



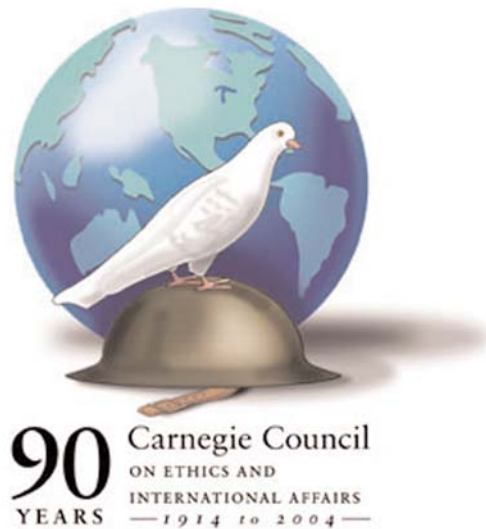
Promoting Democracy through International Law

SECOND REPORT OF THE
EMPIRE AND DEMOCRACY PROJECT

Richard Goldstone
Aryeh Neier
Andrew Kuper



Carnegie Council
ON ETHICS AND
INTERNATIONAL AFFAIRS



The Carnegie Council

The Carnegie Council on Ethics and International Affairs, established in 1914 by Andrew Carnegie, is an independent, nonpartisan, nonprofit organization dedicated to increasing understanding of the relationship between ethics and international affairs. For ninety years, the Carnegie Council's programs and publications have focused on the moral and ethical dimensions of politics among nations.

The Empire and Democracy Project

Two moral and political questions now stand at the forefront of international concern: How can the United States and other powerful actors avoid the perils of empire and instead become credible leaders in promoting democracy and human rights around the world? How can the rules and institutions of the international community be mobilized to advance such peaceful and universal values? The Carnegie Council's Empire and Democracy Project addresses these era-defining questions by convening high-level panels, creating valuable internet resources, and conducting original research.

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FOREWORD

This year the Carnegie Council celebrates its ninetieth anniversary. Founded in 1914 by Andrew Carnegie, the Council is an educational institution established in the Wilsonian tradition. Our purpose is to promote an idealist agenda of human rights and the peaceful resolution of conflict in light of the realities and necessities of power politics.

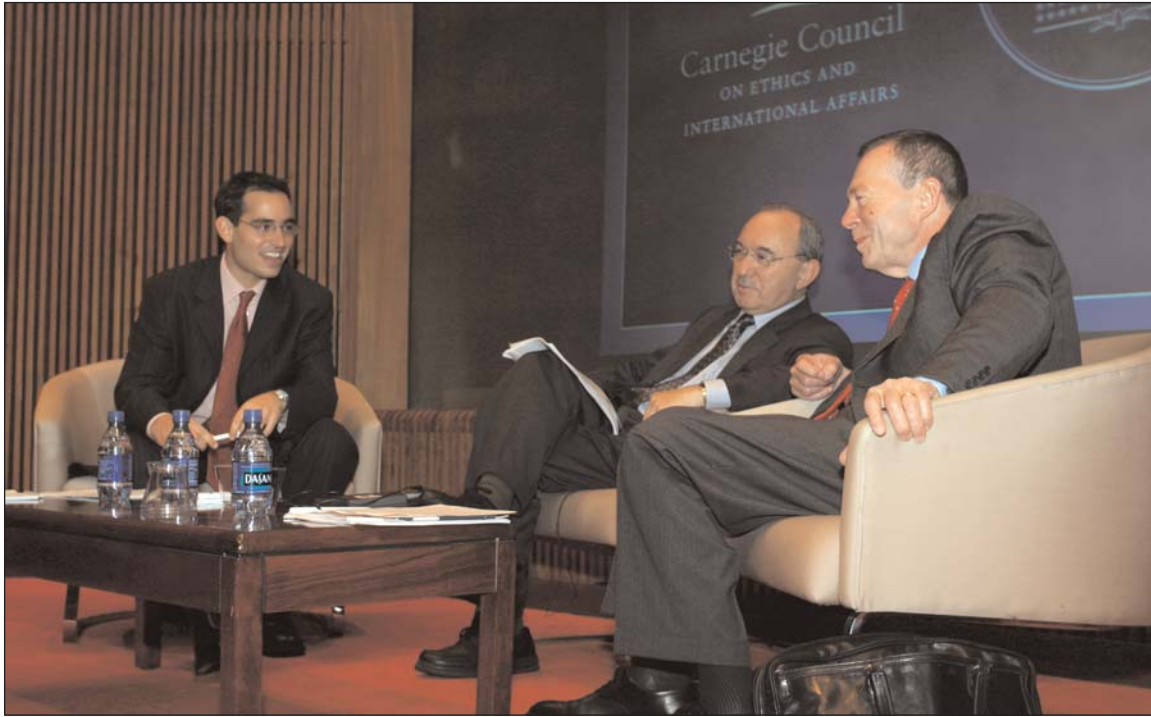
In response to the global challenges posed by the war on terrorism, the Council recently launched a new Empire and Democracy Project. The project is conducting original research, creating valuable internet resources, and convening high-level panels in order to provide clear and compelling alternatives to empire. Our first report examined multilateral strategies to promote democracy in the wake of September 11, 2001, and the conflicts in and over Iraq. This second report focuses on the role of international law in improving the prospects for democracy in this new and dangerous world. The report is based on a panel convened in conjunction with the Foreign Policy Association in New York on February 3, 2004.

Mr. Carnegie would be both pleased and disappointed that we are confronting these topics at this time. He would be pleased at the high level of interest shown by our diverse membership and broad audience, and by the deep commitment and high accomplishment of our panelists. His disappointment would be with the historical moment in which we find ourselves. Ninety years after the Council's founding, it is clear that the optimism that built The Hague and the League of Nations crumbled under the immense carnage of the twentieth century—including world war, mass murder, genocide, and ethnic cleansing.

Convening these panels and issuing these reports is perhaps an act of faith—faith that through experience, debate, and education we can improve on the historical record of the last ninety years. We believe it is possible to find powerful examples of positive change upon which better societies can be built. The participants in this report are living proof that such positive examples do exist and do make a difference.

Joel Rosenthal
President
Carnegie Council on Ethics
and International Affairs

PARTICIPANTS



From left:

Andrew Kuper – Senior Associate, Carnegie Council on Ethics and International Affairs

Richard Goldstone – Former Chief Prosecutor, UN Tribunals for Rwanda and former Yugoslavia

Aryeh Neier – President, Open Society Institute and Soros Foundations Network



Democracy and Rule of Law Endangered

remarks by Andrew Kuper

ANDREW KUPER: In the twenty years between 1980 and 2000, according to the *United Nations Human Development Report*, eighty-one countries took significant steps toward democratization. Yet, according to the same report, half of those countries are not full democracies. They suffer from shallow political participation, they are dominated by one party, or they allow only limited political competition.

So, take a look at the big picture. Two decades ago, a third of the world's states were democracies. Now, a generation later, two-thirds are democracies. That is something to celebrate. But when we look closely, we find that democracy has not taken deep root. Indeed, several countries are actually regressing. Recent events in Russia,

for instance, have led several commentators to proclaim it once again a wasteland of democracy. Many other states are re-establishing so called “soft authoritarian” regimes—regimes that have the trappings of democracy but little of its substance. And we must not fool ourselves that this degeneration occurs only in poor countries. Highly developed countries such as Italy and (at times) the United States are also showing themselves susceptible to undemocratic media rules and manipulation.

