



**SALZBURG GLOBAL SEMINAR**  
**The Lloyd N. Cutler Lecture on the Rule of Law**  
**The Phillips Collection**  
**Washington, D.C.**  
**November 9, 2009**

**Note--This is a transcript of the program that is based on manuscripts submitted by the speakers and by transcription from audio files. Errors may have occurred in the process of creating this printed document.**

**B. Thomas Mansbach**  
**Chair, Advisory Board**  
**Lloyd N. Cutler Center for the Rule of Law**

Good evening, ladies and gentlemen. My name is Tom Mansbach and I'm here tonight wearing two hats.

First and by far the most important, I have the honor to serve as the Chairman of the Advisory Board of the Cutler Center for Rule of Law at the Salzburg Global Seminar. In this capacity, it is my pleasure to welcome you to the Inaugural Lloyd N. Cutler Lecture on the Rule of Law. In the few short months since we began this effort, we've been most fortunate to have been able to assemble a very distinguished Advisory Board, whose members are listed in your program and many of whom are with us this evening I'm glad to say. It is a true testimonial to the esteem in which Lloyd Cutler is held today still and a monument to his memory in the City of Washington. His impact on American history will not be ephemeral.

Wearing my second hat, as a Trustee of the Phillips Collection, it is a distinct pleasure to welcome you to our Museum and our beautiful new auditorium. Following tonight's program, as you wend your way to the reception in the Music Room in the Mansion, I hope that you will linger – but just for a moment – in the galleries with the old friends that populate their walls.

With that said, I would like to welcome to the podium a person who is a valued member of our Advisory Board and beyond that really needs no further introduction, Justice Sandra Day O'Connor. Justice O'Connor.

**Justice Sandra Day O'Connor**  
**Member, Advisory Board**  
**Lloyd N. Cutler Center for the Rule of Law**

Thank you. Really I think we made a step up here being in this gorgeous place tonight instead of some tired old court room. So we welcome all of you here for the first of the Lloyd Cutler lectures which are planned to be an annual event. And they couldn't be better named, I think.

Lloyd Cutler was born in New York City but he certainly became a Washingtonian. And he is a graduate of Yale undergrad and Law School and he first practiced law at the firm of Cravath Swain & Moore. I don't know if all of you are aware that one of his first legal efforts was to help prosecute the eight German spies who entered the United States from a submarine hoping to do some sabotage during World War II. And he joined the army and served in military intelligence during World War II. And after the War he helped start that little law firm here in Washington that became known as Wilmer Cutler & Pickering. It was a very successful firm indeed, and Lloyd Cutler was extremely influential to our country. He served as both counsel to President Carter and President Clinton. He even chaired a salary commission at the request of President Reagan. And he participated at the Salzburg Seminar in many ways. And it was he who would find prominent judges such as Justice Goldstone and bring them to the Seminar and introduce them to it. And how many of you in the audience tonight have actually been to the Salzburg Seminar? Would you raise your hand? A great many of you. And that's just truly a special experience. And it's done so much to introduce particularly young lawyers from certainly Europe and the United States, and now the Middle East as well, to discussions about the Rule of Law and the legal issues that we continue to face today and I think we'll continue to face. I think it's a great idea that we're starting this annual lecture in Lloyd Cutler's name. And I think we're going to now probably hear from President Stephen Salyer (Is that right?) who is going to introduce our speaker. And it's so nice to see all of you here tonight and I hope that this will be the first of many years of lectures in memory of Lloyd Cutler.

**Stephen Salyer**  
**President & Chief Executive Officer**  
**Salzburg Global Seminar**

Thank you, Justice O'Connor, not just for your support tonight, but over many years.

Good evening and thanks to all of you for being here for this really signal occasion. I'd like to start by expressing a special welcome to Polly Kraft who is here with us, Lloyd's widow, and other members of his family: Beverly, Lou Ann, Norton, Jamie – we are just delighted to have all of you here with us.

This is a very important moment in the life of the Salzburg Global Seminar. Lloyd, as you've already heard, was a key figure in our history, guiding the Seminar for ten crucial years as the Chairman of our Board of Directors, and attracting many of the most outstanding figures in international jurisprudence to meetings in Salzburg. We must honor his memory in an appropriate way. With your help we hope to do so by creating the Lloyd N. Cutler Center for the Rule of Law, and we believe that this annual Lecture can play a central role in the Center's work.

Our plan is that the Lecture should be given each year by a leading figure – a person who has made a significant contribution to promoting the Rule of Law in their own country or internationally. By agreeing to give the first lecture this evening, Richard Goldstone has set the bar very high indeed.

Justice Goldstone has made many outstanding contributions to the Rule of Law, in his own country – South Africa – and internationally. At a decisive moment in South African history, he was able to bridge the gap between the races by conducting an inquiry into the violence used by the security forces of the Apartheid regime – an inquiry that was so manifestly professional and fair-minded that no one could seriously dispute its findings.

Later, he was appointed one of the first justices on the country's new constitutional court, and also played a key role in creating the country's Truth and Reconciliation Commission, which of course now is cited throughout the world as one of the richest and most creative models for societies that are struggling to overcome a legacy of bitter conflict.

He was then persuaded by President Mandela to accept the position of the first chief prosecutor of the International Criminal Tribunal on the Former Yugoslavia, to which he later added the same position at the Tribunal on Rwanda. In these two roles he broke new ground, establishing for the first time since Nuremberg that people who commit genocide and other gross crimes against humanity can be held accountable by humanity itself, acting through internationally established legal mechanisms. He is one of those to whom we owe the fact that today no person, however powerful, can commit such crimes without fear of one day being brought to account.

