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Richard Goldstone

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Historical Evolution—From Nuremberg to the International Criminal Court

Judge Richard Goldstone

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PROFESSOR DEL DUCA: I will now turn over the podium to Judge Richard Goldstone, a former member of the Constitutional Court of South Africa and a Global Professor of Law at New York University Law School.

Judge Goldstone in addition to being the Chief Prosecutor in the early days of the ICTY has contributed tremendously to the development of this body of humanitarian law. The Goldstone Commission antedated or preceded the Truth Commissions in South Africa. And he is perhaps one of the few people who, having been involved in both processes, can provide unique perspective in evaluating advantages and disadvantages of criminal prosecution in the Truth Commission procedures.

I ask you now to give a warm welcome to our distinguished colleague and friend Richard Goldstone.

(Applause.)

JUDGE GOLDSTONE: Good morning. Thank you for your

introduction, Professor Del Duca. It's a great pleasure to be back at Penn State and to have an association going back some years with the Dickinson School of Law.

Pre-Nuremberg Impunity

Until the Nuremberg Trials, there was effective impunity for war criminals. At home, they were generally regarded as war heroes and not war criminals. With one or two minor exceptions, military and political leaders who were guilty of the most heinous war crimes enjoyed effective impunity. They were simply not brought to trial. There was no justice for the victims.

Nuremberg and Tokyo Trials

But the Nuremberg Trials of the major Nazi criminals and the subsequent Tokyo Trials of the Japanese leaders ignited a flame of hope for a new system of international criminal justice. Hence, we find a reference in the 1948 Genocide Convention to an international criminal court having jurisdiction over the crime of genocide. One finds a similar reference in the 1973 International Convention that declared apartheid in my own country, South Africa, to be a crime against humanity.

However, the Cold War intervened and the flame that was ignited at Nuremberg spluttered and almost went out during the following half century of inaction. There was no significant advance in the endeavors to set up an international criminal court and international humanitarian law was effectively left in limbo.

Security Council Decision to Establish the *Ad Hoc* Tribunals

Then in 1993, there was the surprising decision by the Security Council to establish the International Criminal Tribunal for the former Yugoslavia. It did so, using its preemptory powers under Chapter Seven of the United Nations Charter under which it is empowered to pass peacekeeping resolutions that are binding and preemptory on every single member state.

It is important to recognize the politics behind that unusual and unexpected development. Clearly, if the Rwanda genocide had come first and not succeeded the genocide in the former Yugoslavia, I don't believe there can be any doubt that there would not have been an International Criminal Tribunal for Rwanda. It would have been treated in the same way as genocide in Cambodia or the genocide committed by Saddam Hussein against his own Kurdish population, and the many terrible war crimes committed in Africa and Asia since the Second World War. In those cases there was no serious thought given to

establish an international war crimes tribunal.

But the politics of 1993 were different in respect to the former Yugoslavia. Firstly, it was in Europe where the major European nations said after the Holocaust, that this kind of egregious conduct would never happen again, and here it was happening in their backyard and they felt a responsibility for it; and they felt something had to be done about it. Secondly, the Cold War had come to an end and there was a window of opportunity in 1993 during which both Russia and China were prepared to vote affirmatively to set up this international war crimes tribunal.

There was also the growing influence of international and national human rights organizations. They influenced politicians in Europe and North America to support an international war crimes tribunal. And, of course, when the Rwanda genocide happened in the middle of 1994, the precedent had been created. The Yugoslavia Tribunal had been established, and it wasn't difficult for the Security Council to agree to the request from the government of Rwanda to set up a second international criminal court. There were political complications that later induced Rwanda to oppose the Tribunal. That is a complicated story and there is no time to consider it now.