Thus, we find that there has been an unprecedented wave of democracy and, simultaneously, there is a crisis of democratic quality and sustainability.

The other part of the big picture that we must consider is the impact of the “war on terror” on democracy.

Two-thirds of states are now democracies. But often democracy has not taken deep root. Many countries are re-establishing “soft authoritarian” regimes—with all the trappings of democracy but none of its substance.



There has been an unprecedented wave of democracy and, simultaneously, there is a crisis of democratic quality and sustainability.

Aggressive measures are needed to combat the new security threats of our time. The Bush administration argues that existing international institutions such as the United Nations are often slow and ineffective. In their view, unilateral action—or at least action by a coalition of the willing—is sometimes necessary. The administration is also opposed to any review of U.S. actions by, for instance, an International Criminal Court.

Whether one agrees or disagrees with the administration's position, the threat of terrorism highlights a deep tension—one that we must confront, and one that is intrinsic to international law itself. On the one hand, there is the content of law. It must demonstrate the right kinds of respect for all persons in the right ways. It must be good law. On the other hand, there is the application of law. The rule of law is vindicated by apprehending, prosecuting, and punishing perpetrators and wrongdoers. But the deep tension derives from the fact that catching and convicting terrorists and other malefactors may require methods that good law normally prohibits. And the great concern is that regimes around the world are using the war on terror as a pretext for violating both civil liberties and democratic principles. This concern is equally valid in the United States and abroad.

Put these factors together and I think we have cause for worry. There is, in important respects, a crisis in international law and a crisis in democracy. And they are connected. What is to be done?

I am sure that many of you, like me, are frustrated with endless complaints in the media, and with the lack of positive proposals about how to set things right, how to get things on track. I am even frustrated by the few positive

Since business interests are often based in developed countries, international law and conventions—such as those against bribery—backed by real enforcement are indispensable mechanisms for reducing democracy-undermining abuses.

proposals that exist. For instance, so-called “liberal imperialists” want to have America impose its will, along with democracy, on recalcitrant leaders and local populations. Such liberal imperialists have proclaimed “The Empire of Liberty.” As a South African, I am somewhat suspicious of this view, and I can testify personally that it doesn't work. There are few things more dangerous and misguided than the old Latin maxim of *Oderint dum metuant*, “Let them hate us so long as they fear us.”

Don't get me wrong. Power and military force are important for abolishing dictatorships, and America must play a leading role; but democracy will take root—and remember that is the fundamental goal—only if democratic institutions and practices are created in large part by



Andrew Kuper, at lectern

local communities. And they invariably need the support of a range of international actors, who invariably need the support of a range of agreed laws and norms.

It was these frustrations that led us to establish the Empire and Democracy Project at the Carnegie Council. Specifically, we are focusing on international mechanisms for promoting democracy around the world. By identifying clear and actionable alternatives to empire, we hope to help counteract the new tides of militarism and militancy that threaten to engulf global security and global democracy.

Before I turn to our featured speakers, let me mention just one finding of the project that is extremely interesting: Studies have shown that there is a powerful relationship between socioeconomic levels and democratic survival and success. If you look at the historical record, a democracy has statistically *no chance* of collapsing in a country with a GDP of at least \$6,000 per capita. The democratic institutions are safely locked in place. But in a very poor country,



there is statistically a one in eight chance of democracy collapsing every year. Imagine: a 12 percent chance of your political system collapsing *every year*.

Poor countries struggle to save and improve democracy partly because their political systems and officials, such as judges and representatives, are more easily bought by wealthy and powerful interests, often from the business community. This is one area where international law is surely useful. Since business interests, for example, are often based in developed countries, international law and conventions—including those against bribery—backed by real enforcement are indispensable mechanisms for reducing these democracy-undermining abuses. Again, we see

that democracy is not just a concern in developing countries, and that problems of democratic quality are not simply caused by the internal problems of developing states.

These findings have obvious implications for Iraq and Afghanistan, which I will not address here. If you would like to learn more about these and other issues, I encourage you to read the first report of the Carnegie Council's Empire and Democracy Project, *Multilateral Strategies to Promote Democracy*. Contributors to the report include Joseph Stiglitz, Mary Robinson, and other leaders in democracy and human rights promotion. This report and other valuable material on related issues is available at our Web site, www.carnegiecouncil.org.

The threat of terrorism brings out a deep tension intrinsic to international law itself: Catching and convicting terrorists, and thereby enforcing law, may require the violation of normally respected laws and liberties.



How International Law Strengthens New Democracies

remarks by Richard Goldstone

Andrew Kuper introduces Richard Goldstone

Richard Goldstone, our first speaker, has just stepped down as a Justice of the Constitutional Court of South Africa, where he was centrally involved in developing and then applying the new South African Constitution—one of the most progressive in the world. From 1994 to 1996 he served as the first Chief Prosecutor of the United Nations Criminal Tribunals for Rwanda and the former Yugoslavia. U.S. Supreme Court Justice Sandra Day O'Connor has said of Richard:

The breadth of his personal experiences in South Africa and at The Hague provides unrivalled insight into the difficult choices that face emerging democracies in

dealing with the crimes of a previous regime.

But a brief anecdote says even more about the man. When leaders of an important law initiative approached Richard, as Chief Prosecutor, to ask him how they could help bring perpetrators to justice, he had one simple answer: “Help the defense.” He was more concerned with having a fair trial than with having an overwhelming advantage for himself as prosecutor. We are lucky to have Richard visiting the law schools of New York University and Fordham University this year, and we are indeed fortunate to have him address us on the important topic of promoting democracy through international law.



FRAMING QUESTIONS

TRANSITION: BEFORE, DURING, AND AFTER

How can and how should international law and legal proceedings be used to:

- * Undermine authoritarian and semi-authoritarian rule?
- * Strengthen democratic practices and institutions in countries in transition to democracy?
- * Deter anti-democratic coups and other retrograde actions?

LAW AND INTERNATIONALISM

Why is it important to have international involvement and support:

- * For criminal trials of deposed dictators, in general?
- * For the trial of Saddam Hussein, in particular?

CULTURE AND CHANGE

How can truth commissions and fair trials of criminal leaders:

- * Help newly democratic societies to end a culture of denial that endures even after repressive regimes have been replaced?
- * Reduce a climate of collective guilt and inter-group antagonism in previously strife-torn countries?
- * Contribute to building open societies based on the rule of law?

RICHARD GOLDSTONE: Andrew Kuper, the director of the Empire and Democracy Project, has asked me to address three questions. They all relate to the manner in which international law and especially legal proceedings can and should be used: first, to undermine authoritarian and semi-authoritarian rule; second, to strengthen democratic practices in countries in transition to democracy; and third, to act as a deterrent to retrogressive action such as anti-democratic coups. So, essentially, I'll be addressing the "before," "during," and "after" scenarios.