No one who takes on such tasks can expect to live a life free from controversy. And all of us in the room here this evening must be well aware of the controversy surrounding Justice Goldstone's latest service to the international community – the fact-finding mission that he undertook in Gaza earlier this year. There may be different opinions represented in the room tonight on the findings of his report. But what I think none of us can doubt is the absolute integrity which he brought to his task, as to so many previous ones.

Justice Goldstone has sought in many ways to bring justice and peace closer together. In one of those efforts the Salzburg Global Seminar is proud to be associated with him – the creation of the Institute for Historical Justice and Reconciliation, which started in Salzburg and now has its own office in The Hague. We are also very pleased, in order to cement this association, that Richard has recently joined the Seminar's Board of Directors and attended his first meeting earlier today.

I can think of no one whose views on his chosen subject tonight – The Rule of Law as an Indispensable Prerequisite for Democracy – should carry greater weight. We are deeply grateful to him for agreeing to give this first Lloyd N. Cutler Lecture, and it is with great pleasure that I welcome Richard and give him the floor.

**Justice Richard J. Goldstone**

**The Lloyd Cutler Lecture on the Rule of Law**

***The Rule of Law: Indispensable Prerequisite for Democracy***

Good evening to you all – Justice O’Connor, President Salyer, ladies and gentlemen. It was with very great delight that I accepted the invitation from Stephen Salyer to deliver this inaugural Lloyd Cutler Lecture on the Rule of Law. It is indeed a great honor and a privilege to do so.

The Salzburg Global Seminar could not have chosen to honor the memory of a more fitting and appropriate person than Lloyd Cutler. He was a devoted leader of the Salzburg Global Seminar for many years, and he truly embodied the ethos of the Seminar. In particular, he was wholly committed to the Rule of Law both in the domestic context and in the international. The privilege given to me is heightened by the presence with us this evening of Polly Kraft and other members of the Cutler family. It was Lloyd who, in 1995, introduced me to the Salzburg Global Seminar. I was the Chief Prosecutor of the United Nations International Criminal Tribunal for the former Yugoslavia. He directed the annual session in those days on international law. And being a great opera fan, Lloyd always arranged that his seminar would coincide with the Salzburg Music Festival. Some weeks before that session Lloyd sent me a faxed message inquiring whether Noleen, my wife, and I were interested in joining him at opera performances during our stay at Schloss Leopoldskron. I sent an immediate and very enthusiastic, positive response. A fax came back from Lloyd inquiring whether I was aware that the tickets were very expensive. I responded bravely to the effect that I had made that assumption. Lloyd kindly obtained much sought-after tickets for a number of performances – opera and music. And each great performance was of course followed by a wonderful dinner with outstanding wine at the Goldener Hirsch Hotel opposite the Festspiele house. In those old fashioned days, I went with travelers’ checks in my bag, and I took an amount – a large amount – which I assumed would be more than sufficient to cover any possible indebtedness I might have to Lloyd. To my embarrassment, when I received his note of the expenses towards the end of the session, my travelers’ checks were wholly inadequate. It was sorted out later with a suitable bank transfer from South Africa to Lloyd in Washington. I hasten to add that the experiences were worth every single cent. Apart from the unforgettable performances that we will always cherish, it was a privilege and a joy to be in Lloyd’s company. At every performance he introduced us to interesting and very often famous people from many countries. Lloyd knew so many of them. He was truly a citizen of the world.

Lloyd Cutler was a strong supporter of the Rule of Law whether in his own country or internationally. In the obituary that appeared in the Washington Post on May the 9<sup>th</sup>, 2005, it was stated that:

Cutler had admirers who liked to highlight his pro bono work dating from the civil rights battles of the 1960s. He co-chaired a group called Lawyers Committee for Civil Rights Under Law, formed at the request of President John F. Kennedy. He also played a major role in organizing lawyers to defend those whose civil

rights had been violated for protesting segregation as well as those arrested during the riots spurred by the killing of the Rev. Martin Luther King Jr.

Lloyd, many of you will not know had a strong South African connection. In 1979, he, together with Professor Louis Loss of Harvard and Dean Erwin Griswold who was then I think already Solicitor General, joined together to begin a fund for training black lawyers in South Africa. And that fund also helped set up the Legal Resources Center which did so much to use the courts in the worst of the Apartheid years to establish rights for black South Africans under the draconian Apartheid laws.

There's a very recent sequel to that – WilmerHale, as it's now called, celebrated the official opening of its Nelson Mandela Manuscript Exhibit in the firm's Washington, D.C. Office this past July. John Payton, who is now the president and director-counsel of the NAACP Legal Defense and Educational Fund, and a former WilmerHale partner, and the South African Legal Service's Fund that Lloyd helped found, Vice President, delivered the keynote address. Mandela's speeches and papers, including the manuscripts from the infamous Rivonia trial that sent Mandela to prison for 27 years, make up the exhibit, and were given to WilmerHale by Arthur Chastelson, our former Chief Justice and former National Director of the Legal Resources Center in order to thank Lloyd for supporting the Legal Resources Center in South Africa and establishing the Fund.

