the core of human rights. And in a number of democracies – I think of the Canadians, I think of Germany and now too in South Africa, our constitutional court has said that really at the heart of all human rights is the recognition of human dignity, and I think, if that's applied across religions, across color lines, across gender lines, in the gay and lesbian communities, recognizing the dignity of all people, and that applies obviously no less and perhaps in particular to indigenous people.

QUESTION: I have a two-part question. Hi. Looking towards the 2008 presidential elections, I wanted to know what you think the best questions are that we can be asking the candidates, and the second part to that, are there any international advocacies organizations state-side that are looking to push the envelope to make sure that the candidates are indeed being asked those questions?

JUSTICE GOLDSTONE: I think it's two very different questions. The first I hesitate to deal with. I think it's a little bit impertinent, if not impudent, for a foreign visitor to tell you what questions you should ask a presidential candidate. That is very much a personal decision, but certainly, I think, some of the issues that I've raised or you've asked, I think that many people in this country who are concerned about them -- you know I think people act in what they conceive to be their own interests, and of course that's human nature. We all do.

Whether we do good things or bad things, we do them because we think that they're good for us. The problem, as I've indicated earlier, is that you always have your self-interest. And for that reason, I think we must recognize that, for most people in this country, as in most countries, what they're interested in their own personal security, having a roof over their heads, having sufficient food to eat, having education for their children, looking after the elderly.

And these are the concerns obviously that any presidential candidate has to deal with. But I think United States citizens have to realize, and most do realize, that as one of the leading -- as the only leading country in the world, as the only super power, it has to spend its tax payers' money on countries in trouble many, many thousand of miles away from your own shores, and the reason is to protect your oil, to protect your interests around the world, and there are many of them. Trade interests, the United States trades and has to trade with the rest of world. It cannot suddenly become an island and forget about the world out there.

So it's really important, I would suggest, that the United States leaders join with other democracies in fighting these problems together, bringing civil wars to an end, bringing war crimes to an end, taking appropriate steps to retard global warming.

All of these issues relate, for the most part, to things that happen, as I say, many thousands of miles away from this country, but they are your concern and they do cost you money.

And the more other countries, other democracies, in particular, can join in, the more important that is, but international organizations -- obviously the international community needs them.

Let me give you two simple examples we take for granted. You take for granted, when you mail a letter to somebody in Russia or somebody in Cuba, it will be delivered.

It's delivered because of an International Postal Communications Convention²¹ that obliges all countries to deliver the mail from any other country. So, at the height of the Cold War, your mail, mailed from people in the United States, was delivered in the Soviet Union.

21. See 39 U.S.C. 407 (1994) (authorizes the U.S. Postal Service to enter into postal treaties, in order "to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services").

Similarly with civil aviation. Your civil aircraft overflies countries that may be at war. Your civil flights overflew the Soviet Union during the Cold War, overflew Cuba during the worse times of the relationship between the United States and Cuba. And that's reciprocal. Cuban flights and Russian flights were able to overfly the United States' air space.

So we live in a very small world, a narrowing world. Use of the Internet, very difficult to cut it off for any kind of -- to stop the Internet coming. Some countries -- China is trying it, not succeeding very well because they don't control the Ethernet that is used for modern technology.

So it's important, I think, for the United States to realize that it cannot do it alone. It needs international organizations and it needs to lead international organizations and together with the other democracies.

QUESTION: Do you believe that the United States can regain its sort of moral ascendancy in the context of still maintaining the so-called war on terror?

JUSTICE GOLDSTONE: Do I think --

QUESTION: Is a moral ascendancy in this country compatible with maintaining a, quote, unquote, war on terror?

JUSTICE GOLDSTONE: I've got no doubt it is. I think that the war on terror should be dealt with for what it is. It's not a war in the sense of military -- of the use of military force. Terrorism is a crime. Terrorists are criminals. They shouldn't be -- they shouldn't be given the privilege of being regarded as belligerents, as members of armies. They are not.

It's a criminal law that should be used, and, of course, it is used to a great extent, but it becomes -- the water becomes very murky and muddy by confusing the war against terrorism with what you and I understand about war.

