

## Speech at the Lloyd Cutler Fellows Program: US Institute for Peace; Friday 1 November 2013

Thank you, Stephen, it's a true pleasure to be here—and a privilege.

I hear our fellows assembled today are amongst the top performers from the top 10 universities in the US. You should feel proud!

### **What Can Inspire You and Set You on the Right Path**

Lloyd Cutler, had a motto, “Don't just do well, do good”. The Salzburg Seminar brand seeks to magnify the impact we have on society, in this instance, through international law. The U.S Institute for Peace is essentially about managing international conflict without violence:--a full agenda.

The three movements together are why you are in this hall, to exercise your collective intelligence. It's about common humanity: the need for you as fellows to understand the globe, its forces, organisms, economies and the motivations of reasonable and not so reasonable people.

The theme of this year's program is “The Future of Public and International Law: a daunting subject for someone who is neither an academic nor a good gambler, so I won't make too many predictions about the future.

As you go forth in your careers, I urge you to think about three things. (i) Have you ever experienced or seen the face of corruption? (2) What is the impact of corruptly-traded influence on international affairs and (3) What does the “C” word mean for the existence--and co-existence-- of nations.

When I was starting out as a young advocate in South Africa, a number of international conventions and cases inspired me to adjust the trajectory of my own career, leading me to the World Bank: --in a sense a melting pot of international law.

Many years ago, I heard about the **Nippon Papers** case and was struck by the idea that the Americans wanted to prosecute bribery (not committed on their soil) of foreign public officials in far-flung or forlorn countries. Fast-forward to 1999, when 37 countries and 4 civil society organizations witnessed the entering into force of the OECD Convention against Bribery of Foreign Public Officials. That wind kept blowing to a point where in the United States presently, rules requiring compulsory reporting of moneys paid in foreign countries for the development of oil, gas and minerals, provide a new brand of international regulation.

Subsequently, I envied colleagues who attended the signing of the **Palermo** Convention in 2000 (we all watched mafia movies at some point) and surveyed the undercurrents affecting the

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International Criminal Court (ICC). When I saw the African Union's recent demarche on the ICC, I wondered whether immunity from prosecution is a doctrine of international law and why?

Amidst these times came the United Nations Convention against Corruption (UNCAC), which to many, sounds like the peace keeping force in Namibia, UNTAG. UNCAC came full circle in the **Glenister** judgement, when the South African Constitutional Court ruled that decisions of the State ought to be rendered consistent with international law and that when South Africa ratified the UN Convention, international anti-corruption obligations trumped government restructuring and other political preferences.

In the early 90s--shortly after Nelson Mandela was released from Pollsmoor Prison,--we studied with some intensity the Canadian Supreme Court's ruling in *R vs. Stinchcombe*, that 22 years later, had set the world on fire about disclosure of evidence in criminal matters.

Many scholars of public international law, including one of my colleagues at the World Bank, declare that the **locus classicus** on Public International Law (PIL) is the **Nicaragua** case of 1986, a matter in which the International Court of Justice asserted both the principle of non-intervention, whilst safeguarding state sovereignty.

### **The World Bank and International Organizations**

The hallmarks of public international law are evident in the international agreements, arbitration and dispute settlement mechanisms, and lately what is termed global administrative law, that international organizations employ. In the international anti-corruption arena, we have subconsciously established what Anne-Marie Slaughter would call, a growing global governance network.

At the World Bank, players with different mandates from varying walks of life apply a blend of domestic and international law to coin novel solutions. Key amongst these are common principles, standards and definitions for investigations by international financial institutions, cross-debarment, sentencing guidelines, the treatment of corporate groups and settlement.

### **International Law Enforcement**

Because of my background, I have to make the case for this often undernourished area in international affairs.

At the tip of the spear are national enforcement and regulatory bodies, including anti-corruption agencies, investigative offices, prosecutors, and auditors-general. These functionaries enforce both domestic bribery laws, and laws criminalizing the bribery of foreign public officials, such as the U.S. Foreign Corrupt Practices Act or the U.K. Bribery Act.

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Although this work is technically domestic, money knows few borders. Bribery cases often involve international elements like offshore bank accounts or shell companies. It is, therefore, entirely possible to be a domestic prosecutor and an international lawyer at the same time!