Lloyd was also a firm supporter of international criminal justice. He believed that war criminals should not be granted impunity. However, he had serious misgivings about the International Criminal Court. At one of the sessions of the Seminar in Salzburg the International Criminal Court (the ICC) was one of the topics of discussion. Lloyd and I debated at length, both in private conversation and in sessions, whether the United States should or should not lend its support to the new Court. I think it would be fair to say that Lloyd had one of the most open and inquiring minds one could imagine. I think it is also fair to say that I helped convert Lloyd from the view that the United States should oppose the ICC to one that the United States should play a waiting game. If, after it began to operate, the International Court appeared to be a professional and credible institution that did not exhibit political bias against this or that nation, and needless to say in particular the United States, that this country should one day consider ratifying the Rome Treaty that established the ICC. If his fear that the Court might be used unfairly against the United States or its interests was allayed, his support for the rule of international law and the need to withdraw impunity from war criminals would win his support for the United States participation as an active member of the ICC. That was what Lloyd said at a session of the Salzburg Seminar and it was indeed the approach of the Clinton Administration.

At the national level, it is now recognized that democracy depends not only on regular fair elections but also on respect for the Rule of Law. We should not forget that Hitler, Milosevic and Mugabe either came to power or retained power in consequence of elections that were deemed to be free and fair. It was the subversion of the Rule of Law that led to their oppressive regimes. We can all agree, I am certain, that at the core of the

doctrine – the doctrine of the Rule of Law – lies the separation of powers between the legislature, the executive and the judiciary, the independence of the judiciary and an independent legal profession, equality before the law and due process. If any of those principles is compromised, the consequences for democracy are devastating and destructive.

One of the essential ingredients of democracy that is too frequently neglected is the protection of minorities and fringe or marginalized groups. In the many new democracies around the world and even in some older ones, the constitution is seen as a document to empower government and not as a brake on the misuse of majority rule. Nelson Mandela had an instinctive grasp of this idea of democracy being to protect minorities. The first case heard in 1995 by the then new Constitutional Court of South Africa was on the constitutionality of the death sentence. It was the single, only issue on which our constitution drafters could not agree. They decided to omit any reference to the death sentence in the new Bill of Rights and to leave it to the Constitutional Court to decide in light of the provisions that were incorporated into the Bill of Rights whether it was constitutional or not. The Court in its very first case held unanimously that this extreme punishment was indeed inconsistent with the right to life and the right to human dignity and that it constituted a cruel and inhuman punishment.

On the day that the decision of our court was handed down, the former Apartheid President, F. W. de Klerk, made a public statement to the effect that whilst he accepted the decision of the Constitutional Court, he said that he believed that a majority of South Africans, black and white, wanted the death sentence. And he said he suggested that there should be a referendum. He said let's ask the majority of people in our country if they want the death sentence, and if they do we should amend the Constitution to make provision for it. That same evening, in a televised address, President Mandela said that he was surprised to hear that former President deKlerk, who was then incidentally one of our two deputy presidents (we had a government of national unity for the first two years of democracy) ... he said he was surprised because he thought that all the leaders, including deKlerk, had agreed that South Africa should be a constitutional democracy and not a government by whatever standards the majority of South Africans might wish. He said he viewed the Bill of Rights as having been designed to restrain the will of the majority. However, with his familiar smile and glint in his eye he said, if we're going to rule by referenda, I don't mind. I want a healthy majority out there. He said let's have a referendum, and I suggest two questions not one. Question one, by all means, the death sentence. If Deputy President deKlerk is correct and the majority of South Africans, black and white want it we should amend the Constitution and allow for it. Question two, he said, we should ask South Africans, black and white, whether white South Africans should be allowed to keep the property they had acquired over the preceding 350 years. If the majority think they shouldn't, then we should amend the constitution and we should strike out in the Bill of Rights the protection of private property. Well, I need hardly add that there has not been another call for a referendum in South Africa!

It follows that if those protections are to be meaningful and effective there has to be an independent judiciary and its decisions have to be respected and carried out by the

executive branch. By the same token, the executive must be obliged to carry out the terms of legislation consistent with the Constitution. In that respect, I must say, as a frequent visitor to this great country, and as an admirer of what it stands for, I have had difficulty understanding this practice of using “signing statements” to indicate that the President regards legislation as being unconstitutional and therefore having no binding effect on him. As was held by an American Bar Association “Blue Ribbon Task Force” in July 2006, these presidential assertions of constitutional authority “undermine the Rule of Law and our constitutional system of separation of powers.” The appropriate action, in the event of the President deciding that legislation is unconstitutional, it was suggested by the task force, is to veto it. The report of the Task Force was unanimously approved by the ABA at a meeting held in August 2006. I might mention that under the South African Constitution, the President has the right to have the Constitutional Court make a determination on any question of legislative constitutionality prior to the President signing such legislation into law. That power has been exercised only once, and was exercised by President Mandela, and the members of the Constitutional Court held that the legislation in question was indeed unconstitutional because it interfered with the powers of the provincial or state parliaments. Parliament amended the legislation in accordance with the opinion of the Court.

The International Bar Association encountered a thorny Rule of Law problem at its annual meeting held in Singapore in 2007. The annual meeting attracts some 3,500 – 4,000 lawyers, and today even more, from some 120 countries. In recent years the last day of the week of meetings of the International Bar is devoted to the Rule of Law and is open to members of the public. The International Bar Association was informed some months prior to the meeting that in order to allow members of the public to attend any meeting in Singapore a police permit was required. The IBA decided with some reluctance to make the application for such a police permit. Ten days before the meeting the permit had not been issued. And I remember the anguish of my colleague Albie Sachs who was to deliver the keynote address at that meeting. He was off to hand to the IBA for transmission to the Singapore police a copy of his address. Well, he was reluctantly persuaded to do that. Shortly prior to the conference we feared that the police permit would not be granted, and I have no doubt that the IBA would have cancelled the Rule of Law day rather than to hold it under those circumstances. Happily, at the last minute the permit was granted. Shortly after that the International Bar’s Human Rights Institute produced a report criticizing the infractions of the Rule of Law in Singapore, and in particular freedom of speech and how the defamation laws in Singapore were used to put critics of the government in prison for bankruptcy because they couldn’t afford to pay the higher amounts of damages that were awarded by the judges of Singapore. That report was rejected in strong terms by the government of Singapore and it had an interesting sequel.