Lessons to be Learned

Contribution of the U.S. to the ICTY & ICTR

There are a number of lessons to be learned from the two *ad hoc* tribunals. The first is the important contribution made by the United States. Madeleine Albright, who was then the United States Ambassador at the United Nations “the fairy godmother” of the ICTY and ICTR. She drove the Clinton Administration to give tremendous support for both those tribunals. From my personal experience as the First Chief Prosecutor of both, I can assure you that neither of them would have been set up and neither of them would have got off the ground without the support from the United States administration. Personnel, financial assistance, computer technicians, you name it—the United States provided crucial assistance. And David Scheffer, who was then the Chief Counsel of Madeleine Albright, and subsequently became the first Ambassador-At-Large for War Crimes, was my chaperone in Washington. He took me to the CIA, Justice, and the FBI. It was through their efforts that we received important intelligence information. Top rate people from Justice and from the military came to work in The Hague and in Rwanda. One cannot overemphasize the importance of the role played by the United States in the early and the middle years of both the Yugoslavia and Rwanda tribunals.

Required Political Support for the Tribunals

A second lesson, one often ignored, is that it's all about politics. Without politics you wouldn't have international criminal justice at all. Without politicians and without politics, these things don't happen and won't happen. One tends to forget that, and one assumes that these institutions are there and it's a given and many people I think ignore the important politics without which the birth of these tribunals would not have taken place.

Development of International Humanitarian Laws

The third lesson is the huge development of international humanitarian law in consequence of it being used. Again it's a truism, if the law isn't used, it's not really worth the paper it's written on. I have untold admiration for the International Committee of the Red Cross (the ICRC). They continued, year after year, decade after decade, to update and refine humanitarian law and in particular the Geneva Conventions. It's to their great credit they did this at times when these laws were hardly used. I believe that international humanitarian lawyers owe a huge debt of gratitude to the ICRC. Without them we wouldn't have the body of law that we have today. The *ad hoc* tribunals and the hybrid tribunals that have followed have daily used those laws. In being used, humanitarian law has developed in many areas.

Gender Related Crimes—Recognition in the ICC Rome Treaty

The obvious example is gender-related crime. Systematic mass rape and other gender crimes were ignored by humanitarian law. When evidence of these crimes emerged with regard to both the former Yugoslavia and Rwanda, the role of women judges on the *ad hoc* tribunals became crucial. They pushed for adequate attention to be given to them. What followed was a whole new exciting development in the recognition and the prosecution of gender-related crimes. This is well reflected in the wide definitions of these crimes in the Rome Treaty for the International Criminal Court.

When we started the Yugoslavia Tribunal, rape was referred to only in one area of our jurisdiction and that was crimes against humanity. The horrors of gender-related crimes have been ignored principally, I believe, because the "laws of war," as it was then called, was written by men for men and rape was simply brushed off as one of the unfortunate but inevitable consequences of war. That's changed and it's been a very important change.

International Criminal Courts Can Provide Fair Trials

The fourth lesson, and it may seem obvious now, but it didn't when we started, and that is that international criminal courts can provide fair trials. That wasn't a given. Many lawyers and academics seriously doubted whether you could get judges and prosecutors and investigators coming together from 40, 50, 60 countries, civil law systems, common law systems, and all different systems in between, and conduct fair trials. I haven't read or heard any serious criticism of the fairness of the trials that have been held in any of these tribunals.

What helped was that most of the judges and prosecutors came from a human rights background—not from a typical prosecuting office background. And I think that's made a difference. But I think all of them, whatever their background, have been very aware of the fact that if the trials in these courts were perceived to be unfair, the whole system would collapse. The whole endeavor would fail. The policy of the prosecutors has been to prefer to lose cases rather than win them by unfair means. Greater attention has been given by the prosecutors and judges to the fairness of the proceedings. They were aware that it was the most crucial aspect of the whole undertaking.

Independence of the Courts and Prosecution

The fifth lesson is that international courts acquire a life of their own and they develop an existence divorced from their parent. The Yugoslavia Tribunal had to determine whether it was lawfully created. It had to decide for itself in the appeals chamber whether the Security Council had the legal power to create it. And little did the Security Council think that this sub-organ that it created would turn around and have to determine whether the Security Council acted lawfully in setting it up. And generally speaking, the independence of the judges, the independence of the prosecutor was crucially important in divorcing these institutions from the parent that created them.