What is happening in Iraq is a war. The activities within the United States to stop terrorism, it's not war. It's fighting crime. It's fighting crime in the country and it's fighting crime internationally. And if it's seen in that way, then I think that the civil rights of people can be protected quite consistently with the fight against criminality.

Privacy rights have been eroded more and more by modern technology. Unfortunately criminals -- and not just terrorists -- bank heist criminals, drug traffickers, prostitution rings, criminals, generally, are benefiting from modern technology. Whether it's the use of the Internet or cell phones, mobile phones, whatever it is, criminals are using those methods, and they're using them across national borders. They're using them internationally. And in order to fight that crime, the policing authorities in your country, in my country and through international organizations have to be given new powers.

If criminals are using mobile telephones, then, in my view, mobile telephone companies have to assist the enforcers, the police authorities in tracing the people that are using them, but it can be done with appropriate oversight, oversight internally.

I think policing organizations -- and the United States is no different than other democracies -- police organizations need internal oversight, but they need external oversight too. Let me tell you why.

If officials are given powers, they use them. If officials are given powers, at times, they'll abuse them. It's human nature. We overreact, and we do it to protect ourselves. If officials know that somebody is looking over their shoulder, they'll act more carefully, and it's not so much getting caught. If officialdom knows that it's being watched, it's less likely to abuse power than if it's not. It's not going to make applications for warrants if they are hopeless. If they don't have to make applications for warrants, then whatever, let's do it.

So I think there are many ways in which our democracy can be protected consistent with fighting criminality, whether it's domestic or whether it's international.

QUESTION: Hi. I share your faith that the moral consensus in the United States will increasingly tend toward the kind of leadership you describe in the future, but my concern is that I think that the historical record suggests that the kind of international cooperation you're describing tends to only emerge in the wake of a staggering tragedy. And I wonder how you think we can minimize the risk of such a tragedy occurring and how we can mitigate the reactionary zeal that inevitably follow such a tragedy?

JUSTICE GOLDSTONE: Again it boils down to leadership. I've learned, in my life, the importance of leadership. People want good leaders. People want to follow good leaders. Often people follow bad leaders. One has to think only of people like Adolph Hitler or Slobodan Milosevic or Joseph Stalin. Millions of their people followed them in the most oppressive of societies.

But let's think of good leaders. Think of your own good leaders. Think of President Roosevelt, who brought the American people into the Second World War against the will of the majority, but he gave that moral leadership and he was followed and he's been revered for it.

There have been many, many leaders, Nelson Mandela in my country. Had Mandela come out of prison calling for revenge in our country, we would have had the blood bath that the world predicted in South Africa, but he didn't. He came out and gave strong moral leadership, and he said, because we were oppressed, there is no reason we would want to oppress others. And his people followed him, and look at the position South Africa is in today in comparison to what it could have been.

And the United States can give that leadership. People want to follow the United States. All people want to follow powerful leaders. It's much better to have a powerful leader than a weak leader.

This is one of the problems. I think international terrorism is in the United States because of that. They resent the United States' power. They resent freedom and democracy in the United States. They resent the way women in the United States are respected and given rights.

These are all powerful pluses in democracy. And for that reason -- for that reason I suggest that, if the United States called a meeting, as I've suggested, of democracies, and the United States could decide which democracies are -- which countries are democracies.

A meeting of leaders at different levels, political leaders, police leaders, if they were called to meetings to discuss how to fight international crime, particularly international terrorism, consistent with democratic principles, I think that would be a tremendous act of leadership and it would garner, I have no doubt, the support of every democracy in the world. And I don't think one has to wait for another tragedy to make that realistic proposition.

QUESTION: Justice Goldstone, I'm not sure if this is your subtext, but when you were talking earlier, I was brought back to my youth when the perceived threat, in United States, was the communist threat and there were many extremists who attempted to exploit that threat for political advantage. At that time, it seems to me, one of the things that was very important was that our national leaders, our presidents, never affiliated themselves with the most extreme anti-communist points of view.