An editorial in the Wall Street Journal criticized the government of Singapore for using its defamation laws to silence its critics. Within days the Singapore Government commenced proceedings against the Wall Street Journal Asia claiming substantial damages from the newspaper’s publisher. This was swift and compelling confirmation of the findings of the report of the IBA. I would suggest that those few Asian leaders who

claim that the Rule of Law is a western ideal are the very people who violate the human rights of their own people.

It can safely be said the Rule of Law today is by and large respected by all true democracies on all continents. I would certainly include, apart from the older democracies in Western Europe and North America, India, Japan, and a number of African nations including my own. I hope that I have said sufficient to demonstrate the essential and universal nature of the Rule of Law in domestic settings.

But let me turn to the international context, because that too as I've indicated would have interested Lloyd Cutler. Does the Rule of Law apply at all to the international community? The first and most obvious difference is that there is no international legislature and no international executive. There is, however, a fast-growing international judiciary. Is this a paradox? I would suggest not. Although there is no international legislature, there are certainly international laws. Their sources are primarily international treaties and customary international law. They are based upon the voluntary agreement of sovereign nations. The absence of an international legislature makes law-making a little cumbersome and time-consuming but that is an inevitable consequence of sovereignty.

Notwithstanding these differences and difficulties, there is certainly no shortage of international laws that touch on many aspects of our lives. These laws are universally respected and applied. They are the laws that control civil aviation over-flying national air space, laws relating to posts and telecommunications, the delivery of mail even in countries that countries have no relationship with, the law of the sea and international trade. And, of course, the rapid growth of literally hundreds of treaties on international criminal law – drug trafficking, trafficking in people, extradition, refugees, war crimes and terrorism. And more and more courts are being established to implement these laws – the Law of the Sea Tribunal, the Appellate Body of the World Trade Organization, the International Criminal Court, the ad hoc Tribunals for the former Yugoslavia and Rwanda, the mixed tribunals for Sierra Leone, Cambodia and Lebanon. There are regional courts such as the European Court of Justice, the European Court of Human Rights, the African Court of Justice and the African Union Court of Human and Peoples Rights, the Inter-American Court of Human Rights. And there are just too many sub-regional courts to mention this evening.

There are opinions and orders coming from these courts in the hundreds. What is important is that the majority of them are honored – they are either complied with or in some cases enforced. The number of international and regional judges has grown exponentially. And, I need hardly say, that the legal profession has responded to what has become a growth industry.

In this context, the absence of an international executive power can be troublesome. It makes the implementation of some international laws more difficult as their enforcement is subject to the goodwill and cooperation of sovereign governments. However, as the world contracts governments recognize more frequently the importance of reciprocity

with regard to international law and order. For this reason compliance and cooperation is growing. It's simply in the interest of states to comply rather than be seen to be an outlaw.

The rapid growth of international law has left little time for the consideration of the Rule of Law at this supra-national level. Is the international judiciary truly independent? How are international judges appointed? Is there equality before the laws implemented by these international courts? Is due process recognized and implemented in trials and hearings before these courts? Is there an independent international bar? There is obviously no time this evening to consider these complex and interesting questions in depth. They would, I suggest, constitute excellent topics for future sessions of the Salzburg Global Seminar.

I would like to spend what time I have left to turn to the importance of international justice and its contribution to the international Rule of Law. The starting point is impunity for war criminals. It is clearly inconsistent with an international Rule of Law to grant impunity to those who commit international war crimes.

In South Africa, the former Apartheid leaders of a white minority claimed blanket amnesties as the price for giving up power. For obvious reasons they wanted impunity. It was more than sufficient, they could claim, with some justification, to expect them to hand over power to a black majority that had been oppressed by cruel racial oppression for almost 350 years. To expect them in addition to face Nuremberg style trials and face prison sentences was just too much to ask of them. They argued that there was no advantage to looking backward. There was too great and expensive an agenda in building a new democratic South Africa. They, of course, were well aware of those awful crimes that had been committed in the enforcement of Apartheid laws. Some of them came to light in the investigations I conducted during the last three years of Apartheid. And many more came to light in our Truth and Reconciliation Commission hearings.

Fortunately, Nelson Mandela and his colleagues were not prepared to go the route of national amnesia. They were not prepared to sweep those past violations under the rug. The victims of Apartheid demanded acknowledgement and our new leaders knew that there would be no peaceful transition without it. The result was the Truth and Reconciliation Commission with discrete amnesties in return for full confessions. The outcome was a huge outpouring of evidence from over 21,000 victims and applications for amnesty from over 7,000 people who claimed that they were perpetrators. That evidence established beyond any question, and to the embarrassment of most white South Africans, what had happened during those dark and evil years. The result is that today South Africa has a single history of the serious and many human rights violations that were committed in those bad years. And that augurs well for the future.