International Criminal Justice Can Act as a Deterrent

The sixth and last lesson to which I will refer is that international criminal justice can act as a deterrent. It's difficult to establish deterrence. How do you prove what would have happened in a situation if there hadn't been this or there hadn't been that? But the best illustration (and I wish I had one from oppressive regimes), relates to the use of military force to stop the ethnic cleansing by Serbia of the Muslim population of Kosovo in 1999. There were seventy-eight days of bombing by NATO force—seventy-eight days of the heaviest bombing

since World War II. There were less than 2,000 civilian casualties. This was a remarkable feat. The reason, I have no doubt, was that the military commanders in Washington, D.C., in Bonn, in London, in Paris, all had military lawyers driving the generals crazy in insisting that they carefully choose military targets and protect civilians.

I've put this to senior people at the Pentagon and I've discussed it fairly recently with the Deputy Commander of the German Army. I asked why were there remarkably so few civilian casualties. In Vietnam 90 percent of the victims were civilians. In Korea over 80 percent of the victims were civilians. In World War II over 50 percent of the victims were civilians. In civil wars in the second half of the 20th Century more than 90% of the victims were civilians. Why now all of a sudden was there this difference? I was given two reasons—in both Washington, D.C. and in Berlin. The first was the use of precision ammunition. Modern technology makes it easier to be precise in taking out a military target. The second was the presence of the ICTY looking over the shoulders of army leaders to see whether war crimes might be committed by the NATO forces. It was important that the ICTY had jurisdiction over war crimes committed anywhere in the former Yugoslavia. So I think that's certainly one illustration of deterrence.

It probably made a difference, too, in Operation Storm, when the Croatian leaders warned their troops to protect civilians. They committed war crimes, but my guess and my instinct was that the war crimes would have been more egregious but for the jurisdiction of the ICTY.

End of Impunity for Heads of State

There has also been the successful end to impunity for heads of state and former heads of state, not only in the Balkans and in Rwanda. It spread to other regions. I remember reading a few years ago about the former President of Indonesia, Suharto, an oppressive war criminal, having to cancel medical treatment in a German clinic because he feared a warrant of arrest might have been waiting for him at Frankfurt Airport. Then there was Haile Mariam Mengistu, the former dictator of Ethiopia, who was wanted for egregious war crimes in his own country. He was inappropriately given asylum by President Mugabe in Zimbabwe. He checked into a Johannesburg clinic. Human Rights Watch in New York heard about it and raised an alarm. Before South Africa could even consider whether there was jurisdiction in our courts, Mengistu hurriedly left the clinic and went back to Harare and had to accept medical treatment there.

It's interesting how the worst war criminals, the worst perpetrators

of the most savage treatment of their people always want the best medical treatment for themselves. Many of them want vacations on the French Riviera or elsewhere in the world. They now no longer travel to the same extent. It's good news for human rights and probably bad news for their travel agents, but they're staying at home and traveling less and that I think must also act as a deterrent. The trial of Charles Taylor must be sending chills up and down the spines of other oppressive leaders within Africa or on other continents.

ICC and the 1998 Rome Diplomatic Conference

In any event, there were these tremendously exciting developments that led to the setting up of the International Criminal Court at the Diplomatic Conference in Rome in the middle of 1998.

Those successes of the Yugoslavia and Rwanda tribunals led the United States to put pressure on Kofi Annan, then newly appointed United Nations Secretary-General, to call a diplomatic conference to set up an international criminal court. That happened in June and July of 1998. And, as many of you all know, 120 nations voted in favor of the statute setting up the international court. Only seven nations voted against it, including, unfortunately the United States.

The United States had initially been a strong supporter of the International Criminal Court. On my reading of the situation, it was during the few months before the Rome conference that the Pentagon decided that it wasn't a good idea. It was senior generals in the Pentagon who decided that it wasn't in the interests of the United States to have an international court looking over the shoulders of American generals and having jurisdiction over American troops. They didn't like the idea and they sent strong messages to the White House that they strongly opposed the International Criminal Court.