You spoke of the importance of leadership. It seems to me what has changed is that essentially our national leaders now -- and I don't know if this is what you were suggesting or not -- but have in effect affiliated themselves with the most extreme points of view having to do with anti-terrorism and attempting to exploit it in the same way that the so-called anti-communists attempted to exploit the communist threat, in my thinking.

JUSTICE GOLDSTONE: Of course you refer certainly, as I understand it -- certainly reference would include the McCarthy era, when so many people in the United States went along with the McCarthyism and aligned themselves with the most extreme steps against communists.

QUESTION: That's exactly what I was referring to.

JUSTICE GOLDSTONE: People allowed that to happen, and it happened in my country. White South Africans went along with the apartheid regime and indefinite detention because they were fighting their enemy, and their enemy was black domination. And they went along with the belief that they would be driven into the sea and slaughtered if there was a black majority government in South Africa. And they gave carte blanche.

They gave license to the government to take whatever steps they wished including torture, murder, across border murders and so on. And it was being done to protect them.

It wasn't as extreme, by any means, in the United States, but there were many people who went along and were silent, allowing people who would deem to be pink or communist supporters, fellow travelers, their rights were allowed, by the majority of Americans, to be ridden over roughshod. People act that way in fear. It was fear of communism.

In the Second World War, the way Japanese-Americans were treated was too rooted in fear and proved, without question, to have been without any foundation in fact at all.

So those are the dangers that democracies face, of leaders using fear to get powers that are not consistent with democracy.

That's where people have to be vigilant. It's the ordinary people in democracy who save democracy. It's not the leaders. It's the people who, at some point, say enough. We are not prepared to go along with this. And it was leaders in Congress who stopped McCarthy, but it was also public objection to it.

That, of course, is the value of democracy. In a democracy, if there are sufficient people against a particular government action, it changes sooner or later, and it may be difficult. But I think it's certainly students at universities who do often take the lead because they have the openness. They're able to discuss things, and this is particularly true of the United States.

Let me say there's one thing the United States doesn't, I think, appreciate sufficiently, and they should be very proud of it, and that's the openness of your society. There are not many democracies where, I, as a foreign visitor, could come and say the things I've said without being resented. I don't think anybody in this audience resents my saying it. They may disagree and that's their right. I would fight very hard to help them object to anything that I said. But it's a very open society.

In London, I would have measured my words much more than I did this morning because one thing I've found, in my frequent visits in the United States, is that there is this tolerance, that there is this acceptance, there is your understanding that what I'm saying, I'm saying because of affection for your country and not for any other reason and because of the fear I have of these rights being eroded. So I think this is the difference.

I think you're correct, it's a mix of leadership from the top, but it's also from the bottom up of that leadership, from civil society and particularly academia.

QUESTION: I'm wondering, as a graduate of the same college Kofi Annan went to, about the role of the UN, particularly after your experience, with the oil for food program.

Does the UN have that type of moral leadership where they can establish the International Criminal Court or other such organizations without the support of the United States, and if not, what can the United States do to become more closely connected now with the newly -- new age UN, especially the new secretary general?

JUSTICE GOLDSTONE: But of course, you're correct, the United States, as the only super power, is by definition the most important member of the United Nations, and if the United Nations didn't exist, I think the United States would have to invent it, as it did in 1945, because there's no other way -- there's no other way of organizing the international community.

When you talk about the UN having the ability to give moral leadership, I'm not sure it's the correct question to ask because I don't believe that the UN is in a

position to give moral or immoral leadership. I think the UN can do no more than the major powers allow it and want it to do. If the major powers want to block the UN from taking action, they can do it, against the wishes of the majority, overwhelming majority of the members of the UN.

That's the system, the veto power of the Big Five operates to block any serious action when it comes to international peace and security. So it's crucially important for the United States to give that leadership.

In the case of oil for food, it was a very different situation. The United Nations was simply not geared up to run a program involving over a hundred billion dollars. A hundred billion dollars, that's modern the budget for most countries who are members of the UN.

Our party brought up that -- I've forgotten -- I don't have it at my fingertips, the number, but it was something -- according to UN rules, with that amount of money involved, there should have been something like about 250 auditors involved on UN rules. There were five. The whole system is just not geared up to doing that, to dealing with it.

