



# National Security Law Report

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## SPECIAL CONFERENCE SUPPLEMENT

### Anarchy in the Third World

Edited by Robert F. Turner

#### Introduction and Overview

On June 3-4, 1993, the Standing Committee sponsored a conference on "Anarchy in the Third World" at the International Club in Washington, D.C.

Professor John Norton Moore, Director of the Center for National Security Law at the University of Virginia School of Law and a former five-term chairman of the Standing Committee, began the conference by giving some brief background on the Standing Committee and emphasizing its long-standing commitment to democracy and the rule of law around the world.

Setting the stage for the programs which were to follow, Professor Moore observed that the world was experiencing "a time of extraordinary change." On the positive side, the end of the Cold War has enhanced the potential for an effective U.N. Security Council and other "opportunities to strengthen world order . . . ."

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*Members of Thursday's initial panel address a record crowd and C-Span TV audience on Anarchy and Government Breakdown.*

#### Panel I: An Overview Anarchy and Government Breakdown

The first panel began with brief remarks by the moderator, Ambassador Samuel Lewis, whose distinguished record of public service includes having been Ambassador to Israel for six years during both the Carter and Reagan administrations, more than five years as President of the U.S. Institute of Peace, and his current post as Director of the State Department's Policy Planning Staff.

#### Dr. Alberto Coll

Dr. Alberto Coll, Principal Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, began the substantive presentations by noting "the tremendous breakdown of governance throughout the Third World and throughout much of

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## Prof. Moore on Anarchy ...

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A "strong and continuing trend toward democracy around the world" would also likely improve the long-term chances for world peace. On this issue, Professor Moore drew the audience's attention to the Copenhagen Document produced under the leadership of Ambassador Max Kampelman through the Conference on Security and Cooperation in Europe (CSCE) process, which recognized democracy as the legitimate basis for government; and he noted the existence of "new, empirical data ... about the relationship between democracy, totalitarianism, and war-peace issues."

On the negative side, Professor Moore observed that there remained a significant threat from the remaining Leninist regimes—and emphasized in particular the problem of nuclear weapons proliferation posed by the North Korean regime of Kim Il Sung.

Turning then to the problem of "anarchy in the Third World"—the title of the conference—Professor Moore noted that there was no single cause to the problems that would be examined at the conference, and no short title could really capture the entire topic. Some of the problems were internal in origin, others international. Still others—like the tragic developments in Bosnia-Herzegovina—could not easily be categorized by either term.

Professor Moore suggested that most of the problems set for discussion at the conference had "a commonality of either the involvement of terrorism or other forms of massive human rights violations, frequently rising to the level of democide or genocide . . ." Since many of them were producing obvious international consequences—such as the flow of refugees to neighboring States—they were issues of legitimate international concern. He challenged the conferees to examine two sets of issues in their deliberations:

- What are the causes and likely prognoses of each conflict; and
- What is the full range of options available to the United Nations, regional organizations, or other international or national actors to deal effectively with these problems?

Professor Moore closed his introductory remarks by noting some ongoing research at the Center for National Security Law examining synergies between totalitarian regimes and system-wide deterrence failure as primary causes of war in the modern era.

## Panel I—Government Breakdown ...

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the Second World as well," arguing that "[t]he end of the Cold War indeed in many cases has acted as a lifting of constraints that had seemed to be holding together various nation States that now have turned out to be very difficult to keep together."

Among the underlying problems, Dr. Coll suggested, were "very ancient and powerful forces of disintegration in the form of . . . ethnic, religious, and nationalistic hatreds and aspirations." The principle that "no people should be ruled by another," he suggested, "has accelerated out of control. Kazakhstan is inhabited by 102 nationalities: Should it become 102 countries? At least 3,500 groups around the world now call themselves nations, and the number keeps growing. Should each have its own country?"

Another key factor is that "[i]n many parts of our world today many countries are being exposed to modern technology and communications, [but] the corresponding political and civic culture on which democratic and orderly governance needs to be founded is simply not there." Quoting James Cladd, Dr. Coll said: "In many Third World countries, the quality of administration found is often indistinguishable from simple looting."

Dr. Coll argued that "the growing fragmentation going on in many parts of the world is giving rise to political entities that are incapable of sustaining themselves either economically or politically, much less capable of providing for their own security"; and he predicted that "the multiplication of such unsustainable entities will tempt regional powers to pursue hegemonic expansionist policies so as to incorporate these entities into a wider political hegemony under their control."

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Turning to what the United States can do about the problem, Dr. Coll emphasized “the principle of selectivity.” “The United States,” he contended, “lacks either the resources or the will to involve itself heavily in all of these conflicts. Most of them affect our interests only indirectly, . . . and we must be very selective as to how, when, and to what extent we involve ourselves in those conflicts.” He said “[w]e must be very careful not to see the Defense Department or the armed forces as a magical instrument that we can deploy around the globe to settle these problems. First of all, military power is inappropriate in most of these cases, and secondly there are tremendous costs to us as a country in using the armed forces for intervention in these conflicts.”

Dr. Coll suggested that “in some of these crises, international organizations need to be prepared to assert stricter forms of conditionality,” requiring meaningful political or economic reforms before support is given. It might also be useful to explore either through the United Nations or regional organizations “the equivalent of trusteeship arrangements by which these international organizations would take a much more aggressive and more active role in shaping the political and economic conditions” in countries which seem to be collapsing into anarchy.

### Professor Chester Crocker

The second speaker was Chester Crocker, former Assistant Secretary of State for African Affairs and now a professor at Georgetown University and Chairman of the Board of the U.S. Institute of Peace.

He began by noting that the end of the Cold War has left the United States with no single dominant hostile aggressor, but that picture has been replaced by the emergence of “lots of enemies” and dramatic changes. “The Third World and the Second World are becoming one as parts of the former Soviet Union look more and more and behave more and more like parts of Africa that I’m very acquainted with.”

In addition to the causes mentioned by Dr. Coll, Professor Crocker suggested that a major cause has

been “the disengagement of the world system from propping up a very shallowly rooted situation of law and order in much of the Third World, which has thrown into question the legitimacy of both boundaries and governments, . . . changing fundamentally the balance of power between governments and the societies in which they exist. . . . [T]he balance of power that previously favored governments is changing against them.”

Another factor is that:

We are more aggressively than ever exporting our deeply held convictions about all sorts of wonderful values: democracy, human rights, market economics, women’s empowerment, environmental protection—all very worthy causes—but, in doing that, we are further weakening governments against whom the balance of power is shifting. The response of governments in some cases is to collapse.

In other cases, it is simply to resist and hunker down.

Still another factor in the growth of anarchy is “the extraordinarily ironic success of peacemakers, who have created settlements that now need to be implemented. That has imposed yet more demands on a transitional world system . . . .”

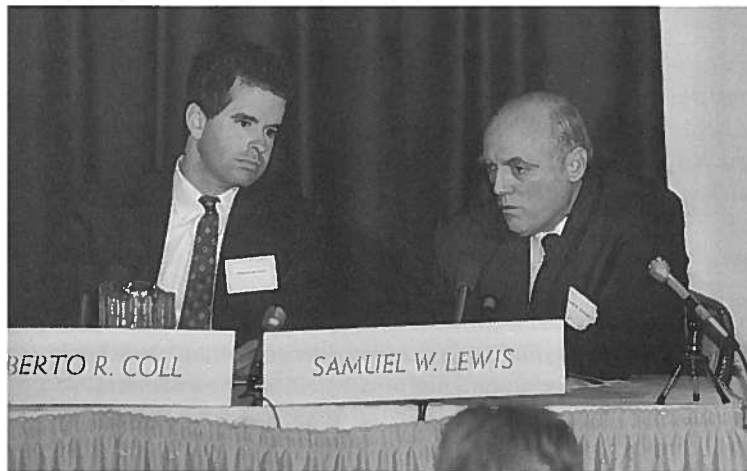
Professor Crocker gave the United Nations “about a B minus” for its performance in the last couple of years, a grade that is likely to fall to a “C plus” by next semester. He was even tougher on the “big powers” in the United Nations, giving them “at best a C, and their grades next semester look like they are going in the tank.”

Turning to other causes of the growing anarchy, he said:

You get anarchy when the balance between the State and its social context breaks down. . . . You get anarchy when the institutions of order are obliged to go into business for themselves to survive, to run drugs, to sell off official assets. . . . You get anarchy when incumbent elites are so isolated that they have no option but to hang on at all cost when what should be happening is some kind of golden parachute for them, however odious their records may be. . . .

You get anarchy when judges, police and legislators

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*Ambassador Samuel Lewis, Director of the State Department Policy Planning Staff and former President of the U.S. Institute of Peace, introduces Dr. Alberto Coll to begin the first panel of the conference.*

## Panel I—Government Breakdown . . .

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of the embryonic international system become mocked, ignored, and humiliated. I'm talking about the U.N. Security Council. I'm talking about major powers like ourselves. I'm talking about U.N. peacekeepers when U.N. forces assigned to a difficult arena of conflict are assigned waste dumps as a place in which to set up their military camps for their troops (as happened in Bosnia) . . .—where U.N. vehicles have become places where faction leaders are assassinated under international cameras. . . .

So, in sum, I guess what I'm saying is that when governments are systematically weakened, however odious they may be, and replaced with nothing, you're going to get a pattern of anarchy around the world.

He endorsed the principle of selectivity emphasized by Dr. Coll, but also stressed that there are some cases in which the United States has to act.