The System of Complementarity and the Pre-Trial Chamber

I think it's a matter for regret that President Clinton buckled under that pressure and the United States policy changed. It must be recognized, however, that I think it was the United States' antipathy to an independent international criminal court that led to some of the protections built into the Rome Statute—the system of complementarity, the fact that the ICC is a court of last resort and not first resort, that national courts have the first bite at prosecutions. I think that's a good thing. So too, is the idea of a pre-trial chamber—that the chief prosecutor is not completely independent and that he is overseen by a pre-trial chamber.

Unfortunately, the Pentagon's opposition continued and the United

States ended up voting against the treaty. Yet, in one of his last acts in office, President Clinton signed the Rome Treaty but did not refer it to the Senate for its approval. The threat from Senator Jesse Helms was probably correct. He said it would be dead on arrival and it would have been. And the opposition would not have only come from the Republican Party. It would have come from the Democratic Party as well.

A la Carte Use of International Laws

The United States has always had a suspicion of international law, of international organizations, and of international courts. And that comes from power. The United States shares it with other powerful nations. China and Russia have the same position. The powerful don't want to be policed. They want others to be policed. The United States likes to use international law as an a la carte menu, using those parts it fancies at a particular time and rejecting those that don't suit its interests or what they perceive to be their interests at another time.

Speedy Ratification of the Rome Treaty

Nobody expected that there would be the necessary 60 ratifications of the Rome Treaty within much less than a decade. It took four years. And today over half the members of the United Nations have ratified the Rome Treaty, including all members of the European Union. Africa leads with 27 countries having ratified, followed by Western Europe with 25 nations.

Implementation Problems

Problems have emerged. First, there is the peace versus justice debate. Ambassador Okun is going to talk about that. One of the problems he will no doubt address is the refusal of the Sudan to cooperate with the ICC. Their investigators are not allowed into the country. We were more fortunate at the ICTY. Although our investigators weren't allowed into Serbia and it was difficult to get into Croatia, we had hundreds of thousands of witnesses elsewhere. In Germany alone there were over 300,000 victims of ethnic cleansing who were available to us as crucial eyewitnesses. And, there were many others elsewhere in Europe.

Problems of perception have also arisen in the light of the Milošević and Saddam Hussein trials. Many critics use those two trials as a basis for criticizing international justice, but of course it's a false argument. It would be the equivalent of judging the American criminal justice system

by the O.J. Simpson trial. These are aberrational trials and in no way reflect the hard work and the successful trials that have been going on day after day now for over a decade.

The most important negative aspect for international criminal justice at the moment is the hostility of the United States to the International Criminal Court. From what I've said, I think you can understand the importance of the support of the United States to the other International Criminal Courts. With regard to the United States, in the beginning I assumed, as I'm sure most people did, that it was a sort of instinctive dislike that the United States has always had for international institutions and international law. Unfortunately, it's now more serious because the United States has demonstrated that it too is capable and, in fact, does commit war crimes. I hasten to add that they are not on a scale comparable to the war crimes about which I've been talking. However, Abu Ghraib and Guantanamo Bay have reinforced the opposition of conservatives in this country. They are saying that if we were members of the International Criminal Court, within months we will be dragged before their court.

It's obviously a false argument. The sorts of crimes committed by United States troops that have come to light thus far would not even fall within the jurisdiction of the International Criminal Court. They're looking at the most egregious crimes committed on a large scale.

More recently, there have been attempts by the Bush Administration to circumvent the provisions of the Torture Convention and of the Geneva Conventions. This weakens respect for the law, and not only in the United States. Unfortunately it has a knock-on effect. If the most powerful nation in the world regards the Geneva Conventions, as it was stated by the former attorney general, as being "quaint," this brings disrespect and disrepute on those important laws.