Let me begin by referring to my own country, South Africa. Our transition was of course remarkable—the transition to democracy from the deep oppression of apartheid—and it resulted, in no small part, from the use and application of international law. From the end of World War II, the liberation movement—and especially

the African National Congress (ANC), the prime liberation organization—became a major protagonist of human rights. It was part of an international and domestic human rights movement. The anti-apartheid movement was a human rights campaign. And for over forty years our black leaders—and it was not only black leaders, but the members of the African National Congress—were a part of the larger human rights culture. Their bible was literally the Universal Declaration of Human Rights. They carried it around in their back pocket. And in 1956 they consulted their mass membership and they produced the Freedom Charter—a remarkable document, in those days an avant-garde document, which reflected the aspirations of the organization and its millions of supporters. It reflected their commitment not only to a democratic form of government but to one that was non-racist and non-sexist.

The South African Constitution is one of the most progressive in the world. It obliges our courts, in the interpretation of ambiguous legislation, to prefer any reasonable interpretation consistent with international law.



Richard Goldstone, at lectern

That culture of respect for human rights explains why our constitution is one of the most progressive in the world. The majority party, the African National Congress, was committed to a bill of rights that would act as a brake on majoritarianism. Many in the black population objected, and still object, to their duly elected representatives being constrained by a bill of rights, and to there being a court of eleven unelected men and women who can say “No, you can’t do that” even if 100 percent of the population wants to do it. But that’s what a constitutional democracy is all about. The white minority, of course, became overnight converts to a bill of rights. When they saw the writing on the wall, that there was going to be black majority rule, they grabbed the bill of rights and became great human rights protagonists. They saw in the bill of rights the protection of privileges they had acquired over 350 years.

The policy of the ANC also explains why our Constitution now obliges our courts to consult international law and invites judges in all our courts to consult foreign law. It obliges our courts, in the interpretation of ambiguous legislation, to prefer any reasonable interpretation consistent with international law over any interpretation inconsistent with international law. I think it is unique in applying that rule to the interpretation of legislation. Our courts, and especially our Constitutional Court, have taken these provisions seriously, and our opinions reflect a wide use of comparative law and a respect for international law.

These uses of international human rights law play an unquestionably important role in compelling compliance by public authorities with democratic processes. It is reflected in our administrative law, in our labor law, in all of the procedures that look into corruption in our society

(unfortunately, there is still too much corruption). And we have active nongovernmental organizations (NGOs) that use the constitutional provisions and the bill of rights to hold our public officials accountable. Let me say immediately that those NGOs exist to a large extent because of input from the United States. It was the United States government—United States foundations in particular—that encouraged these human rights NGOs in our country. And American lawyers and judges engaged with lawyers and particularly with judges in South Africa. I was an early beneficiary of that interaction and it was a remarkable experience for me to be exposed to the internationalization of human rights at an Aspen Institute seminar for federal judges, to which I was invited in 1984.

Until September 11, 2001, as Mary Robinson stated at an important Carnegie Council meeting, the United States was the standard bearer on civil and political rights. It was regrettably tardy in ratifying many international conventions—the Genocide Convention among many others—but it was the United States that took the lead in encouraging human rights endeavors in my own country. From my own experience, I can assure you that without the push and without the human and financial resources from the United States, the Yugoslavia tribunal and the Rwanda tribunal would never have been established and, having been established, would never have succeeded.

Many other South African judges have had a similar

Due to the promulgation of the Patriot Act, the denial of habeas corpus to United States citizens, and the detention without trial of young boys and men at Guantánamo Bay for over two years now, there will be a growing resistance to turn to the United States for appropriate inspiration and guidance as an open and democratic society. The negative effect of these developments on emerging democracies is nothing short of tragic.



experience, and much of our work has been influenced by this engagement from the United States. What is remarkable is that our history might have led one to believe that such engagement would come from English lawyers and English judges, but they gave up too early. They wrote us off as being beyond redemption and had little, if anything, to do with us.

The South African Constitution requires our courts to test limitations of human rights against those found in other “open and democratic societies based on human dignity, equality and freedom.” That is a touchstone that our constitution demands. More often than not, we looked first to the United States in this comparative exercise. I would suggest that, due to the promulgation of the Patriot Act, the denial of habeas corpus to United States citizens, and the detention without trial of young boys and men at Guantánamo Bay for over two years now, there will be a growing reluctance to turn to the United States for appropriate inspiration and guidance as an open and democratic society. The negative effect of these developments on emerging democracies is nothing short of tragic.

As a report from the Lawyers Committee for Human Rights recently demonstrated and documented, there has been an unfortunate knock-on effect in a number of countries, resulting from the backward movement in the United States. In Indonesia, one reads in that report, there has been talk of setting up its own Guantánamo Bay. In a number of countries there are references to political opponents being labeled enemy combatants and journalists being denied freedom of expression.

Obviously, there is a tension between combating terrorism in the modern world and protecting civil liberties. But too many politicians around the world wish to be seen as acting to combat terrorism, even though they are not questioning all that much whether their actions are really helpful. Fearful citizens are especially slow to oppose these measures when their leaders tell them that doing so is unpatriotic and thus aiding the terrorists. So, in democracies, and especially in America, this trend will only be reversed by a well-informed electorate exercising its constitutional rights and making appropriate demands on its leaders.

Fortunately, there are checks and balances in democracies and especially, perhaps, in the United States. There are the cases presently before the United States Supreme Court dealing with the jurisdiction of the United States courts over the persons detained at Guantánamo Bay, and with

the rights of United States citizens not to be detained by executive fiat and without any access to courts. There was the public outcry in the United States that accompanied the first publication of the rules that were to apply to military tribunals. There were protests, and there was an outcry from the legal profession and from human rights organizations, and it did not take too many months until (in March of 2002) the rules were radically changed in direct response to these public objections. That is the importance of democratic leaders having to frequently pay regard to the views of their voters. And, during the past

Respect for international law is not possible when the wide perception is that international law is intended to be a constraint on the activities of the poor nations and not applicable to the wealthy and powerful.

week, pressure from Congress has moved the White House to set up a full investigation into the intelligence lapse that preceded the military attack in Iraq. Prime Minister Blair is forced to follow suit in the United Kingdom.

A fundamental norm of democracy is the rule of law, which Andrew Kuper referred to in his opening remarks. The rule of law is the assurance that leaders will be judged by the same laws that apply to all citizens and that those laws will apply to the wealthy as well as the poor, to the powerful as well as the weak. It is that same rule of law that is so needed and so missed in the international community. Respect for international law is not possible when the wide perception is that international law is intended to be a constraint on the activities of poor nations and does not apply to the wealthy and powerful nations. This widely held and growing perception is fed by the resistance of wealthy nations who do not wish to be bound by international conventions. The most visible, but by no means the only, example is the United States—as is evident from its opposition to the International Criminal Court and to the Kyoto Protocol on global warming. The United States is now the only country in the world, the only member of the United Nations, that has not ratified the International Convention on the Rights of the Child. These laws and institutions are thought by some more powerful nations to be a good idea for the rest of the world, but not for them. They claim an entitlement to be treated exceptionally.

