

American Branch of the International Law Association (ABILA)

2022 Outstanding Achievement Award

JUSTICE RICHARD GOLDSTONE

Acceptance remarks and keynote address

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Fordham University School of Law, 150 West 62nd Street, New York, NY 10023

It is a great honour to receive this Award and especially at this International Law Weekend celebrating the centenary of ABILA. It is also a privilege to have been invited to make some remarks on this occasion.

I propose to consider the many ways in which my career has been shaped by contact with American lawyers, jurists, politicians, and many others, and especially with regard to the recognition and enforcement of human rights and international humanitarian law. I will conclude with a few remarks about the approach of the United States to international criminal courts.

In my earliest adult years, I was impressed with the contributions that Americans had made to the recognition and enforcement of fundamental human rights at the domestic and international levels. In South Africa, the American Civil Rights movement inspired and gave hope to countless numbers of victims of repression and racial discrimination and also to those who fought against the Apartheid system.

As a student leader and anti-apartheid activist at the University of the Witwatersrand in Johannesburg, I had a rather dramatic introduction to the courage of a former president of the United States Student Association, Allard Lowenstein. I was the President of our university's Student Representative Council in 1958. I was contacted by Lowenstein, who was visiting South Africa, apparently as a tourist. A few days after our meeting, Lowenstein hit the headlines. Hans Beukes, a student from what is now Namibia, had been granted a scholarship by the Norwegian Students Association. As he was about to depart on a flight to Europe, his passport had been withdrawn by the South African Government. Lowenstein smuggled Beukes over the border concealed in the trunk of his car. It was a high risk operation. That was certainly a dramatic introduction to United States political activism! I might mention that Lowenstein became a member of the House of Representatives and in 1980 was shot and killed in his Manhattan office by a former fellow student at Stanford University School of Law.

During my earliest days as a judge, I had the privilege of working with American judges and lawyers who came to South Africa to teach trial advocacy skills to aspiring young black lawyers. They included Judges Leon Higginbotham, Nathaniel Jones and Thelton Henderson. They were outstanding role models not only for the novice lawyers but also for the few South African judges who were privileged to work with them.

In 1984, I attended an Aspen conference for Federal judges on the internationalisation of human rights. The organiser was the indefatigable Alice Henkin, who arranged for four South African judges to attend each of four Aspen meetings held that year. Alice chose well - in 1995 all four of us were appointed by Nelson Mandela to South Africa's first Constitutional Court. The meeting I attended was convened in Mobile, Alabama. We were seated in alphabetical order and my neighbours were two Federal circuit court judges, Anthony Kennedy and Ruth Bader Ginsberg. We remained good friends in the decades that followed.

In that same year, I spent three months travelling the length and breadth of America on the United States International Visitor Program. I had the privilege of meeting with many judges, both State and Federal, senior lawyers and many leading academics. Their commitment to the rule of law and equality was both impressive and inspiring.

When I became the first Chief Prosecutor of the United Nations International Criminal Tribunal for the former Yugoslavia, again it was assistance from the United States that made my difficult task a lot less daunting. In particular, Madeleine Albright, then the US Permanent Representative at the UN, appointed her senior advisor, David Scheffer, to shepherd me through the bureaucratic maze in Washington DC. David and I have remained good friends. The support we received from the US was crucial to the success of the Yugoslavia Tribunal and later, the UN

International Criminal Tribunal for Rwanda. Without that assistance and encouragement the Tribunals would likely have foundered.

Difficult and complex meetings in Washington DC, during 1995, led to what was a unique agreement between the Office of the Prosecutor of the Yugoslavia Tribunal and the US Government under which the Prosecutor received secret intelligence information that considerably assisted our investigations and those of my successors. That information included intercepted telephonic discussions between the President Milosevic of Serbia and the self-appointed President of Republika Srpska, Radovan Karadzic. That evidence was material to the later convictions for war crimes of Karadzic and his army chief, Ratko Mladic.

