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US ANTAGONISM TOWARD THE INTERNATIONAL RULE OF LAW: THE VIEW OF A CONCERNED “OUTSIDER”

JUSTICE RICHARD J. GOLDSTONE*

I am delighted to have the privilege and pleasure of introducing Leila Sadat at this ceremony to celebrate her installation as the Henry Overstep Professor of Law.

It is a great honor to receive a chair at this prestigious law school and one richly deserved by Professor Sadat. I recall meeting her for the first time in 1995 at a conference in Connecticut on the legacy of the Nuremberg Trials and the prospects for establishing the International Criminal Court (ICC). At that time the International Law Commission had just completed its draft statute for such a court. Its most optimistic supporters could not have anticipated that within a bare seven years thereafter the ICC would become a reality.

Professor Sadat has made a substantial contribution to the debate concerning the ICC. It has been my pleasure to include her writing in my own courses on humanitarian law both in Europe and the United States. Her recent book on the ICC, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*, has become a leading textbook and reference. It appropriately received the “Book of the Year Award” from the International Association of Penal Law (American National Section) in the fall of 2003.

* Former Chief Prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia, and former Justice of the Constitutional Court of South Africa. Justice Goldstone is also Chancellor of the University of the Witwatersrand. These remarks were given on Sept. 7, 2004 at the installation of Leila Nadya Sadat as Henry H. Oberschelp Professor of Law at Washington University in St. Louis School of Law.

Allow me to make some personal remarks on issues I know to be close to the heart of Professor Sadat. In doing so I am aware that I am an “outsider.” My home in South Africa is eight times zones different from your own, and my perspective on events in your country might well be very different from your own. However, I do share with you a love for this country and its people. I admire and enjoy your openness and your willingness to listen to and to heed criticism from within and outside the United States. It is that trait that encourages me to share with you today my concerns regarding some of the developments in the United States in the aftermath of 9/11.

I have spent my life as a citizen of a country that violated the fundamental human rights of the majority of its citizens. For 350 years, the white minority cruelly oppressed and caused untold misery upon many millions of black South Africans. Because of their skin color, they were denied that most important of all human rights—their human dignity. Americans should be proud of the role many of their people played in bringing that evil system to an end in 1994. I pay tribute, in particular, to the important contribution made by the U.S. legal community in the anti-Apartheid campaign.

The United States also played a crucial role in the development of international criminal justice. At the end of the Second World War, it insisted on a trial for the Nazi leaders. It led the United Nations in establishing the war crimes tribunals for Rwanda and the former Yugoslavia. It encouraged the Secretary-General of the United Nations, Kofi Anna, to call the diplomatic conference in Rome in June 1998 to consider the statute for a new international criminal court. For many years, the State Department has annually published a report evaluating the human rights record of all members of the United Nations. Many countries have curbed their human rights violations for fear of criticism from Washington and freedom-loving people around the world have benefited from and welcomed this role that the United States has traditionally played.

It is no wonder that the United States regards itself as the leader of the free world and the practitioner of a democratic form of government to which countries in transition should aspire.

In the context to which I have just referred, the cause of my concerns should become apparent. All the traditional allies of the United States have approved the ICC. In rejecting it, the United States joined only six other countries, namely China, Iraq, Israel, Libya, Qatar and Yemen. More recently the United States rejected a new protocol under the Torture Convention that allows the United Nations to inspect the prisons of countries thought to be in violation of the Convention. In opposing the protocol, the United States joined China, Cuba, Israel, Japan, Nigeria, Syria and Vietnam. Again, the traditional allies of the United States voted in favor of the

protocol. The United States is one of only two members of the United Nations failing to ratify the U.N. Convention on the Rights of the Child. The other is Somalia. And the United States is one of the few countries in the world to reject the Kyoto Protocol, which attempts to reduce gas emissions and, thereby, global warming.

This country is divided with regard to the fundamental nature of human rights. In his 2002 State of the Union Address, President George W. Bush said:

America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; and respect for women; private property; free speech; equal justice; and religious tolerance.

Yet, there is clearly a huge distance between what the Bush Administration and the human rights community understands by these concepts. I suggest that the treatment of the hundreds of persons detained for almost three years at Guantanamo Bay constitutes a serious violation of their human dignity. The shameful treatment, indeed torture, of detainees at Abu Ghraib Prison in Iraq is a serious violation of their human dignity. Yet the response of the Bush Administration to Guantanamo Bay is to defend it. And their response to Abu Ghraib is, at best, a muted one, lacking any apparent intent of bringing to justice the senior officials responsible.

The rule of law, too, has been violated—in respect of both citizens and non-citizens. It is a great relief that the U.S. Supreme Court has intervened and struck down the Bush Administration’s claim of being above the law and not answerable to the courts.

Time does not permit me to continue to demonstrate that the words of President Bush that I have quoted do not translate into how they are understood by students and practitioners of human rights—around the democratic world and, particularly, in this country.

The United States, of course, is not alone in adopting these invasive measures in the fight against international terrorism. However, as the most powerful nation on our planet and the leader of the free world, the United States is setting an unfortunate example. Most critics of these measures do not for a moment deny the seriousness of the terrorist threat. The critics point out the absence of any appropriate system of checks and balances. What they call for is no more than a rational examination of the need for some of the tactics. And they also object to having their patriotism questioned when they call for that examination.

As one who has fought against tyranny in my own country and elsewhere, I miss being able to point out the United States as an example of a free

society. I fear that the very criminals responsible for 9/11 rejoice in knowing that this country is losing that leadership role. Oppressive societies that are neither free nor democratic are finding solace in this change and are using these practices of the United States in justification for their own violations of human rights.

Modern technology contracts the world, and as borders become more porous, an international rule of law becomes more crucial. The United States quickly and adroitly put together an international coalition to fight terrorism. In doing so, it recognized the inability of even the most powerful nations to fight this scourge alone. We need to make international policing more efficient—the transfer of evidence across borders, extradition laws, prosecuting money laundering, to mention some of the obvious areas of international policing. An international rule of law must surely reflect the values for which this country has always fought—fairness, justice and, most importantly, the recognition and protection of human dignity.

These are values that have been taught at this and other great American universities. They are the values about which Professor Sadat has written and taught. The great advantage of living in a democracy is that she is able to write and teach without fear. You should value this right that too many people across the world do not share. You should ensure for future generations that the United States, as in the past, leads not by its great power but by its equally great values.

Thank you for inviting me to be present with you this afternoon, and I ask you to join with me in warmly congratulating Professor Sadat on reaching this important milestone in her career.