We should lead where we have special diplomatic opportunities and historical links that make us relevant. We should lead where the implications of doing nothing are just too awful to contemplate, where we'd be creating too many bad precedents and leading to too many more negative consequences from our refusal to act. And then, finally, . . . we should lead when we have come to terms with a moral or humanitarian bottom line. The words "never again" mean something.

### Professor Murray Feshbach

The third speaker on the panel was Dr. Murray Feshbach, a Research Professor at Georgetown University and Fellow at the Smithsonian Institution's Kennan Institution. He is also a past President of the American Association for the Advancement of Slavic Studies and the Association for Comparative Economic Studies. He was introduced by Ambassador Lewis as "one of the country's leading Sovietologists."

Professor Feshbach relied heavily upon statistical data concerning the former Soviet Union to present a very dark picture of the future in that troubled region. "To put it mildly," he said, "I think that there is a potential for social collapse and social anarchy before

they solve their problems of the politics and economics of the situation."

There are numerous environmentally related health hazards in the region. Chemical weapons dumped "by the Brits, the Germans, and the Russians" in the Black Sea are currently corroding, and "if they corrode relatively simultaneously," they may kill "hundreds of thousands of people" and endanger the populations of ten countries.

The average life expectancy of Russian males "reached a peak of 66 three decades ago" and is now "getting down to 60." The air pollution situation in Moscow is so bad that one former Russian Minister of Health re-

marked: "To live longer, breathe less." "[T]hree quarters of the surface water is polluted and half of all drinking water is not potable . . ."

Moscow has 636 radioactive toxic waste sites, and they are finding 40-50 more each day. St. Petersburg has 1,500; Omsk has 200; and there are "secret cities" that are even worse.

Infant mortality will increase immensely this year, partly mechanically because they're finally adopting the World Health Organization's methodology; but, more than that, there is enormous growth in congenital anomalies, birth defects, birth deformities, in part due to lack of reproductive health of women, in part largely due to environmental conditions including air, land, and water pollution. Thirty percent of all food is contaminated (10% is toxic), 40% of all baby food is contaminated. Seventy-five to eighty percent of all women have pathology during their pregnancy. [Only] 40% of children born are healthy according to an official state report by the Russian government released last October 6—and that's probably an understatement. In places like Arkhangelsk . . . they're finding plutonium in the placentas of the children.

Open-air testing of nuclear weapons is having a harmful impact upon Soviet health, with newborn children today being both shorter and lighter than babies in earlier periods. Non-military nuclear programs are also being mismanaged and constitute a threat to public health—the plant director in the South Ukrainian nuclear power plant recently was fired after closing off the safety valves just as was done

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*Professor Murray Feshbach provided extensive details about health, economic, and environmental problems in the former Soviet Union.*

## Panel II

### Case Study: Somalia

Thursday's second panel brought together experts to examine the case study of Somalia. It was moderated by Nicholas Rostow, former Legal Adviser to the National Security Council.

#### Ambassador Mohamed Sahnoun

The first speaker was Ambassador Mohamed Sahnoun, currently a fellow at the U.S. Institute of Peace and from 1964 until 1992 a member of the Algerian Foreign Service. He is a former Algerian Ambassador to the United Nations, the United States, France, and Germany, and in 1992 he was the Special Representative of the U.N. Secretary General in Somalia.

Building, perhaps, upon an observation made by Professor Thompson on the previous panel, Ambassador Sahnoun began by noting that "very often governments are part of the problem. It is when there seems to be a political stability and strong government that, in fact, the root causes of some of these crises are sown and nurtured." He provided a useful history of the problems in Somalia since 1988, noting the impact of economic difficulties, lack of equitable distribution of development assistance, mismanagement of the debt issues, and a growing feeling among the people that they had no peaceful means of redressing their perceived wrongs. This led to rebellion, which was followed by bloody repression and widespread torture and other human rights violations.

He argued that, in the absence of an internal democratic mechanism to provide "corrective measures," the international community—either through the Organization of African Unity, the League of Arab States, or the United Nations—had a duty to rescue

#### U.N. Charter Article 99

**The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.**

the victimized population of Somalia. While some countries did put pressure on the Siad Barre regime by suspending bilateral aid, not many others followed. Ultimately, with rebel insurgents approaching Mogadishu, Siad Barre fled in January 1991—leaving behind no "legitimate" government but only a variety of insurgent groups exercising power in various parts of the country.

Ambassador Sahnoun criticized the Secretary General for not acting under Article 99 of the Charter (see box above) to bring the deteriorating situation to the attention of the Security Council. Indeed, the United Nations rejected a request from Djibouti to help organize and manage a reconciliation conference to bring together the various factions in Somalia. This set the stage for a major disaster—years of hatred surfaced while many people began to fight simply to survive. Despair took over, and "individualism and clanism became the only secure fortress for people." Looting became the only means of survival for many.

When the United Nations finally did agree to become involved in January 1992, it confronted an atmosphere of suspicion and confusion—many Somalis could not understand why that world organization had previously supported the Siad Barre regime, and they could not understand why the end of the dictatorship was not immediately followed by international

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## Panel I—Gov't Breakdown . . .

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before the tragic explosion in Chernobyl.

And, speaking of Chernobyl, it is now admitted that the level of escaped radiation registered 80 million curies, not 50 million as previously admitted. (By way of comparison, the radiation that leaked into the atmosphere during the Three Mile Island incident a few years back was 15 curies.) The rate of thyroid cancer in Belarus is estimated by the World Health Organization as 80 times the normal, and that still may increase.

To make matters worse, widespread corruption, a 2500% rate of inflation, a 20% annual decrease in GNP, and a general breakdown in governance make prospects for serious improvement unlikely. Dr. Feshbach gave as an example recent humanitarian flights from Germany and other countries in which 80% of the supplies had been stolen within twenty-four hours of arriving.

In response to a question from the audience, Professor Feshbach added that the population in the former Soviet Union, especially in Russia, is declining rapidly. "Last year there were 10% more deaths than births, and the first two months of this year, there were 50% more deaths than births in Russia."

### Professor Edward Gordon

The next speaker was Professor Edward Gordon, President of the American Branch of the International Law Association and a Professor of Law at the Albany Law School in New York.

Professor Gordon suggested that the changes now being observed may have been exacerbated by the end of the Cold War, but:

[T]he end of the Cold War and its pattern of hegemony merely coincided with longer term trends with the global phenomenon that was well under way in any case, and that may even have hastened the speed with which the Cold War ended and the Soviet Empire and the world Communist revolution collapsed. I'm persuaded that we're living through a time of transformation in the world's political order, a restructuring of authority whose essential characteristic may be that international relations is no longer as dominant a dimension of global political life as it has been since the Seventeenth Century. If so, what is afoot is an upheaval, but it is not necessarily a chaos.

Dubbing the change a shift to a "post-international world," Professor Gordon argued that current international law—anchored to the linchpins of "territorial integrity" and "political independence of States"—may be inadequately prepared as a conceptual frame-

work to serve this new reality.

More and more, the changes in the world "unfold without the direct involvement of nations or States." Technology is key to this phenomenon. Information and images are transmitted instantly, globally, which "undercuts the advantage of territorial control, which is the basis of national sovereignty as well as the fundamentally ordering criterion of international relations."

By conveying images instantly globally, technology has not only shortened political distances, it's also made routine the creation of trans-territorial identities. It has done this by intensifying and rendering more imminent and usable such traditional identities as race, ethnicity, religion, and language, and by investing equally potent ones such as gender, age, social status, occupation and so on, with an imminence and a potential for affecting events they never had before. Workers of the world may yet unite, but it will be because the technology has made their communication more personal and more powerful, not because of anything Marx and Engels and Lenin knew about.

. . . [T]echnology has transformed global politics into an interactive game in which in many cases anyone can inject himself self-consciously and vigorously and instantly into the matrix of events happening anywhere in the world, regardless of where he happens to be at the moment and without going through his own government or any other government. To the extent that governments are unable to effectively counter or block this interactivity, their authority is weakened. To the extent that their performance as governments is now subject immediately to global democratic approval or even comparison shopping, their authority is weakened. The widespread knowledge that political power can quickly be obtained is itself a source of power in opposition to the authority of governments. . . . [C]ompliance with authority is nowhere still unquestioning and automatic.

Professor Gordon concluded that "[t]he challenge to international lawyers is to self-consciously transform international law by focusing more on the outcomes it should promote and protect and correspondingly less upon precedent for the sake of continuity or stability."

### Professor W. Scott Thompson

The final speaker on the panel was Professor W. Scott Thompson, of the Fletcher School of Law and Diplomacy. A former Rhodes Scholar, Dr. Thompson is a Resident Associate at the Carnegie Endowment for International Peace and a member of the Board of Directors of the U.S. Institute of Peace.

He began with the proposition "that if the military prepare for the last war, political scientists look to old concepts to explain current or future realities—and that is a danger." To illustrate, he observed that when

Ghana became the first independent black African State, "in several hundred articles referring to its political parliamentary system, only two detected that the whole thing was a fraud . . ."

Turning to more contemporary difficulties, Professor Thompson noted that Zaire is surrounded by nine States.

If you look at an ethnic map, you'll see that each of the major ethnic groups in Zaire has a larger proportion of its membership across the boundary in one of those nine States. Now, Mobutu is not immortal, and at some point he is going to go. There are no more roads in Zaire. The State has completely disintegrated from a functioning point of view. . . . In any case, what obviously would be most likely to happen in the centrifugal forces at work when Mobutu goes is that all the neighboring States start to nibble and rearrange the map to their own logic and convenience.