We see selectivity in relation to Iraq. The United States, in its efforts to withdraw in the face of continuing violence, is keen to put off democratic elections. This is



The United States is keen to put off democratic elections in Iraq. Delaying elections was also the preference of South Africa's white leaders at the end of apartheid. But neither the black leaders nor the global community would allow that to happen.

obviously rejected by the majority Shiites, whose majority assures them that they will come to power. This delay is also feared by the minority Sunni, and it does not silence the Kurdish demand for some form of independence. These are serious problems. Delaying democratic elections was also, I would remind you, the preference of South Africa's white leaders at the end of apartheid, and not for dissimilar reasons. They saw that democratic elections would mean the end of white rule in South Africa, and the longer they could put that off, the better. If they had been allowed to manage that transition, negotiations would have gone on for a decade or more. But neither the black leaders nor the global community would allow that to happen.

The result was that the first national election was a joyful celebration, and majority groups and minority groups have learned to discuss their differences and to participate in vibrant debate in public legislatures around our country. The political violence that dominated the

After thirty-five years of oppression in Iraq, it is debatable whether there are efficient prosecutors who will meticulously collect evidence against Saddam Hussein.

transition has all but disappeared. There appears, in the last few weeks, to have been a really small resurgence of such violence, but that too has died down, even as we approach our third democratic election in April of 2004. Decisions of the courts are carried out by the government, and the power of the Constitutional Court to set aside decisions of the president of the country is respected.

The real challenge is educating present and future generations of South Africans to understand and embrace our culture of democracy. It's not easy. It's expensive. We need an adequate number of well-trained teachers in

order to do that. The challenge is to educate South Africans to appreciate their democratic rights and to ensure that these rights are used to benefit all our people within a reasonable time frame. A rights-based approach is not going to work if democracy does not sift down to ordinary men, women, and children around the country.

If democracy is to be encouraged in the Middle East, I would suggest that half-measures are not sufficient. I do hope that the United Nations will become actively involved in the process and that every effort will be made to enable free elections to be held sooner rather than later.

Let me end by turning to the question of a trial of Saddam Hussein. The fact that the worst of Nazi war criminals were given a fair trial by the standards of the day was to the credit of the United States. Churchill had to be convinced by Truman that the Nazi leaders should not be lined up against a wall and summarily executed. Stalin would have gone along with that; he was doing it himself for many years. Saddam Hussein is under the control of the United States, and it would be a huge setback to democracy in Iraq if he were to be handed over for a trial that is not judged to be fair by his millions of victims and by other nations in the region. And really the customers of such a trial, if I may put it that way, are the victims. That is the purpose of punishing criminals—to bring acknowledgement and some satisfaction to the victims of criminality.

There are some leaders in Iraq who want a speedy trial before Iraqi judges. One of the interim government ministers said on a BBC program recently that he wanted a swift trial and that the court should not be a platform for Saddam Hussein to give political speeches. The United States appears to be advocating the idea that courts set up by the current United States-appointed Iraqi Governing Council should try Saddam Hussein. The United States is not seriously questioning whether appropriate judges can be found after thirty-five years of oppression in Iraq, and this seems to me to be open to doubt. Whether there are efficient prosecutors who will meticulously collect evidence against Saddam Hussein is also debatable. I have no doubt that a fair and impartial trial will require cooperation and input from the international community,



particularly the United Nations. The fairness of the trial will unquestionably be judged by whether it satisfies the norms of international law.

A fair trial of Saddam will have the effect of bringing acknowledgement to his millions of victims and to others elsewhere in the region. It will enable those victims to begin their healing process and to become full participants in their new democracy. It will also have the effect of demonstrating that the evil regime was that of a criminal clique, and not representative of the people of Iraq or even the Sunni minority or any other group of people. I know of no better way to avoid widespread belief in collective guilt, which can poison the path to democracy.

In South Africa, I have no doubt that the work of the Truth and Reconciliation Commission has helped to avert collective guilt on the part of many in the white community. The demonstration of individual criminal behavior through the evidence of more than 21,000 victims who testified at the Truth Commission, and of more than 7,000 perpetrators who claimed amnesty, has enabled many in the white community to join their black compatriots in building a decent non-racial society.

The crimes perpetrated by the regime of Saddam Hussein cry out for a fair and impartial criminal process. A truth and reconciliation commission might come later, but there must be appropriate punishment for the leaders in light of crimes of this magnitude—genocide and crimes

against humanity.

May I end with a note of caution? In South Africa the institutions of democracy were present prior to the transformation. There was a working democracy for the white minority from which the black majority was totally excluded. That exclusion notwithstanding, the institutions were there for the new majority to take over and use. If anything, they are being used more efficiently and more purposefully than was the case during apartheid. In Iraq, the institutions of democracy will have to be built from the ground up. That is a daunting prospect and one that does not appear to have been fully appreciated by the Bush administration.

In all of these endeavors, the people of Iraq are not going to succeed without the fullest international assistance. Neither elections nor trials can be held in an atmosphere of fear and violence. Adequate policing will be essential for those processes to take place. Having intervened with military force, having rid Iraq of the government of Saddam Hussein, the United States and its coalition partners have no option but to stay the course. They and the United Nations should not leave Iraq until the Iraqi people have been given the opportunity to fashion their own democratic constitution and institutions. If and only if that can be accomplished will the prospects for lasting peace and the prevention of anti-democratic coups be substantially increased.

A Fair Trial of Saddam Hussein Will . . .

1. Bring acknowledgment to his millions of victims and to others elsewhere in the region;
2. Enable those victims to begin their healing process and become full participants in their new democracy;
3. Demonstrate that the evil regime was that of a criminal clique and not representative of the people of Iraq, the Sunni minority, or any other group.

I know of no better way to avoid widespread belief in collective guilt, which can poison the path to democracy.

– Richard Goldstone



No Democracy Promotion without International Law

remarks by Aryeh Neier

Andrew Kuper introduces Aryeh Neier

When it comes to mobilizing international norms and institutions to produce change, no one is more experienced than Aryeh Neier. He has conducted investigations of human rights abuses in over forty countries, and for decades has been deeply engaged in efforts to strengthen international accountability. He was national director of the American Civil Liberties Union. He founded Human Rights Watch and served as its executive director for twelve years. Since 1993 he has served as President of the Open Society Institute and the Soros Foundations Network. Indeed, some even

credit him with getting Mr. Soros into philanthropy in the first place. It is an indication of the power of this new force in world affairs that Eduard Shevardnadze, the recently deposed president of Georgia, complained that the Open Society had orchestrated a “democratic coup” against him and had mastered this fine art first by helping depose Milosevic in Yugoslavia. Aryeh is a man who stands on principle and yet clearly gets things done—and he is likely to be a wise guide on how to reduce the legal and democratic tensions produced by terror in our world.



FRAMING QUESTIONS

THE DEMOCRACY AGENDA

- * What is the relationship between the human rights agenda and the democracy agenda in international affairs?
- * Is the democracy agenda in danger of being selectively interpreted and applied in pursuit of other agendas that have nothing to do with democracy? What can be done to counteract this danger?

THE ROLE OF DEMOCRATIC ACTORS

- * How have the United States' political policies since September 11, 2001, undermined or advanced efforts to promote democracy—particularly in regions of the world that are important to global security?
- * What are the most important ways in which policy-makers and activists, in and beyond the United States, can use international law to promote democracy in their countries?