Judicial Action

The pendulum is swinging and I am cautiously optimistic. The judiciary is stepping in, and this is unusual. The United States Supreme Court was pretty supine in previous comparable situations—one thinks of the internment of Japanese-Americans in World War II and even going back to President Lincoln's withdrawing civil rights at the time of the Civil War. The United States Supreme Court, like the House of Lords in England, has stepped in to set aside some of the more wayward actions by governments both in the United States and the United Kingdom.

So we're at a crucial juncture for the future. The question is whether we'll return to the pre-Nuremberg days of impunity for war

criminals—I believe not. I believe that the citizens in democracies don't want that. And I believe too that political leaders don't want it. I believe that the leaders of the major democracies are beginning to realize the importance of reciprocity in international humanitarian law. One is hearing more frequently in the Senate statements to the effect that if we ill treat foreign prisoners under our care, it's a matter of time before other countries treat our people in the same way and we won't be in a position to say or do much about it.

Perhaps the most important consideration is that the United States and other democracies would hardly enjoy a world without the rule of law. Commercial reasons, apart from political, dictate where the interests of democracies lie. It is important for universities and the academy to consider these questions and I congratulate Professor Del Duca for organizing this interesting conference. Thank you very much.

(Applause.)

PROFESSOR DEL DUCA: Ladies and gentlemen we are at the point where we have time available for comments from the panel and questions from the audience. Would any of the panelists like to comment? Yes. We will proceed from here with questions from our audience.

PROFESSOR CRANE: Richard, I deeply appreciate your comments because they're coming from someone who has been there. I have just two points. Politics I think drives the international criminal justice train. The bottom line is that my experience in West Africa is that if the international community doesn't want to do it, it doesn't happen. I think it's just something that students who are getting into this business need to understand that political support is necessary but politics is also something that historically, as well today, is a threat.

I couldn't agree with you more having been at the international level and experiencing the disappointment as an American citizen to see the loss of the moral high ground of the United States. Henry King and I just wrote an op-ed in *Jurist* this last week talking about this. We were recently celebrating the sixtieth anniversary of the judgments at Nuremberg and chatting about how the United States led the way morally in prosecuting those individuals who did such horrible things in World War II. Yet as you compare and contrast 60 years later, the United States now—I heard one international politician call the United States the world's thug. Now, I don't think that's true, but the fact that it resonated is something that we need to be concerned about. I think two comments are particularly important for us to keep in mind not only today but also in the future.

PROFESSOR DEL DUCA: Dermot, Groome.

PROFESSOR GROOME: On the issue of politics, I guess my

question or what I'm wondering is do you see for the future of international criminal law, do you see politics having such a significant role? I think both you and David established the beachheads that had to be defended very early on. Do you think there will ever come a time when they'll be secure enough that so much of a prosecutor's efforts won't have to be devoted to politics?

JUDGE GOLDSTONE: No, because the politics is the engine. If you take the engine out, then the whole thing doesn't work. And politics is the engine of international criminal courts. Money comes from countries and it is politicians that have to vote it.

Crucially, enforcement is political. There's no enforcement of any court order of an international court without political will on the governments from the countries who have to enforce the orders. I know that David Crane and I have probably spent well over 50 percent of our time in diplomacy, not sitting and drafting indictments. In the beginning in the ICTY, I spent probably 80 percent of my time on diplomacy. I would go to capitals and arrange for my investigators to travel in their countries. We had to get laws passed. We had to continue getting money from a cash-strapped United Nations. And I'm sure both David and I could go on regaling you with stories about the politics that we were personally involved with. Had we not done it, neither of those institutions would have been viable.

PROFESSOR CRANE: The tribunals, looking at it historically and into the future, are creatures of political events. Usually there are conflicts someplace, somewhere. They are also creatures of political compromise in the international community, whatever that means, but the global community reacts and they decide to do something.

A threat that we have to be very careful of is that I've heard diplomats and politicians say well, now that we have the ICC, we will just give it to them. That's also a political kind of perspective that we have to be very, very careful of.