The Yugoslavia Tribunal also benefited from the support it received from the Central and East European Law Initiative of the American Bar Association (CEELI). Through the efforts of Mark Ellis, its founding director, the first defendant to be put on trial in The Hague, Dusko Tadic, received a fair trial. Mark Ellis arranged for two London barristers to join the defense team of Tadic and assist his Dutch lawyer overcome his lack of experience with the common law art of cross examination. Until the UN reluctantly agreed to pay for two additional lawyers on the Tadic defence team, CEELI paid those costs. Mark went on to become an outstanding Director of the International Bar Association. I have been privileged to remain involved in some of its projects.

Many mass graves were found in both Bosnia and Rwanda - as they are being found today in Ukraine in areas that were occupied by Russian forces. War criminals invariably bury the victims of their crimes - whether killings, rapes or torture of civilians. Those graves provide what is often crucial corroboration of the evidence of eye-witnesses and victims. In Bosnia, we were concerned that the mass graves might have been booby-trapped. The UN forces then in Bosnia refused to assist us with our work - our requests were dismissed with the excuse that the assistance would constitute 'mission-creep'. It was a Norwegian NGO that courageously brought in sniffer dogs to look for grenades. And it was an American NGO, Physicians for Human Rights, and their forensic experts, who exhumed and examined the bodies. They did so also in Rwanda. Their evidence played a crucial role in some of the trials that followed in both Tribunals including the prosecution of the genocide committed near Srebrenica in Bosnia. I have remained involved with PHR and have served on its board for some years. Its present work includes tracking attacks, during war, on medical facilities. In the first seven months of the war in Ukraine, Russian forces attacked 233 medical facilities. Attacks on medical workers have been common in Myanmar and Syria. PHR has also been actively involved in highly successful human rights missions in Central Africa.

I have had the privilege of working with two present leaders of ABILA - Leila Sadat and Jennifer Trahan. I met Leila when she was a very young and enthusiastic international law teacher in St. Louis. Some years later

she invited me to be one of the members of the small Steering Committee she established to lead her project on an International Convention on Crimes Against Humanity. Her leadership of that project has been exceptional. The Convention has now reached a difficult stalemate in the Sixth Committee of the UN where Russia and China are preventing the Committee from reaching consensus on referring the draft Convention to the General Assembly. The Sixth Committee, has an exceptional and arcane rule requiring its decisions to have the consensus of all members of the UN. In the end, I have no doubt that Leila will succeed in her quest to fill what is clearly a missing link in international humanitarian law. It has also been a pleasure to work with Jennifer Trahan on her project to put a stop to the use of the Security Council veto by members of the P5 in the face of resolutions to deter the commission of atrocity crimes. Its all in her excellent book *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*.

In recent years, I have been working with Senior Federal District Judge Mark Wolf in setting up an international civil society organisation, Integrity Initiatives International. Its mission is to fight corruption and especially kleptocracy - leaders stealing public funds for personal gain. Our main project is the establishment of an International Anti-Corruption Court (IACC). The United Nations Convention Against Corruption has certainly succeeded in having many States enact appropriate domestic laws to combat corruption. Too frequently, however, kleptocratic leaders subvert their own prosecutorial and justice administrations. Invariably

they launder their illicit funds in foreign countries. The amounts involved, I need hardly add, are staggering. There is no international investigative and prosecutorial mechanism to bring the criminal leaders to account and to recoup the stolen funds. Hence the need for a mechanism at the international level. Our efforts to establish the IACC have now received strong governmental support from The Netherlands, Canada and Ecuador. A meeting is being convened by the Dutch Government at the end next month at which it is hoped that other invited governments will lend their support to such a court.

I propose now to consider, briefly, the somewhat inconsistent attitude of the US Government to the enforcement of the international laws prohibiting the commission of serious war crimes.