ARYEH NEIER: It is a great pleasure to speak on this important topic, and it is an honor to do so in conjunction with Richard Goldstone. Probably no one has managed to symbolize a commitment to international law more effectively than he. I believe that the institutions we now have to promote compliance with international law were in many ways made effective by Richard, and that he deserves our admiration for his efforts.

As Andrew Kuper said in his opening remarks, at the Open Society Institute I am engaged in efforts to promote democracy. I think Eduard Shevardnadze exaggerated greatly in suggesting that the Open Society Institute organized a democratic coup in Georgia. Georgians organized a democratic coup in Georgia, and the Open Society Institute played a rather minor role. Our most significant contribution was that we provided funding for an exit poll that helped to indicate that the results that were claimed in respect to parliamentary elections were in fact fraudulent. That did play a part, but it was really Georgians who ousted Shevardnadze, it was Serbs who ousted Milosevic, and so forth.

Although I am engaged in efforts to promote democracy, the effort to promote international law—in my view—is of far greater importance. If we are to achieve democracies that function the way we would like democracies to function, it is crucial that this be accomplished in the context of international law. Unfortunately, the position that I espouse contrasts with the position of the Bush administration. The Bush administration also espouses democracy, freedom, and human rights, but it does not do so in the context of international law. Rather, the administration's approach is to say that we, the United States, embody democracy; we embody freedom, and we are successful and therefore others ought to follow in our path. This is really quite explicit.

The first sentence of the current *National Security Strategy* outlines this view. It says that there is a single, sustainable model for national success: freedom, democracy, and free enterprise. This idea of success, which seems to mean that the United States is rich and powerful and therefore successful, is constantly repeated as the argument for freedom and democracy. Last November,

The Bush administration espouses democracy, freedom, and human rights, but not in the context of international law. Rather, the administration says that we, the United States, embody democracy; we embody freedom and we are successful, and therefore others ought to follow in our path.



President Bush spoke about democracy at the Twentieth Anniversary Celebration for the National Endowment for Democracy, and the word “success” was the leitmotif of that speech. He said:

Successful societies limit the power of the state and the power of the military so that governments respond to the will of the people and not the will of an elite. Successful societies protect freedom with a consistent and impartial rule of law, instead of selectively applying the law to punish political opponents. Successful societies allow room for healthy civic institutions, political parties and labor unions, and independent newspapers and broadcast media. Successful societies guarantee religious liberty, the right to serve and honor God,” (President Bush didn’t say anything about the right *not* to serve and honor God), “without fear of persecution. Successful societies privatize their economies and secure the rights of property. They prohibit and punish official corruption, and invest in the health and education of their people. They recognize the rights of women, and instead of directing hatred and resentment against others, successful societies appeal to the hopes of their own people.

The concept of international law is missing from all this. I think that this appeal does not go over well in most of the world. First, most people in most countries are quite conscious that they are not in a position to emulate the success of the United States. If you are in Zambia, and

you start practicing what America practices, you are not suddenly going to become powerful and rich. We are at the center of global capital. There is no way that Zambians are going to achieve comparable success in financial matters. The appeal to “Emulate us because we are so successful” or “Go along with us because we are so successful” only breeds resentment. There is a better approach, and it is the approach of international law.

The approach of international law seems to me to be as follows: All of us share a common humanity, and the peoples of the world, through their governments, have come together and have made certain international agreements. Those agreements were entered into over the past six decades, since the end of World War II, starting with the adoption of the United Nations Charter and followed by a long series of agreements (such as the International Covenant on Civil and Political Rights) dealing with international human rights. In those agreements, the peoples of the world have made a commitment to government by the choice of the people through free elections, and therefore the idea of democracy is incorporated in those international agreements. But it is not the dominant aspect. Most of the language of those agreements is focused on such things as freedom of speech, the right to a fair trial, the right not to be tortured, and the right to be treated equally. These are the agreements that the peoples of the world have entered into.

And the United States could take the lead in securing compliance with those agreements: first by adhering to those agreements and making itself the example for others

Encouraging Compliance with International Agreements

The United States could lead the effort to secure compliance with international agreements by:

1. Adhering to those agreements and making itself the example for others to follow;
2. Reminding others of their commitment to abide by those agreements;
3. Providing assistance to others attempting to meet those agreements; and
4. Helping to strengthen and improve those institutions that have been created to secure compliance with international agreements.

If we made an appeal to the governments of the world, and the peoples of the world, to simply live up to the agreements into which they have entered, we would probably not engender the resentments that are built up by the current way in which the United States promotes democracy.

– Aryeh Neier



to follow; second, by reminding others of their commitment to abide by those agreements; third, by providing assistance to others attempting to meet those agreements; and finally, by helping to strengthen and improve those institutions that have been created to secure compliance with international



Aryeh Neier, at lectern

agreements. In this fashion, the United States would find many willing collaborators around the world. If we made an appeal to the governments of the world, and the peoples of the world, to simply live up to the agreements into which they have entered, we would probably not engender the resentments that are built up by the current way in which the United States promotes democracy.

Andrew Kuper talked about the question of whether it is better to be feared than loved, pointing to a popular hawkish argument that hatred can be accommodated so long as one is feared. I agree that this strategy does not work today. We live in an era of asymmetric violence, an age when suicide bombers engage in terrorism, and fear clearly isn't the method by which we are capable of eliminating that kind of violence. If people feared, they would not take their own lives in the process of committing terrorism. So we need a better way in which to proceed, and I believe that the agreements and institutions of international law are a better way forward.

Of all the institutions of international law, the International Criminal Court is the one toward which the Bush administration has demonstrated the greatest hostility. This is a very sad development. It is sad because, as Richard Goldstone indicated, the ad hoc tribunals for the former Yugoslavia and Rwanda could not exist and would not have succeeded without the United States. But the Bush administration essentially argues that the legal standards it has advocated

for others should not be applied to the United States. That creates the impression of hypocrisy internationally.

The United States argues that it has responsibilities in the world that are different from those of other governments, but I do not think that argument stands up under scrutiny. The United States, for example, does not participate in peacekeeping missions of the United Nations. It has agreed to participate in two NATO peacekeeping missions in Bosnia and Kosovo, but many other governments participate in peacekeeping missions all around the world, while the U.S. abstains. Therefore, the forces of other governments expose themselves to the possibility of being brought up on charges before an International Criminal Court in many more settings than is the case for the United States. Yet, the United States says that our responsibilities internationally are what make us not go along with an institution such as the International Criminal Court.

President Bush's speech at the National Endowment for Democracy refers back to another speech about democracy, which was made in 1982 by President Ronald Reagan. Reagan launched what he described as a crusade for freedom worldwide, which committed the United States to a program of promoting democracy. In the current struggle with defiant Islamists, the word crusade isn't used anymore, but it was the word that President Reagan used in 1982. But that crusade was born out of an effort to put the idea of electoral democracy ahead of the idea of human rights. It dealt with a very specific situation that President Reagan was concerned about in 1982.

The particular circumstances were the wars in Central America that were under way at that moment. Notably, the United States was being criticized severely for its sponsorship of the armed forces of El Salvador, which were engaged in very serious human rights abuses. The United States was seeking to deflect that criticism around the time when an election was held in El Salvador. There were long lines of people waiting to vote, partly because there were too few polling places, and the Reagan administration seized on that as an indication that things were going right in El Salvador, that there was a commitment to democracy. The administration also wanted to show that things were better in El Salvador than in

The peoples of the world have made a commitment to government by the choice of the people through free elections, and therefore the idea of democracy is incorporated in international legal agreements.