Professor Thompson then turned to what he characterized as "tectonic issues," such as the decline of State competence. For example, do States know when to "tighten their belts" in an economic sense? He noted that many Third World countries that had borrowed heavily in the 1970s realized in the 1980s that they couldn't simply keep adding debt. For example, Brazil cut its debt in half, Mexico by a fifth, Thailand by a fifth, and so on. But during the 1980s, as a proportion of GNP, Nigeria's debt rose 400%, Uganda's about 800%, Ghana's by 400%, and even India—which historically has refused to borrow after learning the hard lesson that unpaid debts may bring occupation by foreign soldiers—witnessed a relative debt increase of 300%. Overall, foreign debt in Asia and Latin America is now about one-third of GNP, while in Africa it is 110%.

Trying to find an explanation for the differences, Professor Thompson concluded that with four exceptions (Senegal, El Salvador, Argentina, and Venezuela) all of the Third World States that incurred dramatic increases in foreign debt during the 1980s were dictatorships. He reasoned: "I see a very strong correlation between strong leadership beyond a certain point on the spectrum and anarchy in the Third World. This is not a familiar proposition. This seems counter-intuitive in some ways, but it seems to work that way."

While warning of the need to "blew are of people using democracy as a façade," Professor Thompson said there was hope to be drawn "from the wonderful democratic trends in the world." He noted that a World Bank economist recently had told him that Tanzania had finally started to improve its economy. "I said, 'well, when did it start?' 'Oh, about 1985.' 'When did Nyerere step down?' 'Oh—1985.'"

## Panel II—Somalia . . .

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support and aid. He explained:

Not only was the U.N. assistance very limited, it was also so slowly and inadequately delivered that it became counterproductive. Fighting erupted here and there over that little precious food, so that it ultimately introduced a new element of antagonism, animosity and violence. So the suspicion of the Somali towards the U.N. was being fed by the paralysis of the system. Vast regions of Somalia were not supplied by any kind of food.

Fortunately, in the view of Ambassador Sahnoun, the United States finally decided that it must act, and Operation Restore Hope was launched. Concluding that this "has opened new opportunities for the United Nations," Ambassador Sahnoun said it "remains to be seen" whether the United Nations could take advantage of these opportunities.

### Ambassador Robert Oakley

The next speaker was Ambassador Robert Oakley, who after 34 years as a career foreign service officer—including assignments as Ambassador to Pakistan and Somalia, Ambassador-at-Large for Counter-Terrorism, and Senior Director for Near East and South Asian Affairs on the NSC Staff—was chosen by President Bush to serve as Special Envoy to Somalia, a position he held until March of 1993.

Ambassador Oakley began by explaining President Bush's decision to send U.S. forces to Somalia after concluding that the U.N.-sponsored peacekeepers from Pakistan had proven inadequate. The United Nations still was not ready to agree to an expanded operation in Somalia, so President Bush decided to act unilaterally. As in Korea and Desert Storm, the United States decided to act, saying "We're going, who's going to follow?" Some 20 countries signed up for the trip.

After describing the four phases of the original plan, Ambassador Oakley concluded that the operation initially "worked," and there was a positive change in the mood of the country. Security was restored, people were being fed, and "the people had essentially been saved." Pressure then was put on the key warlords to disarm, and regional councils were established to provide political administration for the country.

Ambassador Oakley suggested that the success of Operation Provide Comfort, assisting the Kurds in northern Iraq, may have demonstrated the benefits of military humanitarian cooperation, and the subse-

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## Panel II—Somalia . . .

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quent decision by the Security Council on 26 March 1993 to establish UNOSOM II produced "a sea-change in the U.N. thinking about peacekeeping . . ."

### James Wood

James Wood, Deputy Assistant Secretary of Defense for Africa and for more than three decades a civilian employee of the Pentagon, was the next speaker. In introducing him, Mr. Rostow said that he had been "the chief Africanist at the Pentagon . . . for a very long time."

Mr. Wood began by suggesting that the Somalia relief operation set major precedents in at least two areas: (1) it was "the first instance of a clear-cut humanitarian intervention mission under Chapter VII of the Charter," and (2) it was "the largest strictly humanitarian operation U.S. forces had ever been involved in."

Tracing the military's involvement in Somalian humanitarian relief, beginning with the military airlift of food in August 1992, Mr. Wood reported that "nearly 20,000 C-130 flights" had been made to food distribution points inside Somalia. He discussed the four-fold mission of the U.S.-led Unified Task Force that entered Mogadishu on 8 December 1992, and then—while acknowledging that it might be "too early for any final judgments"—proposed a list of "lessons learned."

- A clear case can be made for "early preventative intervention. . . . Earlier involvement might have saved tens of thousands of lives" and "much of the billions of dollars that are now being invested in dealing with the collapse of Somalia."
- "ICoalitions might be the preferred method of handling military crises of this nature. In principle, regional coalitions would appear better positioned

to quickly influence the situation, enabling a return to normalcy."

- Third, "DoD can, if called on, offer unique and specialized assistance to either regional or international coalitions to include . . . planning and advising for large-scale operations, providing military air- and sea-lift to the crisis area, providing key personnel and small units with specialized skills," and other forms of aid.

These are decisions for the "national command authority," not the military, but if the nation's political leaders want the United States to be the "catalyst," the Defense Department "can serve that role and we can do it rather quickly, and I think we can do it in most cases well. The capability is there."

Mr. Wood concluded his remarks with an appeal. He urged that the nation "reflect seriously on each case which seems to call for some

form of intervention is truly unique. Please, therefore, let us not reach for a five pound hammer unless a five pound hammer is exactly what is needed to do the job. In Somalia, we felt it was appropriate and we had no problem with that decision."

### Major Walter G. Sharp

The next speaker was Major Walter Sharp, head of the Law of Armed Conflict Branch of the International Law Division of the Navy's Judge Advocate General's Office and a veteran of the Somalia operation. He served for three-and-a-half months as the international law adviser to Lt. Gen. Robert B. Johnston, Commander of the Unified Task Force (UNITAF) in Somalia, and for the remainder of his five month tour as Deputy Staff Judge Advocate to General Johnston.

Major Sharp began by observing that he attended a similar Standing Committee conference in October 1992, and as he listened to experts talk about Somalia, "Little did I know that five weeks later I would be in

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*Ambassador Mohamed Sahnoun, former Special Representative of the U.N. Secretary General in Somalia, addresses the Somalia panel as Major Walter Sharp (former international law adviser to the commander of U.S. forces in Somalia) and Ambassador Robert Oakley (former U.S. Special Envoy to Somalia) look on.*



## Luncheon Address

# Kampelman Says Europe Must "Reach for the 'Ought'"

**Note:** The full text of Ambassador Kampelman's remarks appeared in the July 1993, issue of the *National Security Law Report*.

In introducing Ambassador Max Kampelman, the luncheon speaker at Thursday's session of the conference, former Standing Committee Chairman John Norton Moore noted that it is fashionable to assume that individuals seldom make a real difference in international affairs, and he concluded that Ambassador Kampelman's life was living proof of the error in this kind of thinking. Among Ambassador Kampelman's many other contributions—such as his work as Counselor to the State Department and head of the U.S. Nuclear and Space Arms Delegation in Geneva—Professor Moore focused upon the dramatic influence Ambassador Kampelman had made as head of the U.S. Delegation to a series of meetings of the Conference on Security and Cooperation in Europe.

Ambassador Kampelman noted that the term "anarchy" has long been associated with the Third World and stood in sharp contrast to "the stability and order" to be found in Europe. While distinctions still existed, he expressed concern that "growing anarchy and lawlessness" have reared their heads in Europe as well. But one key difference remained, he argued, and it was captured well by Swedish social scientist Gunnar Myrdal years ago when he emphasized "the importance of the 'ought' and the 'is' in political institutions and societies. It was vital for the health of a society, he argued, for there to be agreement on what 'ought to be' if the objectives of that society were to be realized."

It was the continued existence of a strong "ought" in Europe that distinguished "the dismal events in Europe" from "the tragedies we see in the Third World." And the reason the Third World can be described as one of anarchy is that "there is as yet no agreed upon definition of what 'ought' to be."

Ambassador Kampelman then focused upon the dramatic changes that have taken place around the world during the past half-century, from the invention of antibiotics, air conditioning, and photocopy machines to a perhaps ten-fold increase in medical knowledge. Expanding communications have made people in the Third World aware of the promises of modern technology and have increased future aspirations and discontent with the present. National



*Ambassador Max Kampelman delivered the keynote address at Thursday's luncheon.*

boundaries can not keep out the flow of ideas, money, people, crime, terrorism, etc., and "[w]e must learn to accept in each of our countries a mutual responsibility for the peoples in other countries.

He then spoke of some of the dramatic progress made through the Conference on Security and Cooperation in Europe, and noted that countries far from Europe are inquiring about taking part in the process or duplicating it in their own regions. Such initiatives play an important role in reaching consensus on the "ought," and might well contribute to improvements in the Third World.

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## Panel II—Somalia ...