Towards the end of December 2000, in the dying days of the Clinton Administration, I received a call from David Scheffer, who was then then the first US Ambassador-at-Large for War Crimes. He informed me that President Clinton was considering the US signing the Rome Statute. He referred to the great respect and affection that President Clinton had for President Nelson Mandela. David asked me whether I would request President Mandela to call President Clinton and urge him to sign the Rome Statute. Of course, I did so immediately and President Mandela reaffirmed his support for the Rome Statute, and undertook to make contact with President Clinton. Whether Mandela in fact spoke to Clinton, I do not know. In any event, within days President Clinton instructed

David Scheffer to attend at the office of the Secretary-General of the UN and sign the Rome Statute on behalf of the United States. Unfortunately, not too many weeks later President George W. Bush instructed his Under Secretary of State for Arms Control and International Security, John Bolton to “unsign” the Rome Statute. Bolton stated that doing so made it the greatest day of his career - or words to that effect.

In 1995, Russia and China accused the NATO powers, led by the US, of having committed war crimes when it bombed Serbia in response to its policy of ethnically cleansing Kosovo of its Albanian citizens. The Chief Prosecutor of the Yugoslavia Tribunal, Carla del Ponte, indicated that she was prepared to investigate the role played by the NATO powers. This meant that it would potentially investigate US nationals. The United States cooperated with the Office of the Prosecutor. In the end result, Carla del Ponte, refused to launch a full investigation into the Russian allegations. The United States accepted the authority of the ICTY, did not criticise it and did not threaten to withdraw its support for the Tribunal.

Compare that with the response of the Trump Administration when the Chief Prosecutor of the ICC stated that alleged war crimes committed by the US in Afghanistan were to be investigated. I need hardly recall, for this audience, the public statements made by Secretary of State, Mike Pompeo, and the Chairman of the National Security Council - again it was John Bolton - excoriating the ICC. Sanctions were imposed on the Chief

Prosecutor and a senior member of her staff. Soon after President Biden took office, the sanctions were removed.

When, earlier this year, Russia was justifiably accused of having committed the crime of aggression and perpetrating serious war crimes in Ukraine, the US took the lead in calling for the prosecution of Russian leaders before the ICC for the alleged war crimes. The ICC lacks jurisdiction to charge Russian leaders with the crime of aggression and the US has also suggested support for the establishment of a special tribunal to prosecute Russia for the commission of that crime. President Biden has called for Putin to be brought to justice.

In short, the policies of the US Government with regard to war crimes tribunals has been inconsistent. What has remained consistent and strongly supportive has been civil society. The American Bar Association has been a leading voice in favour of US support for the ICC. It has been my privilege to be a member of the ABA's ICC Project which was established to strengthen US-ICC relations through advocacy and education and to provide legal assistance to the Court. That project has been led with great inspiration and ability by former ABA President Michael Greco.

Democracy today is under siege. It is more necessary than at any time in the recent past for the United States to assert its leadership as the leading democracy in the world. Too many democracies have veered

towards autocracy - think of Hungary, India and Brazil. The Trump Administration had scant respect for the rule of law. There are others. Today, there is a lurch to the right in Sweden and Italy. Freedom and civil rights have been snuffed out in Afghanistan and Myanmar.

I know that I need not convince this audience of the importance of democratic rule and the observance of the rule of law. What is insufficiently recognised and acknowledged is that the example set by the United States is followed in other parts of the world - by both democratic and autocratic leaders. Trump's unfortunate actions were cited as justification for autocratic actions and policies in many parts of the world. It was said that if the United States could ignore the results of free and fair elections why not the same for Brazil, as had been suggested by President Bolsonaro. Kenya was just spared that fate when the decision of its Supreme Court that the elections were free and fair was accepted by the loser, Raila Odinga.

The responsibility of the United States to support democracy and the rule of law has never been more important. The resolve of those who support democracy has never been more crucial. Your example has been as crucial as it has been steadfast. That you will continue to stand strong I have no doubt.

Thank you again for honouring me.