



Justice Richard Goldstone and the Dean: Prof Johan Henning

## Dekaan Prestige Lesingsreeks

### Internasionale Kriminelereg

### Dean Prestige Lecturing Series

### International Criminal Justice

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Justice Goldstone het gedien op die banke van 'n provinsiale afdeling van die Hooggeregshof, die Appèlhof sowel as die Konstitusionele Hof, was ook die eerste hoof-aanklaer vir die Verenigde Nasies se Internasionale Kriminele tribunale vir die voormalige Yugoslavia asook Rwanda. Hy het gepraat oor die toekoms van die internasionale kriminele regstelsel .

Hy vergelyk internasionale kriminele reg en geregtigheid aan 'n liggaam sonder arms en bene. Dit is omdat die Internasionale Kriminele wet, in teenstelling met die nasionale wetgewing, het geen wetgewende liggaam en in die besonder, geen wetstoepassing agentskap. Dit berus dus aansienlik op die samewerking van state en kan nie effektief funksioneer sonder die nodige politieke wil van state.

Hy het gedemonstreer hoe die vervolging van die groot Nazi-oorlog misdadigers deur die militêre tribunale by Nuremberg en Tokio aan die einde van die Tweede Wêreldoorlog, het bygedra tot die vorming van die internasionale kriminele reg en geregtigheid, onder andere deur die aanneming van die Konvensie van Genève en die aanvaarding van die Universele Verklaring van Menseregte deur die Verenigde Nasies.

Hy beklemtoon die belangrike rol wat Afrika-state, in die besonder Suid - Afrika gespeel het in die vestiging van die Internasionale Kriminele Hof in terme van die Statuut van Rome. Hy het opgemerk hoe , na die ICC begin sy werk, dat die hof uitgereik lasbriewe teen sekere staatshoofde in Afrika , en hoe dit ongelukkig het 'n skewe persepsie onder sommige Afrika-state wat die hof is 'n Europese hof wat fokus op die Afrika-kontinent .

Hy het opgemerk dat dit was 'n blote mede- voorkoms dat die gevalle wat tans voor die ICC , al spruit uit die Afrika-kontinent en dat die meeste van hierdie gevalle is ondersoek deur die ICC op versoek van die Afrika-state self . Die onlangse aanstelling van Fatou Bensouda van Gambië, as hoof-aanklaer van die ICC, kan ook dien om die geloofwaardigheid van die hof onder Afrika-state te herstel.

Hy het verduidelik die opposisie van die Verenigde State van Amerika aan die ICC, ten spyte van die feit dat hy was instrumenteel in die stigting van die hof. Die Verenigde State van Amerika speel 'n prominente rol in die internasionale vrede bewaring , en sy houding teenoor die hof in op grond van sy begeerte om nie sy burgers te onderwerp aan enige ander kriminele hof jurisdiksie , as dié van hul eie.

Die beswaar is ongegrond as die jurisdiksie van die ICC is beperk tot slegs die mees ernstige internasionale misdade en slegs as plaaslike howe is nie in staat of onwillig is om jurisdiksie oor die vervolging van oortreders van sulke misdade te neem. Hy het opgemerk dat daar positiewe tekens dat die VSA is stadig versag sy houding teenoor die ICC.

Internasionale Kriminele reg en geregtigheid het groot vordering gemaak in die ontwikkeling, veral sedert die stigting van die ICTY en die ICTR. Dit het ten doel om die beëindiging van straffeloosheid van vervolging van oortreders van growwe skendings van mens- en humanitêre regte.

Justice Goldstone has served on the benches of a provincial division of the high court, the Supreme Court of Appeal as well as the Constitutional Court, also was the first chief prosecutor for the United Nations' International Criminal Tribunals for the former Yugoslavia as well as Rwanda. He *spoke about the future of international criminal justice.*

He compared international criminal law and justice to a body without legs and arms. This is because International Criminal law, unlike national law, has no legislative body and in particular, no law enforcement agency. It therefore relies substantially on the co-operation of states and cannot function effectively without the required political will of states.

He demonstrated how the prosecution of the major Nazi war criminals by military tribunals at Nuremberg and Tokyo at the conclusion of World War II, contributed towards the shaping of international criminal law and justice, amongst others by the adoption of the Geneva Conventions and the acceptance of the Universal Declaration of Human Rights by the United Nations.

He highlighted the prominent role that African States, in particular South Africa, played in the establishment of the International Criminal Court in terms of the Statute of Rome. He noted how, after the ICC started its work, that court issued warrants of arrest against certain African Heads of States, and how this has unfortunately created a skewed perception amongst some African States that the court is a European court which targets the African continent. He noted that it was a mere co-incidence that the cases currently before the ICC, all emanate from the African continent and that most of these cases are under investigation by the ICC at the request of those African states themselves.

The recent appointment of Fatou Bensouda from Gambia, as chief prosecutor of the ICC, could well serve to restore the credibility of the court amongst African States.

He explained the opposition of the United States of America to the ICC, despite the fact that it was instrumental in establishing the court. The United States plays a prominent role in international peace-keeping, and its attitude to the court is based on its desire not to subject its citizens to any other criminal court jurisdiction, than that of their own.

The objection is unwarranted as the jurisdiction of the ICC is limited to only the most serious international crimes and only if domestic courts are unable or unwilling to assume jurisdiction over the prosecution of perpetrators of such crimes. He noted that there are positive signs that the US is slowly softening its attitude towards the ICC.

International criminal law and justice has made major strides in development, especially since the establishment of the ICTY and the ICTR. It aims at ending impunity from prosecution of perpetrators of gross violations of human-and humanitarian rights.