We live in an era of asymmetric violence, an age when suicide bombers engage in terrorism. Fear clearly is not the method by which we are capable of eliminating that violence. If people feared, they would not take their own lives while committing terrorism. So the agreements and institutions of international law are a better way forward.

neighboring Nicaragua, which was controlled by the Sandinistas. The Sandinistas, who had come into power in 1979, were saying that they wouldn't hold elections until 1985. So the Reagan administration seized on the idea that it would promote democracy in El Salvador—and elections symbolized democracy—in order to mask all the stories of death squad killings and massacres.

In effect, Jimmy Carter, in 1977, had committed the United States to a policy of promoting human rights worldwide, and the Reagan administration shifted it from a policy of promoting human rights to a policy of promoting democracy. This shift had some good consequences and some adverse consequences. Probably the best consequence was that the Reagan administration, which originally had been very supportive of Chilean dictator Augusto Pinochet, ended up pulling the rug out from under him in 1988, Reagan's last year. They forced Pinochet to go ahead with a plebiscite he had scheduled but that he wanted to cancel because of the last moment realization that he would lose. That plebiscite, which he

Uzbekistan. U.S. policy since the fall of the Soviet Union has not focused on promoting human rights. There have been calls for democracy, but when terrible human rights abuses take place, as in Chechnya, the United States has been largely silent.

Part of the reason that democracy and human rights are more secure in the Baltic countries is that those countries have had the possibility of joining the European Union, and therefore they have had to conform their practices to EU standards. The European Union and the Organization for Security and Cooperation in Europe brought pressure on Latvia and Estonia to respect the rights of the large Russian minority in particular, and that has helped make the Baltic countries respectful of human rights.

So U.S. policy was set on a path of promoting democracy *without* promoting human rights. To a large extent, that has been the path on which it has continued under the Bush administration.

Unfortunately, there are some significant downsides to promoting a form of democracy that is not based on international law, and that focuses mainly on electoral democracy. I think one of the most important books to be published recently is by Yale Law Professor Amy Chua, who has focused on the downside of market democracies. Professor Chua argues in her book [*The*

World on Fire] that one of the consequences of conjoining democracy promotion with strong free market promotion has been the production of ethnic resentment and ethnic violence in circumstances where these new democracies have what she calls "market dominant elites." Ms. Chua draws on her own background as someone of Chinese origin who grew up in the Philippines, where a large part of the economy is owned by the Chinese, and where there is great resentment and often violence against the Chinese. The same is true in many other countries in Southeast Asia—Indonesia in particular, where there have been riots and pogroms against the Chinese minority. This pattern also exists in many other parts of the world. In Rwanda,

The U.S. argues that it has responsibilities in the world that are different from those of other governments, but that argument does not stand up under scrutiny.

did lose, ended the dictatorship. The Reagan administration only followed that course of action because it had been committed to electoral democracy internationally.

But the Reagan administration's failure to be concerned with human rights had some negative consequences, exemplified in the way subsequent administrations dealt with the former Soviet Union. If you look at the former Soviet Union today, of the fifteen countries that emerged only Latvia, Lithuania, and Estonia can be considered countries where democracy and human rights are fairly secure. Democracy and human rights are not secure in the other twelve post-Soviet countries, and a number of them are out-and-out dictatorships, such as Turkmenistan and



part of the story is that the Tutsi minority was a relatively economically successful minority, and thus the resentment of the Hutu majority was directed against a market dominant elite in a democracy that had undertaken free market development.

It is not an example cited by Ms. Chua, but I would say that there was an element of this in Bosnia. If you think of the prolonged siege of Sarajevo, a siege that lasted three years, one of the key elements was that Sarajevo was a cosmopolitan city. It was a mixture of different ethnic groups, but by far the largest portion of the population was Muslim, and going back to the Ottoman Empire, Muslims held a somewhat privileged position in Bosnia. Those besieging the city were generally people from the countryside. They were rural combatants with strong resentments against the Muslim elite in Sarajevo. In my view, that partly explains the three and a half years of shelling and sniper fire, which killed about 10,000 people in the city and injured several times that number.

Similarly, consider the imprisonment of Mikhail Khodorkovsky, which is applauded by the Russian population and is part of the reason for President Putin's overwhelming popularity. Khodorkovsky was arrested, formally, for financial improprieties. But the fact that Khodorkovsky is Jewish, and that a disproportionate number of the oligarchs in Russia are Jewish, is part of what makes the imprisonment of Khodorkovsky so popular in Russia today. Those kinds of resentments are unleashed when we do not have a commitment to law,

to human rights, and to institutions that are capable of preventing such abuses of power.

I think there are many downsides to the efforts to promote democracy without also promoting a culture of human rights. Richard Goldstone spoke about the development of a commitment to human rights in South Africa. A lot of things have not worked well in South Africa, but really it is a remarkable country in the sense that there is a market dominant elite, the white minority, and yet the deprived black majority population has been willing to allow the processes of law and democracy to deal with the inequities through gradual change, rather than engaging in ethnic violence. It is crucial that there be a culture of human rights and a commitment to the rule of law if we are to emulate the South African experience and not repeat the experience of Bosnia, or of Russia, or of many other parts of the world.

The Bush administration's argument that American success should be emulated in the rest of the world seems to me incredibly misguided. American success was achieved because over a couple of centuries we built up the rule of law and we built up a respect for human rights in the United States. We've had some diversions from that path since September 11 but, overwhelmingly, we do have a continuing commitment to human rights within the United States. Our democracy works because of that commitment. We should be promoting that commitment in the rest of the world—and not the argument that other countries should copy us because we are rich and powerful.

Reagan launched what he described as a crusade for freedom worldwide, which committed the United States to a program of promoting democracy. But that crusade was born out of an effort to put the idea of electoral democracy ahead of the idea of human rights.



QUESTIONS AND ANSWERS

QUESTION 1: TRIALS VERSUS TRUTH COMMISSIONS: HOW TO HELP NEW DEMOCRACIES?

ANDREW KUPER: What is to be done when national democratic processes threaten to run into conflict with international law? In the case of setting up truth commissions, it often happens that they have support from the local population. Yet, truth commissions sometimes grant amnesty, as in South Africa, and this seems to run significantly counter to the attempt to hold everybody accountable under international law (regardless of the boundaries and the borders of states that are crossed). So, what are we to do in those difficult instances where the population seems to support a truth commission, perhaps with amnesty, and yet the international law community insists that these are egregious crimes, and they must be prosecuted in fair trails?

RICHARD GOLDSTONE: Let me first say that in a perfect society, criminals should face justice and should be punished. That is the right of victims to perfect justice: proper investigations, fair procedures, and appropriate punishment of those found guilty. But when you are dealing with societies that have come through oppression, societies that have been the subject of genocide and huge crimes against humanity, it's just not possible. There are too many criminals, and there are too many victims, and there aren't enough courts to deal with them. Take



Richard Goldstone and Aryeh Neier discuss the merits and appropriateness of truth commissions.