One of the most striking anti-corruption efforts in the world is based in Latin America: The International Commission Against Impunity in Guatemala. This Commission, established by agreement between the U.N. and Guatemala, not only provides technical assistance to Guatemalan law enforcement and policymakers, but also contains a Special Anti-Impunity Prosecutor's Office, empowered to conduct its own investigations and oversee and coordinate resulting cases with domestic prosecutors. The Commission is a remarkable demonstration of the lengths sometimes required to root out corruption.

Domestic enforcement work can also foster marvelous creativity. For example, the Hong Kong ICAC—reputedly the world's leading anti-corruption agency—has always devoted substantial attention to public outreach and awareness. So, it went off and created its own popular, multi-season TV show: *ICAC Investigators!* It has infiltrated the public consciousness, making corruption uncool. Inspired by this, I have given some thought to writing "INT: The Movie" over my next few vacations.

### **Other Innovations And Developments**

In leading INT, I have prioritized our interaction with national enforcement authorities. We also launched the World Bank's International Corruption Hunters' Alliance, which brings together these bodies, so colleagues can collaborate and design new schemes in the interdiction of both the supply and demand side of corruption.

The Organization of American States (OAS) adopted the Inter-American Convention Against Corruption (IACAC) in 1996. It now has 34 state parties and contains powerful provisions facilitating extradition. Article 13 of the IACAC not only makes corruption an extraditable offense, but the treaty itself provides grounds for arrest and extradition, even if state parties do not otherwise have an extradition treaty between each other! If a state party still refuses to extradite the offender, then it must prosecute him or her, unless the requesting state agrees otherwise. The question is what happens in practice?

Other international organizations fight corruption in different ways. At the policy level, groups like the G20 are working to stem the tide of money laundering and international tax evasion. At the operational level, some regions have developed transnational enforcement agencies, such as the European Union's Anti-Fraud Office, OLAF, which has significant investigative powers.

Corruption hurts the poor the most. Beating corruption takes a crusade. This reality has inspired many civil society organizations to advance the anti-corruption movement. These range from

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small village committees in India and Africa, to global organizations like Transparency International. CSOs have, in turn, formed umbrella organizations like the UNCAC Coalition, which has 350 member organizations from over 100 countries that work together to keep our feet to the fire.

And business, too, has a major role to play, through the development of corporate controls standards, and “publish what you pay” initiatives in areas like extractive industries and defense.

### **The Community**

These groups have different resources and abilities, but they share common goals. We know one another. We cheer one another’s successes, and support one another in times of struggle. We are sensitive to each other’s limitations, and we don’t always see eye-to-eye. But we are working together, in the interests of everyone.

Make no mistake: fighting corruption is tough work, especially when one goes after “grand corruption” involving very senior officials. Many of the bigger names in the anti-corruption world—people like Eva Joly of France and John Githongo of Kenya—were ostracized because they dared to take on the powerful. Mutual support isn’t just nice and friendly; in our world, it is essential.

### **The Future?**

What can we learn from this architecture, and this community?

The international anti-corruption world embodies several skills that, I believe, are required to address other tough international issues.

Our work is integrative. We constantly consider national and international laws, norms, principles, and precedents. In this constant conversation, everyone influences everyone in the search for solutions.

Our work is iterative, and requires flexibility, as change proceeds at different paces in different places. That’s the nature of geopolitics: multifaceted, cyclical and imperfect.

Our work requires profound reflection and clear thinking, to successfully navigate all the complexities of multinational facts and cases while using the full range of tools at our disposal.

And, perhaps most importantly, our work is rooted in a deeply-held desire for fairness and belief in justice. At the World Bank, when we say we have zero tolerance for corruption, that’s not just a catchphrase. That’s a promise: to our shareholders, our clients, our donors, and the poor whom we ultimately serve.

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### Conclusion

Mr. Paul Volcker, an international giant, in addressing the International Bar Association in Boston a few weeks ago quipped: *“You carry the full weight of a long respected profession. If we fail to maintain an effective rule of law and a strong defense against corruption,—two sides of the same coin—then you can hardly escape complicity!”*

You are all smart, talented, hardworking people. I sincerely hope you follow your desire and become international lawyers. You are the next generation who will define the new landscape. And when you get there—when you find yourself counseling clients, arguing cases, doing deals or drafting treaties—remember to aim high. Don’t settle for simply being well-paid guns for hire; or suave, multilingual technocrats; or negotiators who put profit ahead of people.

A true international lawyer is a citizen of the world. Citizenship brings privileges, but it also carries with it responsibilities. Our shared responsibility is to help make the world a better place. Make that at least a part of whatever you do in your legal practice.

Always remember, it’s not about power, it’s about the law.

Thank you very much.