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Somalia." He discussed the special problems posed to the mission by the reality that there was "no government" and no effective "national law" with which to work. Normally U.S. forces like to negotiate a "status of forces" agreement to resolve anticipated legal problems, but there was no "government" with which to negotiate. The initial command element was accompanied by five attorneys, and the legal staff expanded to 20 during the operation. They were, in turn, supported by the legal staffs at Central Command and the legal staff serving the Chairman of the Joint Chiefs of Staff. The Australians, Belgians, Canadians and Turks also brought military lawyers with their contingents to the coalition.

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## Panel II—Somalia . . .

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The absence of local “law” forced the lawyers to make a number of important decisions. In addition to a few specialized treaties dealing with things like civil aviation, they relied heavily upon the U.N. Charter, customary international law, and even principles of United States law. Draft “rules of engagement” had already been prepared at higher headquarters, and Major Sharp reported the military commanders viewed them as “one of the best sets of rules of engagement that they had ever seen . . . .”

He noted there were a number of very difficult issues to address, such as how to handle Somali children who would use slingshots to hurl rocks at American convoys—causing serious injuries. The use of cayenne pepper spray proved effective for this purpose, and as the word spread the number of such attacks decreased substantially.

Another key problem was what to do with individuals suspected of mass murders and other “crimes against humanity.” There was no local authority to take control of such individuals; so, ultimately, it was decided that United States forces would investigate such accusations and try to preserve the evidence—but it did not take criminal suspects into custody or prosecute them.

Another key issue was control of Somali airspace. General Johnston issued a document assuming the role as airspace control authority—which allowed the United States to control the hundreds of flights taking off or arriving every day. Major Sharp believed that serious incidents and even in-air collisions were prob-

ably avoided because of this measure.

Additional problems arose when the United States and United Nations personnel sought to try to reconstitute some sort of civilian government in Somalia. A decision was made to utilize the 1962 criminal code but that, too, caused problems. For example, in 1962 a jurisdictional limit of 3,000 Somali shillings set about 80 percent of minor crimes to the lower trial courts. In the past three decades, inflation has reduced the value of 3,000 shillings to something like cents in U.S. currency, and the judges did not believe they had authority to unilaterally alter the criminal code. Thus, virtually every case had to begin at the appellate courts. Other important issues were whether the UNITAF should serve as a police force and what should be done about civilian detainees, but these were ultimately resolved.

Did it work? Major Sharp argued with a resounding “yes.” He noted that when he first arrived in Mogadishu there was no food market, but illicit drugs were widely available. The hospitals were treating 70 gunshot wounds a day, and more than a thousand people were dying each day. The International Committee of the Red Cross estimated that more than 25 percent of Somali children under the age of five had already perished from hunger and disease before the Americans arrived in December.

In contrast, by the time he left the economy was functioning again, people were walking around the streets, food was available at the market, commercial activity had increased, and the hospitals were treating fewer than one gunshot wound a day. The death rate had dropped to five to ten people per day by the end of March. These were encouraging signs.



*Some of the most intense exchanges of the entire conference occurred in connection with Thursday afternoon's first panel, which addressed the tragic situation on the former Yugoslavia. Here Professor Alex Dagnich (third from right) seeks to explain the conflict in the historical context of religious and ethnic disputes dating back for centuries.*

## Panel III

### Case Study: Bosnia/Herzegovina

Former Standing Committee Chairman Richard Friedman chaired the first afternoon panel, which addressed the increasingly tragic situation in the former Yugoslavia. He noted that Ambassador Petar Sarcevic of the Republic of Croatia to the United States had been added to the panel. In addition, Mr. Friedman had agreed to read a statement which Ambassador Muhamed Sacirbey, Permanent Representative of the Republic of Bosnia to the United Nations, had intended to deliver to the conference. Ambassador Sacirbey had been called back to the United Nations to take part in a debate on the future of his country.

#### Dr. Kenneth Jensen

The first speaker was Dr. Kenneth Jensen, Director of Research and Studies at the United States Institute of Peace. He began by suggesting that we are in a new era, one characterized by the breakdown of the post-colonial and post-communist States. Most apparent in the former Soviet Union and Africa, it is also present in Eastern Europe.

Ethno-nationalism is more a symptom than a cause of the problem, and the situation is such that "the world may have to live with something other than Nation-States, indeed, something other than States, period, for some time to come."

Dr. Jensen argued that a "central feature" of dealing with the Bosnian crisis is "the narrowness of the international debate." The debate is "narrow," he contended, in the sense that "it has as its focus not the problem of what to do about Bosnia, but rather the focus of the reaction of established systems to the problem of Bosnia—established systems like the U.N. collective security system, the European community, the Atlantic community, and . . . [the] foreign policy of the United States . . ."

The security system produced in Europe by the Cold War was not well-suited to deal with Yugoslavia; it was designed to focus on the Volga Gap. Europe needed a new security system, but was unwilling to construct it. He envisioned a new European partnership with Russia on Bosnia, with Russia's role growing as "manager of Serbia." The management of Croatia and Bosnia will likely fall on Western Europe and the United States. Russia's reason for cooperating would be as a means of getting back into Europe.

He concluded by emphasizing that the United States

"must have a clear sense of the limits of what can be done, a clear sense of wills and resources." We must recognize that, in the first instance, regional problems ought to be resolved by regional means.

#### Professor Alex Dragnich

The second speaker was Professor Alex Dragnich, of Vanderbilt University, who once served as a civil servant in Yugoslavia. He argued that the problems of Bosnia-Herzegovina could not be understood outside the context of the Yugoslav civil war. Beginning in Roman times, he traced the history of the region, focusing especially upon the creation of the Kingdom of the Serbs, Croats, and Slovenes following World War I.

During the Second World War, most of Bosnia-Herzegovina became part of the Axis satellite State of Croatia. Yugoslavia was divided into six republics under the Communists, of which Bosnia-Herzegovina was one. He contended that the Yugoslav constitution, supported by the Yugoslav Muslim organization, refutes Slovene and Croat arguments that they had a right to secede.

Professor Dragnich argued it was important to understand the historical basis of Serbian fears, some of which resulted from the massacre of some 700,000 Serbs along with 60,000 Jews and 20,000 gypsies in Axis-allied Croatia during World War II—a massacre in which he said "some Muslims also participated." He made reference to the "Islamic Declaration" authored by Bosnian Islamic leader Alija Izebegovic, which said that the Islamic movement should take power once it is "morally and numerically strong enough," and that "there can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions."

Speaking very critically of Western intervention in the region, he quoted another scholar as having remarked: "The West came to Yugoslavia as firefighters and ended up being pyromaniacs."

Turning to issues of international law, he questioned whether the European Community had a legal right "to decide on the demise of Yugoslavia at the very time that Yugoslavia was a member of the United Nations, the Conference on Cooperation and Security in Europe, and other international organizations." In essence, he contended, several sovereign European nations had decided to "assist in the destruction of another . . . sovereign European state." Not waiting for the outcome of the civil war, they gave premature recognition to the secessionist republics.

In conclusion, Professor Dragnich argued that "the West mismanaged the Yugoslav crisis, mainly by its

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### Panel III—Bosnia . . .

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failure to discourage the secessionist-minded republics from declaring their independence, and once the premature secessions were proclaimed extending hasty recognitions, thereby contributing significantly to the actual outbreak of civil war." The problem was made worse by a lack of expertise, an unwillingness to listen to the experts, or both. There was clearly no appreciation of the Serbian stake or of the determination of the Serbs to defend their perceived national interests.

#### Ambassador Petar Sarcevic

The next speaker was Ambassador Petar Sarcevic, representing the Republic of Croatia to the United States. Responding to Professor Drag-nich's presentation, the Ambassador asserted: "[T]hese incredible atrocities which are happening in former Yugoslavia cannot be explained, cannot be justified, with history . . ."

Criticizing the response by the international community to the crisis, he contended that, "[d]espite ample evidence that Serbia and Montenegro have committed a war against Croatia, Bosnia and Herzegovina and previously Slovenia, the international community has left the people of Bosnia and Herzegovina entirely unprotected as they did the people of Croatia." He said that the evidence was abundant that international human rights law and humanitarian rules had been "grossly violated" in Bosnia-Herzegovina and Croatia for nearly two years, but the world "is not ready to take collective measures in accordance with . . . Chapters VI, VII and VIII of the United Nations Charter." He also endorsed the idea of an international war crimes tribunal to judge, prosecute, and punish those who are responsible for crimes against humanity.



*Croatian Ambassador Petar Sarcevic took strong issue with Professor Drag-nich's appeal for an understanding of the Serbian position.*

Turning to the U.N. embargo, he argued that "nearly 95 percent of all the weapons" were "in the hands of the Yugoslav army," and thus the embargo primarily injured the people who were defending their families and homes from aggression.

#### Ambassador Muhamed Sacirbey

The next scheduled speaker, Ambassador Muhamed Sacirbey, had been forced by a U.N. debate to remain in New York, where he represented Bosnia-Herzegovina at the United Nations. His remarks were read to the audience by moderator Richard Friedman.

He condemned the "joint action plan" as being "inadequate" and even "counterproductive" and "doomed to failure." It treated the symptoms and not the disease. United Nations air support would not be

permitted to protect endangered civilian but only U.N. force. There were inadequate controls on heavy weapons, which he thought should either be "neutralized" or placed under international control. The "safe areas" did not include larger towns now under Serbian occupation, and no specific response was established if humanitarian relief was blocked under the agreement. Indeed, there was no commitment to challenge the Serbian authorities if they failed to comply with the agreement.