A comparable outcome has resulted from the work of the United Nations criminal tribunals for the former Yugoslavia. The testimony of hundreds of witnesses has laid bare the crimes that accompanied the terrible wars in the Balkans in the early 1990s and

the egregious war crimes committed against thousands of innocent children, women and men. There, too, the testimony of hundreds of witnesses put an end to the false denials that were so common in the aftermath of the criminality of evil leaders and their followers. Allow me to give you just one illustration. A member of the Bosnian Serb Army, Drazen Erdemovic, was one of the members of an assassination squad outside Srebrenica in July 1995. The infamous massacre of over 8,000 civilians, men and boys, was strenuously denied by the Bosnian Serb Army. They said this was United States propaganda against Serbia. Then, in early 1996, for personal reasons, Drazen Erdemovic decided to tell his story to an American TV network, ABC. A journalist and a cameraman flew to Belgrade and they interviewed on camera Drazen Erdemovic. He admitted to having lost count after he had shot and killed more than 70 innocent men and boys. He objected to this role but his own life and those of his family were threatened by his commander. He was given the option of either joining the victims or joining the firing squad, and he proceeded with his ghastly role under that duress. He also gave the journalist a map of the precise location of the mass grave in which those victims had been buried. The journalist fortunately left the map at the United States Embassy in Belgrade and she did a silly thing – she called her London office to say she was on her way to the airport with a video and she would arrive in London later that evening. Well, she was met at the Belgrade Airport by Serb Security Police who confiscated the only copy of the video film.

On arrival in London, the journalist called me in a very emotional state. She understandably felt that she had placed the life of Erdemovic in jeopardy and asked whether I could assist in any way. I decided that the widest publicity to the event was the best way to protect his life and I obtained that night an order from the Tribunal ordering the Serb Government to transfer Erdemovic to The Hague as a potential defendant and witness to the events in Srebrenica. Fortunately for the Tribunal, Erdemovic was not a Serb national and in order to garner financial assistance from the United States, Slobodan Milosevic, to our great surprise, decided to accede to the request and Erdemovic was flown to The Hague on a United Nations plane. The Serb Army continued to deny the massacre.

We recovered the map the journalist had left at the US Embassy in Belgrade and that enabled us to send the coordinates of that grave to the United States Government. They very soon sent us satellite photographs of the site of the massacre and they fully corroborated the version of Erdemovic. We had the grave exhumed and the forensic evidence provided beyond any doubt that further corroboration of Erdemovic's evidence – the bodies exhumed all of men and boys. They all had their hands tied behind their backs and the cause of death was a single bullet wound to the head. That evidence effectively put an end to the false denials. It enabled the Tribunal to convict Erdemovic of crimes against humanity and formed the basis of subsequent findings of genocide against Bosnian Serb leaders. In February 2007, the International Court of Justice followed the findings of the Tribunal and they held that Serbia was guilty of not having prevented when it could have the massacre outside Srebrenica in the middle of 1995. That evidence and those proceedings brought acknowledgement to the victims of Srebrenica, to the families of those who had been murdered. It allowed a large number of

them to begin their own healing process. And, of course, it put an end to the false denials that had accompanied the massacre. And, only last week the trial of Radovan Karadzic began in The Hague. One of the charges against him is the genocide committed at Srebrenica. The evidence of Erdemovic, I have no doubt, will loom large at that trial.

Turning to Rwanda for a moment, the genocide that resulted in the deaths of some 800,000 innocent people in less than 100 days was described in minute detail in the evidence placed before the Rwanda Tribunal. There were also denials and they have stopped in light of the evidence given by hundreds of witnesses.

Absent these forms of justice – whether truth and reconciliation commissions or prosecutions – the societies in question today would today be very different and, I would suggest, they would be more violent societies than they are. South Africans can now rebuild my country in the knowledge that white South Africans have a debt to pay for what was done by them or in their names. Although an enduring peace has not come to the states of the former Yugoslavia, the cannons have been silent for some 14 years. And, hopefully, cycles of violence have been stopped in Rwanda. I have no doubt that some form of justice is essential in the Middle East if there is to be an enduring peace there.

In both the former Yugoslavia and Rwanda, attacks were made on the institutions designed to bring the truth to light. It was primarily the perpetrators who cast doubt on the processes of truth-making. They did what they could to prevent their establishment and having been established from fulfilling their mandates. That they did not succeed was due in no small measure to the role of the Clinton Administration. It was through the efforts of the then Ambassador to the United Nations, Madeleine Albright, that there is now a permanent International Criminal Court hard at work in The Hague. It now has the support of 110 nations including that of every member – every single member – of the European Union. Its jurisdiction is making itself felt by many in capitals of countries accused of committing serious war crimes. It is the living proof that we no longer live in an age of impunity for war criminals.

These, then, are some of the issues close to the heart and mind of Lloyd Cutler. It was the privilege of many in this room tonight to have discussed them and many other issues with him. We all learnt to respect his inquiring and disciplined mind. We respected the openness with which he listened to views that were opposed to his own. It is probably that facility that made Lloyd such a fan of the Salzburg Global Seminar. Its mission is described as challenging present and future leaders to solve issues of global concern. It expresses its values as seeking to magnify the impact of individuals and institutions that bring just and humane values to bear on the global challenges facing their societies and the world. In that context it is also appropriate that this inaugural lecture should be delivered today, the 20th anniversary of the fall of the Berlin Wall. The Salzburg Global Seminar, both before and after that seismic historic event, successfully brought together leaders from eastern and western Europe in Salzburg.

For those of us who knew Lloyd Cutler, it is not difficult to understand his many years of active support and service to the Salzburg Global Seminar. And how fitting it is to remember and honor his memory in this way. Thank you very much.

**Stephen Salyer**

Thank you, Justice Goldstone, for that remarkable talk and thought-provoking suggestions for the Salzburg Global Seminar for future sessions. We will take those to heart.

We're privileged tonight to welcome Judy Woodruff, Senior Correspondent at The NewsHour with Jim Lehrer. Judy is well known to most in the audience as one of the leading journalists in US broadcasting today. We welcome you, Judy, to a conversation with Justice Goldstone.