Rwanda for example. There must have been at least 300,000 individuals, in a population of seven million, who were actively involved in murdering their fellow Rwandan citizens. In South Africa, there were tens of thousands of apartheid officials who were guilty of serious human rights violations. How many can be brought into a court? If you have an International Criminal Court, is it ten people in a year? Twenty people? Certainly not fifty. So there has to be a compromise along the way.

I would suggest that there is no substitute for bringing the leaders to court. That is the least a decent society must do. It is tokenism in a way, but in a good way, because it demonstrates that there is no impunity for criminals, and that the guiltiest should get priority in being brought to justice and punished. But you can't bring all perpetrators to court, and that's where I think truth commissions and other forms of justice are important, because they are better than nothing. The truth and reconciliation commissions in South Africa, Chile, and other countries have at least brought some acknowledgment to the victims. The massive evidence that has come before these commissions also stopped the denials and at least established a basis for getting the history right, rather than having two or three or four deeply conflicting histories in a society.

ARYEH NEIER: I have a somewhat different approach to the issue. My approach would be to look at the particular kinds of crimes that were committed in a given country, and how they were committed. It seems to me that the question of whether a truth commission is appropriate very much depends on the nature of the criminality. The truth commission idea caught on as a result of what happened in Argentina. In Argentina under military rule, the characteristic crime was disappearances—involving kidnappings and torture of the victims. Men in plain clothes and unmarked cars conducted the kidnappings, and victims were taken to secret locations and tortured to get the names of others. After the torture was over, the bodies were secretly disposed of. Many of them were taken up in planes and dumped out over the South Atlantic.

The nature of those crimes was that everything about them was intended to deceive. There was no acknowledgment of the criminality as it was being committed. The Argentines who lost family members demanded to know what happened to their relatives. They were epitomized by a group called the “Mothers of the Plaza de Mayo,” who marched around in a circle every Thursday afternoon in



front of the presidential palace, wanting to know what had happened to their children. The government’s explanation was that those who had disappeared had left the country, or had gone to join some secret guerilla group, and that the government didn’t know what had happened to them. But the mothers demanded the truth. The government maintained a pretense of legality throughout, and truth became very important to the victims, and to the relatives of those who had been murdered. In that circumstance, the idea of a truth commission can be very powerful. It finally penetrates the web of lies and shows exactly what was done, who did it, and so forth.

Now, think of two very different circumstances. Think of Rwanda and again of the siege of Sarajevo. There was no mystery about what was going on in Rwanda—it was broadcast on the radio. Everything was out in the open. This was genocide without any attempt to preserve a pretense of legality. Similarly, the siege of Sarajevo was on television worldwide every single day. Truth isn’t a particularly powerful weapon when dealing with those kinds of crimes.

I would also say that in a country like Rwanda, where the ultimate crime of genocide was perpetrated, a truth commission seems a rather puny response. There have been cases where truth commissions exist side by side with trials. In Sierra Leone, there is a joint United Nations–Sierra Leonean criminal court that is prosecuting the leaders responsible for the horrendous crimes that



The panelists confer.

took place, yet there is also a truth commission. The court can only deal with a small number of people, as Richard said, so the question of capacity is a very important factor. The truth commission supplements the court. In Argentina, there were criminal trials and there was a truth commission. In South Africa, there were a few criminal trials for those who refused to acknowledge and disclose their crimes fully. So, using the two mechanisms in combination can be a very good approach.

But in Sierra Leone, what really matters to people are the criminal proceedings, not the truth commission. In cases where perpetrators went around cutting off people’s arms and legs, and committing other horrendous crimes,

When Are Truth Commissions Useful?

Richard Goldstone:

There is no substitute for bringing the leaders to court. That is the least a decent society can do. It is tokenism in a way, but in a good way, because it demonstrates that there is no impunity for criminals, and that the guiltiest should get priority in being brought to justice and punished. But you can’t bring all perpetrators to court, and that’s where I think truth commissions and other forms of justice are important, because they are better than nothing.

Aryeh Neier:

I have a somewhat different approach. The question of whether a truth commission is appropriate very much depends on the nature of the criminality, if there was an intention to deceive. There was no mystery about what was going on in Rwanda—it was broadcast on the radio. This was genocide without any attempt to preserve a pretense of legality. Similarly, the siege of Sarajevo was on television worldwide every single day. Truth isn’t a particularly powerful weapon when dealing with those kinds of crimes.



I am in favor of responsible media, but I attach more significance to having diverse media. When one point of view is heard, and it is not countered by other points of view, we are in a dangerous situation.

–Aryeh Neier

a truth commission isn't enough. The crimes were not committed with a pretense of legality, or with the intention of deceiving. Everything was visible, and victims and citizens want those people punished for committing those crimes. I think the circumstance of the criminality matters a great deal in determining the right approach.

QUESTION 2: RESPONSIBLE MEDIA AND THE COMPLEXITY OF INTERNATIONAL LAW

NOEL LATEEF: My question goes to your appraisal of the centrality of responsible media in promoting democracy through international law. I recently had the pleasure of speaking to Roger Ailes, the president of Fox News, and I asked him what role he saw the media playing, and if it had any responsibility to educate the public. Mr. Ailes responded in short that, “the business of the media is to stay in business.” A corollary concern is the complexity of international law. The Dayton Accords that brought an end to hostilities in Bosnia were 300 pages long, and I think Henry Kissinger could probably credibly claim on television that he was one of only three people who had read the accords in their entirety. How can these complex-



Noel Lateef, President of the Foreign Policy Association, asks about media responsibilities.

ities—the imperatives and attitudes of the media business, the abstruse and detailed nature of law—be addressed and managed in the interests of democracy?

RICHARD GOLDSTONE: We are discussing democratic liberties, but in most oppressive societies there is no free media. South Africa was a very strange society because, in our worst apartheid days, we had a fairly free media. There were constraints, but certainly the media played a very important role in publicizing what apartheid governments did and in helping bring down the system. There is a huge role for education by the media—who else?—especially in new democracies like South Africa.

What worries me in a number of developed democracies, particularly in the United States, is the regionalism of media. I have been amazed when traveling around this country at how little international news there is in newspapers. I think you can count on the fingers of one hand the newspapers in this country that have good foreign news coverage. I have noticed in Europe, for example, that on Sunday people in even the smallest towns go and get their Sunday newspapers, and they are pretty good newspapers, whether in France or in England or many other European countries. I have been amazed at how many people in this country rely on television for their news. What does the television give them? Motor collisions in their village, news about their city very frequently, but not about other cities in the United States, let alone about the international situation and community.

I think our media are not doing a great job. They are providing soap operas and the sorts of coverage that bring in advertising. A huge opportunity is being lost in the older democracies, and perhaps even more in the new democracies.

ARYEH NEIER: Of course I am in favor of responsible media, but I attach more significance to having diverse media. Part of the reason is that it seems to me very important that a particular medium, which may express the views of the government, should not be too powerful. When one point of view is heard, and it is not countered by other points of view, we are in a dangerous situation. I'll use the example of Rwanda again. Notoriously, radio



Ann Phillips, a Carnegie Council trustee, asks for an appraisal of the Bush Doctrine of pre-emption.

television *Mille Collines* incited and actually helped organize the genocide. I doubt that it could have had so important a role if there had been many media with many points of view. It is one thing if all you hear is one point of view, one argument; it's quite another if you have a cacophony of views, even if you have media that are irresponsible.