In conclusion, he contended that the current plan "merely institutionalizes the status quo by seemingly acquiescing to the explicit Serbian rejection of the Vance-Owen peace plan." Its timing would "appear to legitimize the Serbian conquests and crimes of ethnic cleansing and genocide." It would strengthen Serbian extremists, undermine any moderates, and foreclose "the option of the application of military force to compel Serbian acceptance of the Vance-Owen plan," which he felt was the appropriate U.N. response.

## Roger Winter

The next speaker was Roger Winter, Director of the U.S. Committee for Refugees. Picking up on the theme of change raised in earlier panels, he noted that "ten percent of all the States in the world today were created within the last two years." Unfortunately, he said, the transition has produced an incredible flow of refugees. "I am in a growth industry."

He contended that the proper approach to the problems in Bosnia-Herzegovina "was in terms of the Genocide Convention." "The World Court in April, in issuing some instructions to the government of Yugoslavia, said that what was occurring in Bosnia-Herzegovina was tantamount to genocide. It was genocide in the view of the humanitarian community, and the fact that we are now establishing war crimes tribunals is essentially an acknowledgment of that fact."

Saying that he agreed with the comments read by Mr. Friedman on behalf of Ambassador Sacirbey, he said not enough emphasis was given to "protect[ing] people where they lived before they were displaced and debauched, and we needed not only to have announced it, we needed to have actually done it, to have taken the necessary steps to protect and assist them."

Mr. Winter was also critical of the way in which European governments have dealt with refugees from the conflict. "You may not realize it, but basically people who have fled this conflict to other countries of Europe are not given refugee status." He was particularly critical of the British government.

What happens in Britain now requires that for a Bosnian to enter the country, that they have a visa; but there is no British embassy in Sarajevo. So you can't go to a British embassy to get a visa to get into Britain. So what do you have to do? Somehow you have to flee. You have to get to another country. If you get to another country to apply for a British visa, there's another regulation that hits you in the face. They say, "Ah, but you're in a safe country, as evidenced by the fact that you've been able to go and apply for a visa and be subject to a legal process."

While placing primary responsibility on the nations of the region to help settle the refugees, Mr. Winter also contended that "there should be some meaningful limited resettlement of the victims of this conflict in the United States."

## ABA President McWilliams Visits

Before the next speaker was introduced, moderator Richard Friedman interrupted the panel to introduce a special guest, Mike McWilliams, President of



*Refugee expert Roger Winter was especially critical of the failure of some European governments to respond effectively with the humanitarian crisis in Bosnia-Herzegovina.*

the American Bar Association. Mr. McWilliams then spoke briefly, adding his own special welcome to the group and praising the work of the Standing Committee and the success of this conference.

## Max Primorac

Mr. Friedman then introduced Max Primorac, President of the Croatian Democracy Project, who warned that there had been a "general paralysis . . . [in] U.S. foreign policy thinking in the aftermath of the Cold War." The world community was relying upon the United States to take the lead in addressing the problem, and the threat posed went beyond the future of Bosnia-Herzegovina. "It is clear that Milosevic and the increasingly powerful ultranationalist paramilitary groups of Vojisav Seselj and others will not stop in Bosnia. They are certain to recommence the war with Croatia to achieve the great Serbian dream of a warm water port on the Adriatic coast."

In his view, "the only real solution . . . to putting out the conflagration in the Balkans is to meet Serbian force with greater force." Serbia and "its proxy armies in Bosnia and Croatia" are "the enemy of world stability . . ."

Noting that it looked increasingly unlikely that United States combat forces would enter the conflict, Mr. Primorac argued that "[a] much overlooked but legitimate alternative . . . is arming Croatia."

## Ambassador John Scanlan

The final speaker on the panel was Ambassador John Scanlan, former U.S. Ambassador to Yugoslavia. He argued that the United States must follow a

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## Panel IV

### Case Study: Haiti

The final panel of the first day of the conference focused upon the problem of Haiti. It was moderated by Professor Alan Weinstein, President of the Center for Democracy and a member of the Board of Directors of the U.S. Institute of Peace.

#### Peter Huessy

The first speaker was Peter Huessy, President of PRH & Co. and a consultant to various agencies of government. He began his remarks by asking what U.S. strategic interests should be in the post-Cold War era, and then turned to the specific problems of Haiti. Rather than discussing "peacekeeping" in Haiti, the question was "making the peace." "There is no peace. There is no domestic tranquility. There is no justice. And that is not necessarily remediable by a military force of 10,000 or 5,000 troops . . ."

Haiti is no military threat to anyone, and it is not one of the "123 conflicts currently going on in the world, either civil wars or wars between States," and our primary concern about Haiti has to do with human rights. To be sure, Haiti is "deprived"—but it is deprived by its own leaders.

Mr. Huessy spoke critically about the proposal for an embargo. "I really think that when you look at a country that is about as far down the economic scale as you can go, the idea that pushing them even further down the economic scale—when the elites are going to skim off whatever they can . . . they are not going to suffer," it won't have the desired effect. Sometimes economic pressures work, but Haiti is not a good candidate for that approach.

He concluded that what Haiti needed was not the World Bank, the U.N. ECOSOC, or other international development programs sending money to Haiti. "These folks help countries commit suicide economically, and what Haiti needs is investment, private investment. They need to free up entrepreneurs."



*Standing Committee member Diane Wood warns that economic sanctions against Haiti may do more harm than good.*

#### Professor Diane Wood

The second speaker was Professor Diane Wood of the University of Chicago School of Law, who is also a member of the Standing Committee. She began with an historical overview, tracing a long series of military coups and violent overthrows of the government that date back to the creation of Haiti in 1804 as "the second independent country in the Western Hemisphere after the United States."

The poorest country in the Western Hemisphere for many years, Haiti is highly dependent upon the United States and the European Community for its economy. In 1990, Haiti exported approximately 80 percent of its exports to the United States and imported 66 percent from the United States. The United States has also been the primary aid donor for Haiti.

Noting that the Caribbean Basin Initiative (CBI) was designed to help Caribbean nations to "help themselves" by stimulating a strong and thriving private sector, Professor Wood concluded that it has not worked for Haiti. On the contrary, it may well have been counterproductive, as it "has the unfortunate effect of diverting food production that would have benefited the local population to export production . . ."

This and other Western policies "have left Haiti quite unable to help itself in the way that one might like to see."

Professor Wood discussed some of the social and economic inequities in Haiti, noting that only about 10 percent of Haitians speak fluent French—the official language of government, newspapers, etc.—and that the Creole speaking majority is at a major disadvantage in Haitian society. Turning to the issue of sanctions, she argued that sanctions might have some utility in the Haitian situation—but emphasized there were many "ifs" which needed to be considered before such a policy was likely to be effective. Citing authorities on sanctions, she indicated that a "gradualist" approach was unlikely to succeed. "If you are going to impose sanctions, try to be sure that you can do it effectively. Haitians with whom I have spoken

have emphasized that they think that the sanctions that have been in place thus far are a joke—that they're very porous . . . . [They pointed out that American Airlines flies to Port-au-Prince once a day, people can go check on their investments in Miami whenever they want to, and there just isn't anything significant, at least as far as the elite class is concerned, that has happened yet.]

Another risk of economic sanctions is that they "may worsen a bad situation." She concluded:

My fear is that if economic sanctions produce a "success" in the form of the return of President Aristide to Haiti and the end of the military government there, what will President Aristide go back to? He will go back to a devastated economy. He will go back to people who are just as poor and untrained as they ever were, and I'm afraid that without a policy that somehow incorporates the building up of that economy in a stable way again, we're just going to be back here again in some period of time . . . with the same discussion about Haiti and the same depressing outcome.

### Kenneth Roth

The next speaker was Kenneth Roth, Acting Executive Director of Human Rights Watch. He began by questioning the title of the conference, saying that "Haiti is not a situation of anarchy," but instead "a situation of repression." Explaining, he said "the victims are not chosen at random as they stroll along the streets of Port-au-Prince, but are rather quite deliberately singled out because they have dared to speak out against the military authorities . . . ."

The solution, he said, was "not to build an order on some vacuum, but rather to reestablish the rule of law, to hold people accountable for having broken the law." He criticized American and United Nations negotiators, who he said were "prepared to throw out the principle of accountability for violations of human rights" in return for a settlement. "They've dispensed with the rule of law and have treated the last 20 months simply as an anarchy that is to be surmounted rather than as deliberate violations of human rights that are to be redressed."

Mr. Roth argued that "there can be no solution to the political crisis without formal acknowledgment of the legitimacy of the Aristide presidency and his prompt return." That might take six weeks or even six months, but it ought to occur before the end of his five-year term. He criticized Aristide for having chosen a prime minister viewed as too partisan to build a broad

coalition government, and argued that after he returns he needs to select a "consensus prime minister." In addition, there must be resignations at the top of the armed forces—including probably 2,000 officers. The remaining military force needs to be cut back, beginning with tossing out the thugs.

On the question of amnesty, he argued that there should be amnesty for "crimes against the State" like rebellion, but—noting that the issue was controversial—he felt that there should not be amnesty for "crimes against individuals" such as murder and torture. Not only would this be "a tremendous disservice to the victims," but it would "be catastrophic for Haiti's long-term well-being. Further, as a matter of international law, he argued that such an amnesty would be illegal. Noting that the Inter-American Court on Human Rights had held "that every State has a duty to prosecute gross abuses of human rights," he reasoned: "[I]n other situations where we are faced with blackmail by those who hold the guns, we respond differently. We're all used to the idea that you don't negotiate with terrorists . . . ." Real democracy for Haiti will require a strong judiciary and a recognition of the principle that people who violate the law through murder, torture, etc., must pay a price.