**Judy Woodruff**

**Senior Correspondent**

**The NewsHour with Jim Lehrer**

Thank you, Stephen. I'm delighted to be here. I was honored to be asked to do this. Justice Goldstone, I'm very much looking forward to our conversation. Before I do, I just have to say that Lloyd Cutler was a dear friend of mine and I'm particularly honored to be here and to take part in a program that was created in his name.

So, I have so many questions I want to ask you, Justice Goldstone, but I thought I would just get to the toughest questions first. And that is: Do you mean to suggest that Lloyd Cutler is a cheapskate?

**Richard Goldstone:** No, definitely not.

**JW:** When you said he wouldn't pick up the cost of the opera tickets.

**RG:** Well that would have been really too much to expect. And also it would have stopped us from accepting the invitation the following year.

**JW:** Well I had to get that one out of the way. Well you made so many important points that I'd like to touch on and of course I want to touch on the Gaza Report. One of the things you talked about in your remarks was the rapid growth of international law, but you talked about it being in the absence of international executive power. Is there any sort of international governing structure you can imagine that would fit the kind of world we live in? I know you said we're growing in that regard, we're getting better in that regard, but do you envision something that might work?

**RG:** Well, [all really] that's in existence, strangely enough, I would suggest is the Security Council. The Security Council is more and more making executive acts. And sometimes without due process let me add. It's freezing assets under terrorism. There was a case recently in the European Court of Human Rights in Luxembourg that in fact refused to follow a binding decision of the Security Council freezing the assets of a

member of one of the European states' parties, because there was no due process. He was given no opportunity to make a case before his assets were frozen. But here one can see the beginning of some sort of executive in the international community. I think it's got a long way to go and I think that there are a lot of findings that are necessary but I think it could happen.

**JW:** Is that something that we should be thinking about now or is it something that you think would just naturally evolve?

**RG:** It certainly is, with this growth of international law I think one needs to accompany it with some sort of executive authority that will see to the execution. The difficulty of course is it has to be done for the foreseeable future. It has to be done accepting the sovereign rights of independent states, and that's where the contradiction arises.

**JW:** Another point you made that I made note of – you criticized signing statements by US presidents. And I guess one of the questions I had: Is this only a reference to the former US President or does it also include the [current] President?

**RG:** Oh, no, no. Clearly, a former US President made a habit of it. But the criticism applies to any use of signing statements absent of veto, or a decision by the Supreme Court or an appropriate court of jurisdiction that the legislation is unconstitutional. It seems to be inconsistent with the Rule of Law that the president assumes the power, himself or herself, to decide that legislation of a national parliament is not constitutional.

**JW:** So you, under no circumstances, think a signing statement is warranted?

**RG:** No.

**JW:** That brings me to this question: How do you rate President Obama's performance on human rights and on the Rule of Law?

**RG:** Well certainly there are new winds blowing through Washington. And certainly if one looks at the people who have been brought into government in many areas by the Obama Administration, I have no doubt that the respect for human rights and Rule of Law is something that is going to leave its mark, and be something which certainly I hope and expect will be to the pride of this administration.

**JW:** Is there anything specific that you would point to that would signal you one way or another?

**RG:** Well certainly, the intent and the difficulty that have arisen with regard to closing Guantanamo is one of them. But I think, too, that one can expect greater assistance to the International Criminal Court and other criminal jurisdictions in the international community.

**JW:** Have you been disappointed that the Guantanamo issue has not moved more quickly?

**RG:** Yes, of course it's disappointing, but there are many reasons for it and some of them are beyond the power of the administration. I think that there are many countries that certainly could have given more assistance in accepting people from Guantanamo. I don't think it can be expected that these nationals of all countries around the world should simply be freed and allowed to live in the United States.

**JW:** And with regard to human rights, there were some who criticized President Obama for what others said was just a small thing, and that is not meeting with the Dalai Lama and giving what's viewed as deference to the Chinese Government.

**RG:** Well, you know, that's politics, isn't it? I mean, it's obvious politicians have their agenda. Now I remember one example. I remember being, soon after I issued the indictment against Karadžić and Mladic, and I remember being asked by then Ambassador Holbrooke – still Ambassador Holbrooke – whether I would criticize him for shaking hands with Karadžić, with whom he had to meet during the peace process. And I remember saying to him: Ambassador Holbrooke, I've got my job I've got to do and you've got yours. Karadžić's been indicted. He hasn't been convicted. He's presumed innocent until he is convicted. I said: I'd be the last person to criticize you, but I wouldn't shake his hand.

**JW:** So he was seeking your private advice on this?

**RG:** Right, yes.

**JW:** Ambassador Holbrooke was. Well now it's not private anymore, but that's alright. Another thing you brought up that we took note of – you quoted Lloyd Cutler as favoring, I think, a wait and see attitude toward the International Criminal Court. Do you think the Court's performance today could justify the US participating?

**RG:** Well, you know, that's a difficult question. I don't. I'm a great supporter of the International Criminal Court, and I think it's a great misfortune for that Court that the United States is not leading it as it should have been, and as I think it was anticipated it would do when it was first mooted. Without the United States' support it's a much weaker court. Without the United State's support I think the Yugoslavia and Rwanda Tribunals would have failed. And I say that from personal experience. But you know, governments and nations don't do anything that they don't think is in their interest. And why should they? No country joins an international convention if they think it's against the interests of their people. Sometimes countries misinterpret what their self-interest dictates, and this may be one of those cases. But until the United States, until sufficient members of Congress believe that the International Criminal Court ratification – the United States joining – it's not going to happen.

**JW:** Help us understand what you think the measurements are that the United States should be looking at as it judges that court.