But again it will always be politics. It's a bright red theme that throughout the history of tribunals or lack thereof because it was also a political decision to do nothing. We can give many examples of that in history, particularly in the twentieth century, the world's bloodiest century, where the world just looked the other way and let it happen and did nothing. In my mind, the worst atrocity that I can think of is the death of millions of people and nothing is done and they disappear in the sands of history, such as Armenia where we had between 10 and 15 million die at the beginning of the twentieth century.

PROFESSOR DEL DUCA: Professor Ross, you had a question?

PROFESSOR ROSS: You mentioned in the introduction, Justice Goldstone, you also witnessed another way of dealing with crimes

against humanity, which is the South African Truth and Reconciliation process. I wonder if you could offer some views from an international context why that process is no longer really being seriously considered. My understanding of the international documents creating the International Criminal Court is that it maintains the way we deal with war crimes is to prosecute and punish war criminals, which was obviously not the approach that the Republic of South Africa took. I wonder if you could comment on going down that way and the propriety of either mandating or at least building in the flexibility to move to a truth and reconciliation process as opposed to the crime and punishment line.

JUDGE GOLDSTONE: I don't see any contradiction between prosecutions and truth commissions. I think they're two tools that can be used either separately or together. The ICC, hybrid tribunals, *ad hoc* tribunals, truth commissions. Whether with or without amnesties, are different tools for dealing with past serious human rights violations. I rather see them like a surgeon's instruments. He decides for which operation and for which procedure he needs this scalpel or that. I don't think one can generalize. I think one's got to look at it country by country, region by region, to decide whether prosecutions will bring about lasting and enduring peace and reconciliation or whether you want truth commissions or whether you want both.

In South Africa we had both. The South African Truth and Reconciliation Commission so far is unique in also having discrete amnesties as an inducement to get the truth. We had not only the evidence of over 21,000 victims, but also over 7,000, applicants for amnesty. This huge outpouring of information in the two and a half years of the life of the South African TRC has given South Africa a wonderful gift. We have now one history of what happened in the apartheid era.

Without the Truth Commission there would have been two major histories, a white history of denial and fabrication and a black history from the victims who know what happened to them. Their history would have approximated the truth. But now we have one history and my grandchildren and their children will be taught the same history. So that's very important. But the prosecutions were crucial. People wouldn't have come forward if they didn't fear prosecution. There weren't sufficient prosecutions in my view, but I understand the problems.

I certainly don't see any contradiction any more than I see a contradiction between the hybrid tribunals and the ICC. I think they compliment each other very well as part of the complimentary process. If a country like Sierra Leone has a hybrid tribunal, it's doing the work

that should be done there, not in the ICC. So I just don't see any of these situations as being mutually exclusive.

PROFESSOR CRANE: Just to jump in very quickly. We had a Truth and Reconciliation Commission as well as an international tribunal in Sierra Leone. They both reasonably worked together for about 90 percent of the time. We had an issue related to one of the defendants who wanted to make a public spectacle before the TRC and the judge rightfully said no, you're going to incriminate yourself and you're not going to do that.

But putting that aside, we found that much of it is luck. It was not planned by the international community. We actually had a domestic Truth and Reconciliation Commission and an international hybrid tribunal. I'll talk a little more about it this afternoon. But I'm convinced that to have a sustainable peace you have to both have truth and justice. I'll explore that a little bit more this afternoon. Victims want to have their stories told. They realize that it's not going to be before the tribunal possibly, but they want to go to some organization to tell their story. There were many times in Sierra Leone where they would come up to me and literally tug on my sleeve telling me I want to tell you what happened to me and my family. The TRC allows some of that to go officially in the record. It's a reconciliation of itself and thousands of Sierra Leoneans and West Africans went to the TRC to tell their stories.

PROFESSOR DEL DUCA: Any questions? Yes.

STUDENT: You had mentioned that one of the victories of the international tribunal is establishing that we are actually having fair trials for the defendants. You had mentioned the trial in particular as an example of things that go wrong. I assume that one of the things you meant is allowing him to defend himself, but perhaps that can be seen as one of the things that went very, very right in establishing the international community's attention to giving these defendants their full rights.