### William G. O'Neill

The final speaker of the first day was William G. O'Neill, Deputy Director of the Lawyers Committee for Human Rights. He argued that Haiti was "unique" in that "[t]here is no foreign power that is trying to take over Haiti. Haiti is not trying to invade anyone else. There is no territorial dispute." And yet the world community was focusing strong attention on, and even considering the use of force in, Haiti.

He then spoke of the historic economic inequities in Haiti, where "a tiny elite . . . has virtual monopolies over segments of the economy." The corrupt "Duvalier system . . . did not leave with Jean-Claude on the transport plane in February 1986, it is still there."

While Haiti had a "vibrant, functioning justice system for a brief period after the Marine occupation ended in 1934," Duvalier "systematically gutted Haiti's justice system." There remain some "brave and able lawyers," but much remains to be done. And ultimately, if there is to be a chance for a genuinely free and democratic Haiti, the infrastructure for a "rule of law" must be restored.



*Human Rights lawyer William O'Neill calls for restoring "rule of law" infrastructure in Haiti as moderator Alan Weinstein looks on.*

## Panel V

### Case Study: Cambodia

Friday morning's first panel was devoted to a case study of Cambodia. It was chaired by Thomas Plofchan, of the Bureau of Human Rights and Humanitarian Affairs at the Department of State.

#### Dr. Craig Etcheson

The first speaker was Dr. Craig Etcheson, Executive Director of the Campaign to Oppose the Return of the Khmer Rouge. He provided an historical overview of the problem, beginning with the great Angko Empire, and discussed the era of French colonialism and the growth of communist movements in Indochina. Prince Norodom Sihanouk sought to keep Cambodia "neutral" in the growing superpower confrontation in Indochina in the 1960s by playing off various factions against each other. To keep North Vietnam happy, he turned a blind eye to the use of eastern Cambodia by North Vietnamese and Viet Cong forces—a development which ultimately got out of hand and resulted in his own downfall and replacement by his former deputy, Lon Nol, in 1970.

While the Cambodian communist movement had always been managed by Ho Chi Minh and the Indochinese Communist Party, Hanoi's "attitude of paternalism" led by 1960 to the emergence of a secret anti-Vietnamese faction in the Cambodian party—eventually led by Pol Pot. In the early 1970s he was able to use Lon Nol's cooperation with South Vietnam and the United States to gain the support of Hanoi, and he formed a strange alliance with the Cambodian royalty headed by Prince Sihanouk—who had taken refuge in China.

The tragic events which followed the Khmer Rouge victory in April 1975 are well known. Pol Pot began a regime of terror during which cities were emptied, personal possessions were outlawed, and within a few years as many as two million people were slaughtered because of such "offenses" as believing in religion, wearing glasses (a sign of literacy), or having any ties to Vietnam. Pol Pot's Khmer Rouge regime found a natural ally in Beijing as both Cambodia and China engaged in military skirmishes with the regime in unified Vietnam.

Vietnamese troops invaded Cambodia on Christmas Day, 1978, and captured Phnom Penh within two weeks. At this point Pol Pot formed a new coalition that included radical communists, royalists, elements of Lon Nol's republicans, and other anti-Vietnamese factions. After thirteen years of ongoing struggle, the collapse of the Soviet Union—which had been bank-

rolling Hanoi and several other communist regimes—prompted Vietnam to withdraw its troops from Cambodia. Dr. Etcheson characterized the intervention in Cambodia as "Vietnam's 'Vietnam.'"

The United Nations entered the picture and brokered a peace agreement among the Cambodian factions signed in Paris on 23 October 1991. Pol Pot declared that his Communist Party had been dissolved and that he was "retiring from politics to become a schoolteacher," but defectors and captured documents indicated that this was but a ploy. In fact according to Dr. Etcheson, Pol Pot "has adopted the same united front, infiltration, liquidation technique so successful in bringing him to power in 1975." His Khmer Rouge forces occupy key posts in the united front they have formed with the Sihanouk royalists and are liquidating royalists in order to gain full control of the front.

The 1991 Paris Agreements resulted in "the largest, most expensive, and most interventionist peace-keeping operation in United Nations history. While it has produced "significant successes, the U.N. peace plan has failed to bring peace to Cambodia." While at the moment Vietnam is taking a "hands off" approach "in hopes of overcoming U.S. opposition to its entry into world trading systems," Dr. Etcheson concluded that "it is only a matter of time before there is a response by Vietnam."

#### Professor Anthony Clark Arend

The second speaker on the Cambodia panel was Professor Anthony Clark Arend, of Georgetown University, who focused his remarks upon the role of the United Nations. Noting that developments in Cambodia were very much in a state of flux, he said "it's certainly too soon to determine whether it's a failure or not," and argued "it has tremendous potential still for being successful."

He explained in detail the nature of the United Nations role, including the establishment of a Supreme National Council which then "delegated its authority to govern Cambodia to the United Nations" through the United Nations Transitional Authority in Cambodia (UNTAC). Acting as the sovereign power in Cambodia, UNTAC was to restore order, disarm the various factions, administer the interim government, arrange for free elections, manage Cambodia's foreign affairs, and exercise other rights of sovereignty. While 55,000 individuals did turn in their arms, the Khmer Rouge refused to cooperate and remains a significant military force today.

Nevertheless, elections had recently been held, with 87 percent of registered voters turning out to vote despite threats of Khmer Rouge violence. With



90 percent of the votes counted, the royalist party had about 46 percent, and the Phnom Penh government's "Cambodian People's Party" had about 38 percent. While the elections were an impressive accomplishment and were widely acclaimed by international observers, the fact remained that the Khmer Rouge said they were worthless, and the Cambodian People's Party was only slightly more tolerant of the process. Indeed, one of the biggest problems was that none of the contending factions were "democrats," which made it more difficult (although not impossible) to make democracy work.

Despite the favorable evaluations of the elections process by U.N. and other observers, major problems remained. Among other things, the senior United Nations representative had recently announced that UNTAC lacked power "to enforce the results if the government rejects them." Professor Arend argued that UNTAC did have this authority, and took the position that the United Nations must take serious action (perhaps short of force) to enforce the results of the elections.

### Reed Brody

The third speaker was Reed Brody, Executive Director of the International Human Rights Law Group, who had just returned from Cambodia earlier in the week after serving as an observer of the elections. He characterized the vote as "an historic moment in Cambodian history." Despite this, he noted there were very serious problems both before and after the vote.

For example, both the Khmer Rouge and the Phnom Penh government attempted to intimidate and harassed potential voters—the primary difference being that the Khmer Rouge was far more violent in its approach. While Mr. Brody felt the UNTAC forces had the legal power to maintain order, in fact they "essentially stood by and let these violations occur." Even with \$2 billion and a force of 22,000, UNTAC proved ineffective in maintaining order—which may say something about the difficult tasks facing the winners of the elections as well as the future ability of the United Nations to manage such problems.

Nevertheless, "by and large the election would appear to reflect the will of the Cambodian people," and a positive by-product of the process is that there are now four separate human rights groups in Cambodia, with two more being established. They claim a total of 160,000 members and provided some 2,400 election observers across the country.

While this is encouraging, Mr. Brody reminded the audience that it occurred "under the protective umbrella of 22,000 U.N. troops." He said "there is a real

fear . . . , particularly on the part of those people who have exposed themselves during this period, that if the United Nations leaves, these 100 flowers which bloomed during the interregnum will just be mowed down. And I think it would be gravely irresponsible of the U.N. to just have developed these things and then to abandon them."

Sadly, none of the factions involved in the dispute have an encouraging record. "Sihanouk did not brook dissent when he was in power," and the Khmer Rouge slaughtered their opponents at will. The relatively small areas under the clear control of the Phnom Penh government are described by United Nations officials as being "lawless."

If Cambodia is to have a chance at a democratic future, it must be given the infrastructure necessary for that role—such as an independent judiciary. The International Human Rights Law Group has been trying to help pave the way for the creation of such an infrastructure, by sending resource people into Cambodia to work with human rights groups, teach them skills, etc. Much remains to be done, but there has been important progress, and success is possible. Above all, the world community must not again turn its back on the Cambodian people.

### Dr. Gregory Stanton

The next speaker was Dr. Gregory Stanton, founder of the Cambodian Genocide Project and now a U.S. foreign service officer. Dr. Stanton holds a Ph.D. from Chicago and a law degree from Yale, and since 1980 has been collecting evidence on genocide in Cambodia for possible use in a future international tribunal.

He began by noting that none of the rival factions had any democratic instincts. Funcinpec, winner of 57 of the 120 seats in the soon to be established parliament/constitutional convention, is "a royalist party, a monarchist party." The second group, the current State of Cambodia (or "Cambodia People's Party") will have 51 of the 120 seats and "is a communist united front party" organized along Soviet lines. "They, too, will oppose decentralization and democracy in Cambodia . . . ." The third force is the Khmer Rouge.

Even if the feuding factions genuinely wanted to establish a democratic government under the rule of law, this would be a difficult task. The Khmer Rouge, after all, were "the first party in history to literally apply Shakespeare's admonition about what to do with lawyers." Perhaps a dozen lawyers survived the Pol Pot bloodbath. This will make the establishment of a functioning judiciary extremely difficult.