**RG:** Well, you know, one of the disappointing aspects, of course, is that there's no United States judge on the Court. And there aren't significant positions filled in the Prosecutor's Office or the Registry by United States nationals. I think that's a pity. And I think that's going to delay the United States getting involved. I've always believed, and it's been my personal experience in a professional international office with people from 40, 60, 70 countries knowing the agenda of the prosecutors and of the judges. If there was a United States judge in the International Criminal Court, and he or she felt that the Court was acting in a biased way against the United States, or any other country, what would that judge do? Certainly not remain silent. He or she would go public within hours. And quite rightly so. And that's an insurance I think that many nations don't appreciate. Having their nationals there, overlooking and overseeing what is happening, is the best insurance against bias.

**JW:** But not every country can have a judge.

**RG:** No, but obviously the United States could. There's no question that certainly the five permanent members who want judges, they will get them.

**JW:** I want to turn now to the controversial subject that Stephen alluded to when he introduced you, and that of course is the Report on Gaza. I heard part of a speech that Prime Minister Netanyahu gave today right here in Washington. And among other things, he said, this report seeks to deny Israel the right to self defense.

**RG:** That's just absolutely untrue. And I use strong words. I have said frequently before the report was published and since the report was published, Israel has every right, and not only right – a duty and obligation, to protect its own citizens. And I have no doubt that Israel was entitled to use military force to stop the rockets and mortar attacks from Gaza. The report doesn't go into this issue because it wasn't relevant to our mandate. Our mandate was violations of international law, particularly, international humanitarian law. And those laws assume that military force is used. It doesn't question whether the military force was justified or not. The question we investigated wasn't whether Israel, or Hamas for that matter, were entitled to resort to the use of military force. What we looked at was how the force was used. Was the force used lawfully or was the force used unlawfully? We held unequivocally that Hamas was using it unlawfully, because it was firing rockets and mortars at civilian targets. And we held, by the same token, that Israel used disproportionate force to stop the firing of rockets and mortars, and for that reason acted in violation of international law. There's no question - there was no issue whereby we questioned the right of Israel to use force and to defend its citizens.

**JW:** He also said in his remarks that he in essence thanked President Obama for rejecting the Report. Do you accept that the President has rejected it?

**RG:** No, absolutely not. The Obama Administration in fairly forthright terms has supported the main recommendation we made. And that is that Israel and the authorities in Gaza should hold open and credible investigations into the allegation that we made. That has been supported and is still be supported by the Administration. There are criticisms made by the Administration and by the Secretary of State saying that the Report was, I think, deeply flawed. But I still wait to hear any reasons for that.

**JW:** Have they given any detail as to what?

**RG:** No. And I would welcome that if it's flawed. If we satisfy that it's flawed then I would be the first person to admit that.

**JW:** What about the criticism from the House of Representatives, which as you know, I think it was 344 to 36 is what I wrote down, to condemn the report. Were any of their criticisms just?

**RG:** Well, again, I sent a letter to (which is of public record), I sent a letter to the Chairman of the Foreign Affairs Committee, Congressman Berman, criticizing a lot of the misstatements of fact in the preamble to that resolution. I'm convinced that the resolution was founded to a great extent on allegations that are incorrect.

**JW:** The fact that Israel did not cooperate in any way – Is that correct?

**RG:** Yes.

**JW:** With the work that you were doing. Does that in any way undermine what you were able to learn?

**RG:** Well, of course it does. I've been a judge long enough to know that it's important to hear both sides. And if there are more than two parties – all of the sides. And it was a great sadness to me that Israel didn't cooperate. I really thought that we would get that cooperation in light of an evenhanded mandate that I was able to obtain with the assistance of the President of the Human Rights Council. And I would guess if Israel had fully cooperated the Report would still be in the writing. Because I have little doubt there would have been ... And I really pleaded with the Israeli Government to meet with us to give us advice on how that mandate should be implemented, what issues were important to the Israeli Government. And obviously we would have taken every possible step to meet any reasonable requests from the Israeli Government.

**JW:** I guess the UN General Assembly began its debate last week on whether to refer the Report to the Security Council. What do you think should happen as a result of your Report?

**RG:** Well what should happen is the acceptance and implementation of what I've referred to as our main recommendation. We recommended, as I said, that Israel and the authorities in Gaza should have domestic inquiries, credible inquiries under international

law. It may well be that Hamas, or if it's a Palestinian authority in Gaza and there's conflict about that, I would imagine would need international assistance to carry out such and investigation. And there would be no shortage of offers, even within the Arab states, to enable that to happen. Israel is a democracy that is fully able to hold its own inquiries. They've got retired judges and they've got judges and many people and experts who can hold a credible public inquiry. And make public what can be made public, and if there're state secrets then so be it. Those are kept from the public. They've done it before.

They've done it on at least three or four occasions. They've held public inquiries into sub-[unintelligible], into some of the Lebanon incidents, and so forth. And that's what we said should happen within a period of six months. At least there should be an effort to do that within six months. And we recommend of the Security Council should appoint an independent committee to monitor these inquiries both in Israel and in Gaza. And if they weren't carried out then the Security Council should refer them back to the International Criminal Court.

**JW:** Justice Goldstone, you've said, it's no secret – you've said this in interviews – that this has been a difficult process for you. You are a Jew. You've described yourself as a Zionist. And it's been difficult. Talk a little about how hard this thing has been to go through.