JUDGE GOLDSTONE: I don't have any criticism of Milošević being allowed to defend himself. I think under international law that's his right. He had a right to defend himself, but it's not an absolute right and I think that the judges allowed him to abuse that right. I think the judges should have done what judges in the United States have done in the case of defendants who misbehave themselves. There was the Minutemen trial many years ago in New York where the defendants were young, undisciplined outlaws who started shouting and screaming in court and disrupted the proceeding. The judge sent them out of the court and they weren't allowed to disrupt the trial.

I think Milošević should have been told earlier that he had the right to defend himself, but that if he abused that right it would be withdrawn.

He should have been warned that if he did not behave himself, he could go and watch his trial from his cell. "We'll give you a closed-circuit television and we'll give you the remote, and if you want to switch it off, it's your decision. But you can't use the platform as a political platform. You can't continue for days to cross examine on irrelevant political issues. We're not going to allow you to do it." They should have done it, I believe from the beginning, and it wouldn't have taken two years for the prosecution to present its case.

PROFESSOR DEL DUCA: Other questions? We still have a few minutes. Yes, another question.

STUDENT: Along the lines of International Criminal Court, it's set up as a court of last resort and the national courts have jurisdiction first. Perhaps one of the U.S.'s worries as to becoming part of that treaty is that U.S. soldiers will be tried in other nation's courts and that those trials will not be fair trials in regards to our troops.

JUDGE GOLDSTONE: Well, there's nothing to stop any nation from putting United States troops on trial under the present law, and this has nothing to do with the International Criminal Court. If I go into the streets here this afternoon and murder somebody, I'll go on trial in your court. I can't say I want to be tried in my court in South Africa. If you come to my country and commit a criminal offense, you're amenable to the courts of my country. If the United States troops commit war crimes in any country in the world, they're amenable to the courts of that country. That's the present law. The International Criminal Court isn't something different.

In the case of the International Criminal Court, 102 nations have said we can do that together. If citizens of the United States or any other country commit a war crime in our country, our courts have jurisdiction. What we're doing is we're going to pool that. What we can do singly, we're going to do together. If somebody commits a war crime on my territory by joining the International Criminal Court, I'm prepared to give the International Criminal Court jurisdiction if the court of the national doesn't want to do it itself. This is not new. I don't understand that objection from the United States.

AMBASSADOR OKUN: Yes, that's absolutely right. The existence of the ICC actually limits that kind of behavior you talked about; that is to say, the question of universal jurisdiction being lodged in a national court. Now, there is an argument ongoing in the legal community actually, a theoretical argument, whether that should not be the case; that is to say, if it is universally recognized that there are universal crimes, genocide, crimes against humanity, war crimes, they ought to be triable not only at the ICC or in the *ad hoc* tribunals, but in national courts, but it's losing its favor.

I can give two relevant examples. In Belgium, which had this in their domestic legislation, they actually had given themselves the right to enforce the law. One of the indictees was the former prime minister of Israel, Sharon, because of his alleged war crimes in the Lebanon War of 1982, which were very serious. He was condemned by the Israeli Judicial Commission. Anyway, it didn't happen. Not only did that not happen, the Belgian legislature, their congress, actually withdrew the law after a couple of years because they saw it was overreaching. They realized that not only because of the ICC, but just because of the politics of the matter, it simply wasn't realistic.

The other case where it was applied and was of course and still in a way is alive is the case of Pinochet, the former Chilean dictator. You may remember he was arrested and put in the United Kingdom under a Spanish warrant from Judge Garzon actually because he had killed—his government had murdered Spanish citizens during the Chilean dictatorship and the British executed the warrant of arrest, but it was fairly quickly quashed and he was flown back to Chile where he is still at age 91 undergoing certain trials.

But that entire issue that Senator Helms made so much fuss about really is a red herring, but he made a big fuss. He even got the U.S. congress to pass a law that if any U.S. soldier were arrested and brought to The Hague for trial before any court that the U.S. gave itself the right to intervene militarily to free him, which people in Washington call the Invade Holland Act you see. But I think that's a passing issue at this point.