The job is a difficult one, but something has to be done. Dr. Stanton argued that the United States and

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## Panel VI

# Strengthening the United Nations and Regional Organizations to Deal with Anarchy and Government Breakdown

Friday morning's second panel addressed the topic "Strengthening the United Nations and Regional Organizations to Deal with Anarchy and Government Breakdown," and was moderated by former National Security Council Legal Adviser Nicholas Rostow.

### Professor Richard Gardner

The first speaker was Professor Richard Gardner, of Columbia Law School, a former Rhodes Scholar whose distinguished record includes service as U.S. Ambassador to Italy. Professor Gardner began by noting that the men who met in San Francisco in the summer of 1945 had in mind something quite different than dealing with anarchy and government breakdown—they were primarily concerned with cross-border aggression. Indeed, Article 2(7) of the Charter (see box below) was expected to prevent United Nations intervention in "internal" conflicts except when specifically invited by the country concerned.

He noted that a recent study by the Carter Center concluded that there were 32 "wars" going on around the world in which 1,000 or more people were dying each year, and most of these were "civil" wars in whole or part. "The world community through the Security Council is responding to this challenge by a more expansive interpretation of Chapter VII and the threat to international peace and security."

#### U.N. Charter Article 2(7)

**Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.**

The decision has not been greeted with uniform enthusiasm. There are no provisions for judicial review of Security Council determinations in this area, and "a lot of countries in the Third World [are] wondering if the bounds will be overstepped with respect to their own situations. And this is one reason, in my view, why there is increasing agitation to reconsider the composition of the Security Council and add additional countries from the developing world to it."

Another noteworthy development has been the willingness of both American political parties to put greater emphasis on the United Nations and other multilateral institutions in U.S. foreign policy—and this is especially true of the new administration. He noted that President Clinton had emphasized multilateral approaches as a candidate, and as President he has proposed the establishment of a U.N. "rapid deployment force" to help keep international peace.

We must recognize that there is a "huge and growing gap between what the U.N. is being asked to do in this area of internal conflicts and its capacity to respond." "Preventive diplomacy" is high on everyone's list of what needs to be emphasized, and "[t]he U.N. needs to do more to anticipate conflict and to get involved early. Everybody, I think, would agree had the U.N. gotten itself involved in Somalia earlier and Bosnia earlier, some of the tragic circumstances might have been avoided."

Professor Gardner argued that the United Nations "needs a better early warning system," and to this end he suggested that it might be wise for some members to share intelligence information with the Secretary General concerning problems which could enable him to perform his Article 99 (see box on page 5) responsibility better.

Another problem is financing. The United Nations is owed more than a billion dollars—much of it for peacekeeping—and the United States has not set an ideal example in this area. If the United Nations is going to be effective, it must have the financial support of its members.

According to Professor Gardner, a "major test of the concept of collective security" is "how many U.N. members are prepared to put their young people into combat situations in an area where they don't regard their vital interests as fundamentally involved?" Thus, how many States will be willing to enter into Article 43 agreements with the Security Council—making some of their soldiers available on call to the Security Council in advance of a crisis?

Finally, Professor Gardner noted that dealing effectively with anarchy and government breakdown requires far more from the United Nations than simply military forces, and he emphasized the need for election monitors, refugee experts, human rights ob-



Columbia Law School Professor Richard Gardner(right) identifies ways in which the United Nations needs to be strengthened to deal with new world problems, while fellow panelists Dr. Allan Gerson (center) and former U.S. Ambassador to the United Nations Elliot Richardson take notes.

servers, and experts on police administration and economic development.

### Dr. Allan Gerson

The second speaker on the panel was Dr. Allan Gerson, Professor of International Law and International Transactions at George Mason University and former Chief Counsel to Ambassador Jeane Kirkpatrick at the United Nations. He argued that, to be effective in such circumstances, the United States and the United Nations were "inextricably linked." Success would depend in large part upon three components, each of which began with the letter 'c.'

First is the element of *caring*, "or, phrased more differently, giving a damn." The second was *competence*—which in turn required another 'c,' *cash*. The third element was *credibility*.

Using this standard to measure recent U.S. actions, he gave President Bush high marks on competence and credibility but said he "clearly failed" on caring, in that he "did not care very much about aggression in other parts of the world, and he did not express any great concern about massive human rights abuses in other countries." He argued that "[w]hat Clinton did . . . is worse. And that is because, having professed care, he then failed to act to implement those cares. And that's worse because that affects the U.S./U.N. competence and ultimately its credibility." To emphasize the point, he quoted former British Ambassador John Thompson as having recently written in the *New York Times*: "Although Bosnia and Herzegovina was and is the object of external aggression, we might have deemed it a civil war and declared an isolationist

policy. That would have been deplorable, but understandable. Instead, we declared ex-Yugoslavia to be an international problem, and then we lacked the courage of our convictions."

On a similar theme, Professor Gerson quoted Senator Patrick Moynihan as having recently observed: "The moral basis of the world international order in the aftermath of Bosnia is weakened as it has not been since the 1930s."

### Professor Hugo Caminos

The next speaker was Professor Hugo Caminos, Assistant Secretary for Legal Affairs of the Organization of American States (OAS). He focused his remarks on the ways in which the OAS was working "to promote and defend democracy in this hemisphere."

In some respects, this is not a new issue for the OAS, because the preambular paragraphs of the 1948 OAS Charter declare that representative democracy is an indispensable condition for the stability, peace, and development of the region.

In June 1991, Resolution 1080 on "Representative Democracy" provided a new machinery to deal with threats to democracy in the region. The OAS Secretary General is instructed to call for a meeting of the Permanent Council to examine any threat to democracy in the region, and to decide on and convene an ad hoc meeting of the Ministers of Foreign Affairs if that becomes necessary.

To date, there have been several activities of the OAS designed to promote and defend democracy. The OAS sent observers to oversee the elections in Nicaragua in 1990—a practice that was followed subsequently in Haiti, El Salvador, Suriname, Paraguay, and Peru. In response to the military coup in Haiti in October 1991, the dissolving of the Congress in Peru in April 1992, and the dissolving of the Congress in Guatemala earlier in 1993, the Ministers of Foreign Affairs held special meetings and recommended measures to address each threat to democracy.

In conclusion, Mr. Caminos contended that:

It seems clear to me that the OAS is legally competent to observe political processes at the request of its member States as well as defend democratic regimes on the basis of agreed legal norms for the region. These actions neither violate the principle of non-intervention nor the U.N. Charter. In fact, these regional activities fall outside the scope of Chapter VIII of the Charter. In dealing with these matters, whenever appropriate, mutual cooperation between regional organizations and the United Nations should be encouraged. [But] [t]he Security Council should not intervene unless it has determined the existence of any threat to the peace, breach of the peace, or act of aggression.

*Continued on page 26*

## Luncheon Address

### Congressman Hoyer Calls for New Firmness in Bosnia

Following lunch, Standing Committee Chairman John Shenefield introduced the keynote speaker of the day, Congressman Steny Hoyer, co-chairman of the Commission on Security and Cooperation in Europe, describing him as "perhaps that member of Congress who is most knowledgeable, most forthright, most articulate, as an advocate and protector of human rights, one of the . . . foremost thinkers in the Congress on the subject of the CSCE process."

Congressman Hoyer began by noting that anarchy, traditionally in this century associated with the Third World, is now "very prevalent in the emerging states of Eastern Europe and the emerging factions and republics of the former Soviet Union." He observed that:

Civil and ethnic conflict has brought and continues to bring a level of violence and destruction unprecedented in Europe since the Second World War. Demagogues posing as patriots use extreme nationalism to sweep reason aside. Unresolved historical injustices are resuscitated. Atrocities invite revenge. And new hatreds are being passed on to the next generations. In many ways the violation of human rights has never been worse. Bosnia-Herzegovina is a classic model of a failure of collective security. This is a human catastrophe of major proportions.

Sadly, he noted, "Historians will footnote that we watched it happen, perhaps, with full knowledge of the barbarity that goes on and, notwithstanding that knowledge, failed to take necessary action to stop it."

While there may be various causes to the problem, a frequent motive is "power and geographic expan-

sion." Congressman Hoyer explained:

Just as Stalin and Tito promoted an ideology of unity, in order to better entrench their regimes, today's Milosevics promote an ideology of hatred and division to promote their own nascent dictatorships. And let me point out here to you that you do not need nationalists on all sides for it to happen. It is Serbian nationalism followed by Croatian nationalism and not, I suggest to you, Muslim nationalism or Islamic Fundamentalism, that is responsible for this war.



*Congressman Steny Hoyer (D-Md.) keynoted Friday's lunch with a powerful call for an effective international response to the tragic situation in Bosnia-Herzegovina.*

To be sure, he acknowledged, "historic ethnic problems or their residual contemporary prejudices exist," but "it is the creation of a power vacuum with the demise of communism that to a large degree permits the violence underlying policies such as ethnic cleansing." He explained:

When the communist empire collapsed, leaders like Milosevic, like Croatia's Tudjman, and like many extremists in Russia, Slovakia, and elsewhere in Eastern Europe and the former Soviet Union, all of who share something in common—they're former communists—turned to nationalist rhetoric to latch on to power. [They were] seeking, I suggest to you, the same exact goals they sought as party leaders; yet burdened by an ideology too discredited to do them any good, they turned to nationalist rhetoric to bolster their claims.