And I think it was to the credit of the UN bureaucracy and bureaucrats that there was as little fraud as there was. It was really one or two bad eggs -- bad apples in the basket who came to be found guilty by inquiry and since then by the courts, particularly the Southern District of New York.

So I think it's wrong to regard the UN as a body being able to do anything apart from the wishes of the Big Five.

QUESTION: I was wondering if you could take us back to a more personal point in your talk. You began by telling us about 1984.

I'm wondering about your initial decision to become a judge during apartheid in South Africa. For young lawyers here, if there are human rights reports about this country, they raise issues outside the war on terror, about the use of the death penalty, about rates of imprisonment, that surpass anything of apartheid South African or the former Soviet Union, about issues of racial bias in this country.

For lawyers deciding whether to participate, as a member of judiciary or as a prosecutor or defender, I'm wondering how you wrestled with those sorts of choices and the morality they play?

JUSTICE GOLDSTONE: It was a very difficult situation. For me, from my student days, I opposed apartheid. I opposed racial discrimination and racial oppression.

And all of sudden, I'm invited to join the bench in a country where I would have to take an oath of office to apply rules of apartheid, which I found, from a moral and a humanity point of view, to be wrong.

Before 1980, I wouldn't have contemplated that. It was these new organizations led by some of my closest friends who were using -- began using our courts to establish rights for many millions of black South Africans.

It was their attitude, and they were ambivalent. Some of them said we wouldn't accept an appointment on the bench, but we'd love you to because, when

we bring our cases, we'd like to have a sympathetic judge more than an unsympathetic judge.

So it was very much a borderline decision. I was fortunate in a way because, soon after I joined the bench, I was able to render decisions in cases brought by those organizations which helped reverse apartheid. It brought -- one of the decisions, which I rendered in 1981, a year after I became a judge, brought an end to residential discrimination in South Africa, and I was happy that I was able to be in a position to do that.

It could have worked the other way. There is a certain amount of happenstance in all of our lives and whatever happens to us, but that was a moral dilemma.

I remember Thelton Henderson, who was the first African American to be appointed a federal judge in California, visited South Africa in those days to help black lawyers, and he said to me he didn't realize, until he came to South Africa, that black lawyers would refuse on moral grounds -- had to refuse appointments to the South African bench.

He said never, in the United States, was that position, during the civil rights era; no African American was in that moral dilemma of not accepting an appointment to the United States Federal bench. It was a very different situation, but we all have these difficulties.

So I was able to just overcome my personal objection to apartheid to become a member of the bench. It was difficult for another reason. The obvious question was why would the apartheid government want me, known to be antiapartheid, to be a member of the bench.

Well, the reason is politics. Firstly, the South African government, in the 1980s, wanted -- boasted about having an independent judiciary, and it was an independent.

It could afford an independent judiciary for two main reasons. One was that 95 percent of the judges supported apartheid anyway so they didn't need to have their independence interfered with. The five percent -- and there were ten or twelve or fifteen of us who accepted appointments in those days, although known for our antiapartheid views, the government used us and it made the position more difficult because we were helping to confer respectability on a government that didn't deserve to be respected, but power went with it.

The second reason the South African government could afford to have antiapartheid judges was we had no constitution. So what I, as a judge, ruled on Monday, our parliament could undo on Tuesday.

The government said we don't want the international community, that we're trying to corrupt to our side -- to be seen as to be interfering with decisions of the judges. That gave us tremendous political power in fact.

I knew if I gave a ruling in favor of the rights of black South Africans, the government wouldn't undo it. In fact, they didn't. It was easier for them to blame

the judges and say this is not our fault, when they were criticized by the right-wing supporters. It's not our fault. Blame the judges.

So it was a very complex dynamic, but it certainly helped our transition, and that's using the benefit of hindsight. It helped our transition that a number of us took the position and were able to play a role during transition because the judges who did created a respectability in the black community, and the fact that you were respected in the black community and judges in the white community enabled us to play a very unusual role.

MODERATOR: I'd like to thank our guest, and invite everyone to a reception, which is out these doors and just beyond. Thank you very much.