**RG:** Well obviously it's been a very, very difficult mission. I've had a fair number of difficult missions, but this was the most difficult. And it was the most difficult for many reasons. Firstly, because of my interest in and support of Israel made it very difficult for me to see and hear in Gaza what I saw and heard. To see the way in which civilians were attacked. Thousands upon thousands of private homes destroyed. Tens of acres of agricultural land bulldozed. Over 200 factories bombed. Only flour-producing factory bombed. Water provision bombed. Sanitation works bombed. It was very difficult for me to accept that Israel, of all countries, was prepared to resort to those methods. Notwithstanding the tremendous provocation there had been in consequence of many thousands of rockets and mortars fired. So it was a very conflicting experience for me visiting Gaza, and particularly interviewing some of the family members of victims. Of course it was also, and really it made a huge impression on me, that we investigated and that we spoke even though Israel didn't cooperate. We spoke to witnesses from Southern Israel who were the victims of rockets. We spoke to victims both in Geneva and by telephone in Israel. And it brought home to me the terrible terror in which people in Southern Israel lived in light of the rockets and mortars. So it was a very difficult situation on both sides. These situations always are. And of course the aftermath has been difficult because I've been attacked personally by many people in Israel and in Jewish communities, including our own in South Africa. And that makes it very difficult, not only for my wife and me, but it affects our families and that's a huge prospect there.

**JW:** Has it changed your view of Israel? Of its aspirations? Of what it represents.

**RG:** No, absolutely not. No. And I think one must draw a distinction between the actions of governments and describing guilt to people. One thing I've learned in my

career is that collective guilt must be the last thing visited on people in any country. And that's the importance of justice. I think forms of justice demonstrate that these acts are committed by individuals and not by a whole people. And I have little doubt that deep down the people of Israel don't like their government and their defense for doing these things. And I have little doubt, by the same token, that the majority of people in the Arab world don't approve of rockets being fired at innocent civilians. And I think that's a very important contribution of international justice – any forms of justice.

**JW:** Do you have any particular expectations for how much longer this dispute goes on?

**RG:** Well at the moment there is very little reason for optimism. And really on both sides. On the Palestinian side it's well known that there's intra-Palestinian violence. They are busy assassinating and torturing one another – Hamas against Fatah, and Fatah against Hamas, depending if we talk about Gaza or the West Bank. And as long as they're at one another's throats, on what basis can we expect a peace negotiation to proceed. And on the other side, the President of the Israeli Government it seems to me is not really serious about any peace, any peace negotiations.

**JW:** The last question I want to ask you is to broaden out to something you alluded to in your conversation. You mentioned today was the 20<sup>th</sup> anniversary of the fall of the Berlin Wall. You talked about the changes in your own country. Both of these were great strides, as were others, forward for democracy, for the Rule of Law. But since then, over the same 20 years, we've seen the rise of non-state terrorism. We've seen Afghanistan and what has happened there. We've witnessed Iraq, Iran, North Korea, it goes on and on, China, the defamation of human rights. Some would question whether the advances that we celebrated as the world 20 years ago have really been set back and maybe we're going in the other direction. What's your thought?

**RG:** Well, you know, I'm an optimist. I believe it's been two steps forward and one step back, rather than the other way around. I think the world has advanced. I think national criminal justice, that I spoke about in the Lloyd Cutler lecture, is an example of this – the proliferation of courts, the acceptance, and the number of democracies that have come online. If you look at my continent there are now countries that are democratic that were oppressive. My own, obviously, and the other democracies – Botswana, Namibia, and other members of the African Union. The same is true in Central and Eastern Europe, and in Latin America. So I think democracy is becoming more and more popular, and more and more accepted, and so too the Rule of Law. So I think there's room for optimism.

**JW:** So even with what we hear from Vladimir Putin in Russia, even with what we see in China, Zimbabwe?

**RG:** Well, I think the standard – even they talk about democracy – maybe tongue in cheek – but that's better than these countries simply accepting as they used to do that democracy was something to be spent. At least there's a recognition – a growing recognition – of the importance of democracy and protection of rights.

**JW:** And that's a hopeful note for us to end on. Justice Goldstone, thank you very much.

**Stephen Salyer**

Thank you, Justice Goldstone. And thank you, Judy Woodruff, so much for that terrific discussion on stage. And thank you very much again, Justice O'Connor, for honoring us on this wonderful evening.

It's impossible to recreate in a little over an hour what we do all year round in Salzburg. But I hope you got at least a bit of a refresher and a glimpse of what the Salzburg Global Seminar is about. And we're thankful that all of you were able to be here with us.

Before I invite us to the evening's reception, I need to acknowledge a few people. First and foremost, I want to mention Tom Mansbach here. Tom, would you stand? I know many in the room know you. Tom, both as Chair of the Cutler Center Advisory Board and as a devoted friend and supporter of the Seminar, has made this evening possible. And we're very grateful to you.

I want also to thank the other members of the Cutler Center Advisory Board, a number of whom are here in the audience tonight, and especially Bailey Morris-Eck. Bailey, along with Tom, has been very helpful in planning this event and helping to get this advisory group underway. We're very grateful to her.

Polly, Beverly, Lou Ann, Norton, and Jamie, we're so happy that all of you were able to be here tonight. I know there are many people who look forward to greeting and talking you in the reception, and I know they'll seek you out.

I am confident that just about everybody here tonight has some memory or image or story related to Lloyd Cutler – he made an impression on all of us who were privileged to meet him. The Salzburg Global Seminar is one of the places in which he invested so much of himself, and this institution will be forever in his debt. By the establishment of the Cutler Lecture and the Lloyd N. Cutler Center for the Rule of Law, we honor him and his legacy to us and to the world. I invite all of you to help us build the Center in the years to come, and thank you all very much indeed for being with us tonight.