I'd rather have a lot of irresponsible media than just have one point of view being broadcast. In the former Yugoslavia, *Radio Television Serbia* reached most of the population of Serbia, and there was very little else available to provide an opposing point of view. At a certain point, *Radio B92* came along, but that was limited to the city of Belgrade, and it was not in Belgrade that the enthusiasm for the war was strongest, but rather in the provincial parts of Serbia. The same was true in Croatia, where the official radio station helped foment the conflict. So, a diverse media seems to me to be particularly significant.

QUESTION 3: THE BUSH DOCTRINE OF PRE-EMPTION: IS IT LEGAL?

ANN PHILLIPS: I wonder if you might address the Bush Doctrine concept of pre-emption in the context of international law.

ARYEH NEIER: International law essentially says that you have a right to engage in self-defense. It also says that, other than self-defense, the Security Council of the United Nations has to authorize conflict. I happen to believe that there is another form of international armed

conflict that is authorized by international law. I think there is a duty under the Genocide Convention to prevent and suppress genocide, and therefore, where there is the imminent possibility of genocide, I think that military intervention is justified.

As far as self-defense is concerned, I think one can argue about what is involved. Do you actually have to be attacked, or does the attack have to be imminent? A credible argument could be made that if the attack is imminent, you have a right not to wait until you are attacked, but to attack. The question is, when the attack is not imminent, when you are not preventing something like genocide, when the Security Council does not authorize your attack, do you have a right to go to war under those circumstances? The Bush administration's *National Security Strategy* says yes, and I would say no.

RICHARD GOLDSTONE: I'll concur.

QUESTION 4: WOULD A DEMOCRACY COMPLIANCE MECHANISM BE USEFUL?

QUESTION: First, a comment: I am Italian and I was struck by the words of Andrew Kuper, at the start, regarding the media situation in my country. I would say that something even more complicated is happening in Italy. The only thing that is known commonly is that [Prime Minister Silvio] Berlusconi owns three out of the seven major national television channels. What is less well known is that, for instance, eleven out of 630 posts in the chamber of deputies have not been filled appropriately because of a tricky electoral law. Meanwhile, for two and a half years we have gone without two judges on the Constitutional Court; and two members of the Council of the Supreme Magistrate were not elected properly. So the role of media is very important; but in a country where you have real problems when it comes to democracy, there are more complicated issues that must also be addressed. Now, my question: Given that we are talking about promoting democracy and international law, would it not be useful to try to establish a democracy compliance mechanism in the international community, one in accord with international law? Some type of compliance mechanism might help in extreme situations, as well as situations where people still believe they live in a democracy, like in Italy, with its institutional and structural problems.



Since World War II, the world has made tremendous strides at an increasing pace. For one thing, national sovereignty is yielding more and more to the protection of human rights.

—Richard Goldstone

ANDREW KUPER: Let me add to and clarify the question: Insofar as there is an international norm of democracy to which you both referred, a norm that Professor Thomas Franck of New York University Law School famously identified all the way back in 1992, is it possible to establish effective enforcement mechanisms that will entrench and advance this norm? Could there be a democracy compliance panel of some kind, perhaps attached to the United Nations, providing international recognition and assistance if a country upholds certain democratic standards?

RICHARD GOLDSTONE: Since the Second World War, and at an increasing pace—I'm an optimist, not a pessimist—the world has made tremendous strides. Education is helping, and has changed things. Before the ad hoc tribunals were set up by the Security Council, there were no



An audience member asks about the prospects for establishing a democracy compliance mechanism.

references in newspapers to international humanitarian law. It was taught as an esoteric subject in some law schools in some democracies. Today, one reads about it all the time, whether it is the trial of Milosevic or something else.

When the United States went to war in Afghanistan, when NATO fought over Kosovo, and when the Iraq war took place, statements were made daily about protecting civilians. Whether the military succeeded 80 percent or 100

percent of the time isn't the point I am making. A changed consciousness exists and it is having a dramatic effect. For instance, humanitarian law is now being taught in universities across the world. So there has been a tremendous advance—for one thing, national sovereignty is yielding more and more to the protection of human rights.

At the end of World War II, rights violations were labeled as internal affairs. No country, no international organization had any right to criticize how a government mistreated or murdered its own people. South Africa got away with violating human rights for many years, saying "Apartheid has nothing to do with you. The way we treat our black people is our internal affair, not the business of the United Nations or anybody else." The internal affairs claim is no longer heard. Some violators try and raise the argument, but it is no longer seriously entertained. And with the United Nations, NGOs, and human rights groups regarding it as their business to assess governments—and it is accepted around the world that it is their business, and that it has become part of the business of government to look at other governments—I think this is a new world we are living in. I don't think we should get too gloomy. Terrible things are happening, but some good things are happening as well.

ANDREW KUPER: Aryeh, do you worry that democracy, as a criterion to be applied by the United Nations or governments, is going to diminish attention to these sorts of international rights norms? Is that your argument? If so, should we be suspicious of democracy compliance mechanisms?

ARYEH NEIER: No, I would not be suspicious of democracy compliance mechanisms. I would just argue for a rich view of democracy. It seems to me that a rich view of democracy includes the idea that democracies live by law, and that norms and rules of international law are critical for the way in which democracies relate to each other and for the way that they ought to relate to their own citizens. I don't want my words to be misinterpreted: I attach great significance to advancing democracy, but we must be mindful of the kind of democracy we promote.



A rich view of democracy includes the idea that democracies live by law, and that norms and rules of international law are critical for the way in which democracies relate to each other and for the way that they ought to relate to their own citizens.

–Aryeh Neier

BIOGRAPHIES OF PARTICIPANTS



Richard Goldstone served most recently as a Justice of the Constitutional Court of South Africa. From 1994 to 1996, Mr. Goldstone was Chief Prosecutor of the United Nations Criminal Tribunals for Rwanda and the former Yugoslavia. He also chaired the Independent Inquiry on Kosovo, and the committee that drafted the Valencia Declaration of Human Duties and Responsibilities. In 2004, Mr. Goldstone will hold visiting professorships at the law schools of New York University and Fordham University. He is the author of *For Humanity: Reflections of a War Crimes Investigator* (Yale, 2000).



Aryeh Neier has been President of the Open Society Institute and Soros Foundations Network since 1993. Previously, Mr. Neier founded Human Rights Watch and served for twelve years as its executive director. Prior to that, he worked for the American Civil Liberties Union for fifteen years, including eight as national director. An internationally recognized expert on human rights, he has conducted investigations of human rights abuses in more than forty countries. Mr. Neier's most recent book is *Taking Liberties: Four Decades in the Struggle for Rights* (PublicAffairs, 2003).



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1. How can the United States and other powerful actors become credible leaders in promoting democracy?
2. How can the central rules, procedures, and institutions of the international community be mobilized to promote democracy most effectively?

The Project addresses these complex questions by holding high-level panels, creating valuable internet resources, and conducting original research. By identifying clear and actionable alternatives to empire, the Project helps counteract the new tides of militancy and militarism that threaten global security.

For more information on this project, please visit www.carnegiecouncil.org, or write to us at democracy@cceia.org.



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