Thus, while it may be helpful "to seek to address ethnic intolerance in this region through educational programs, . . . we must also respond to people like Milosevic as the dictators that they are in capitalizing on ethnic tension for their own personal gain."

This, in turn, leads to another key factor: "the relationship between economic dislocation and historic ethnic intolerance." The euphoria surrounding the Revolution of 1989 has given way to "a somber reckoning with reality," and several of the current demands for ethnic political autonomy are clearly tied to the desires of various groups "to maintain

control of their often considerable local resources such as diamond mines or oil deposits.”

Congressman Hoyer suggested that the West has not managed the crisis in the former Yugoslavia well:

At some point, we should have realized that, in confronting violence, credible threats . . . of retaliation would have to be made. Neither moral persuasion nor empty threats have relevance on the battlefield and against leaders such as Hitler, Saddam Hussein, Pol Pot, Milosevic, or others. . . .

I believe the war in Bosnia has undermined principles of human rights and of international law, seriously called into question the willingness of democracies to back up stated commitments to support democracy with effective action, and diluted the credibility of the United Nations. The lesson, I suggest to you, is a bitter one: aggression under given circumstances will, in fact, be tolerated by the international community. The costs of failed democracy will be borne by generations to come.

The Congressman endorsed the Security Council's efforts to promote a war crimes tribunal for Bosnia:

[T]he establishment of a war crimes tribunal is an effort by both the CSCE community and the United Nations to achieve justice, to bring those directly responsible for directing or committing war crimes or crimes against humanity to account. In this context, perhaps the most important aspect of the rule of law is not just its ability to prevent wrongs, as it seeks to do, but rather it is the capacity of a system based on the rule of law to redress wrongs. . . .

We speak of forming the political and institutional framework for that new world order. Yet the events in Bosnia-Herzegovina suggest that the worst of the old order has been replaced by the demagogues liberated by the end of the Cold War. If we permit these people to prevail, the new era will be shaped by the voices of violence and vengeance and not by the principle of democracy and accountability. In my view, this last aspect will be the hallmark of any new world order.

Those of us who are lawyers have pursued our careers on the premise that it was the law that made us civilized, and it was the law that protected us as individuals against those who were perhaps stronger, more malevolent, and who would undermine our persons and property. That principle ought to be equally applicable in the international arena, notwithstanding the difficulty of that objective. I cannot believe that the greatest powers on the face of this earth in its history are impotent to stop what we see as the direct, shameless, undermining of the rights of our fellow citizens of this globe.

Representative Hoyer's remarks drew a very warm response and a wide range of questions from the audience.

### Panel III—Bosnia . . .

*Continued from page 13*

policy of “evenhandedness” by “not plunging in on one side or the other in a military sense.” The United States had undercut its ability to influence the crisis by “premature recognition of Slovenia, Croatia and Bosnia . . . and by suggesting that we know before any war trials have taken place who are the guilty and who are the innocent . . . .” By this approach, “we have emboldened extremists on all sides . . . .”

Second, he argued that there must be “enforcement credibility.” Our strong rhetoric accompanied by inaction has “permitted extremists to believe that we will condemn but not act.”

Ambassador Scanlan's third point was that there ought to be a “regional approach” to the problem. Two thousand years of “imperial invasion and subjugation of the indigenous populations by Romans, Central Europeans and Ottoman-Turks” have imposed “artificial borders” which have left “three million Serbs outside of Serbia, two million Albanians outside of Albania, three million Hungarians outside of Hungary, and one million Croats outside of Croatia.” This does not even count the smaller ethnic groups that have been artificially divided. The appeal of “greater Serbia,” “greater Croatia,” etc., is a real one, and any long-term settlement is going to have to take a regional approach and recognize these problems.

Finally, he argued that there was a great need for “regional economic cooperation”:

Impoverished people are highly susceptible to political demagoguery and provide fertile breeding grounds for anarchy and fascism. If we ignore the regional economic dimension of the Balkan problem we place in peril all hope for a stable and lasting peace. Until the United Nations, Europe, and the United States deal evenhandedly with all the parties to the conflict, there will be no peace in the Balkans. All the peoples of the former Yugoslavia must have a clear perception that they will be treated equally. No nation should enjoy a favored position. No nation should be less equal than any other. No nation should be led to believe that it stands accused of collective guilt for the sins of its leadership, particularly if that leadership enjoys what amounts to dictatorial or arbitrary power.

He concluded by reemphasizing the importance of supporting the Serbian democratic opposition. “I think the time is ripe for the United States to make it quite clear by [a presidential address] . . . that we respect the Serbian nation, we do not hold them collectively guilty for the sins of their regime, and that we will want to deal with them, not their regime, in the future.”

## Panel VII

# Modalities of Intervention and Their Parameters: Negotiations and Mediation, Humanitarian Relief, Military Action, and Sanctions on Regime Elites

The first panel on Friday afternoon addressed "Modalities of Intervention and Their Parameters: Negotiations and Mediation, Humanitarian Relief, Military Action, and Sanctions on Regime Elites," and was moderated by Professor William Zartman of Johns Hopkins University.

### David Stewart

The first speaker was David Stewart, Assistant Legal Adviser for the Bureau of Human Rights and Humanitarian Affairs at the Department of State, who discussed "Humanitarian Relief." He began by observing that the new international order has been forced to revisit a debate that has been going on for years among international legal scholars—"whether and in what circumstances it can or must provide humanitarian assistance or humanitarian relief to people in dire straits in a particular country, the government of which is unwilling or unable to meet their needs."

He sought to distinguish "humanitarian assistance" from the more controversial theory of "humanitarian intervention"—to be considered by Panel VIII (p. 24) and which, in its classic form, "denotes forceful, coercive intervention in a State without the consent of its legitimate government by one or more foreign States for the purpose of ending that State's gross violations of human rights of its own citizens." He suggested that, "where the motive is to meet the basic needs of people rather than to end intentional government repression or to enforce human rights standards, and where the coercive or forcible element, if there is one, is protective or defensive in nature rather than offensive, perhaps it is easier to find a basis of legitimacy under international law."

He then discussed the agencies within the United States government that become involved in humanitarian assistance, such as the Office of Foreign Disaster Assistance of the Agency for International Development, which has a budget of about \$27 million and

has already responded to more than 45 disasters overseas during 1993. The Pentagon also contributes to such efforts, but the specific element with responsibilities in that area may soon be changed by the new administration.

At the United Nations, the Disaster Relief Coordinator (UNDRO) was historically tasked with this responsibility, but a year or so ago these duties were shifted to the Under Secretary General for Humanitarian Affairs. The U.N. High Commissioner for Refugees has also played an important, and often very successful, role.

He then discussed the apparent conflict between Article 2(7) of the Charter (see box on page 18) and the idea of humanitarian assistance. When the relief is non-consensual, such as in the United Nations efforts to assist the Kurds in Iraq, "humanitarian assistance arguably begins to take on attributes of humanitarian intervention and to brush up against the prohibition under Article 2(4) of the Charter" (see box below).

Mr. Stewart said he was "personally drawn to the argument that an intervention which is not aimed at the territorial integrity or political independence of a state and is not otherwise inconsistent with the purpose of the Charter doesn't, in fact, violate Article 2(4)." Further, he argued, "questions of sovereignty and territorial integrity and interference in domestic affairs simply disappear when the humanitarian assistance is provided under Chapter VII of the Charter, as was the case with regard to the Kurds in northern Iraq, in Bosnia, and in Somalia."

### Professor Robert F. Turner

The second member of the panel was Professor Robert F. Turner, of the Center for National Security Law at the University of Virginia, who addressed "Sanctions on Regime Elites," or "what do we do in the last resort when all else fails?" He suggested that it was time to "rethink our targeting doctrine," which he argued "has not kept pace with the developments of international law in the last four or five decades." Arguing that many of the ways in which we think about war developed during an era when war was a

#### U.N. Charter Article 2(4)

**All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.**

“sovereign prerogative of kings” and soldiers were little more than subjects or “property” of kings; he noted that since the 1946 Nuremberg Trials it has been a principle of international law that aggressive war is unlawful and that even kings may be held legally accountable for planning or launching such a conflict.

In the face of armed aggression, international law clearly recognizes a right of both victims and other States to use lethal force in self-defense or collective self-defense. Making reference to his own experiences in Vietnam, Turner argued that the lives of soldiers—irrespective of their nationality—have moral value, and if the world community is forced by an aggressor to decide between killing large numbers of relatively “innocent soldiers” (individuals who were not responsible for the policy decisions to engage in aggression and who in many cases might be conscripts or otherwise coerced to serve in the military) or directing the defensive force against the “war criminals” who actually initiated the aggression, principles of both law and morality favored “punishing the guilty.”

Turner argued that it was better to deal with aggression through non-violent means where possible. Defensive force is only lawful when “necessary” and “proportional.” But the “proportionality” concept itself argued that if taking one life, or a small number of lives, would bring the aggression to an end, that was preferable to “sending our children out to slaughter” tens or even hundreds of thousands of another State’s “children.”

The goal would be to apprehend war criminals for trial, with all of the procedural due process necessary to secure justice. No life ought to be taken without due process if there are alternatives. But if the aggressor leaves no choice but the decision whether to go after the criminal policymakers or to slaughter soldiers in the fields, fundamental principles of morality and criminal law support the conclusion that the punishment ought to be inflicted upon those individuals who have committed criminal acts.

Professor Turner expressed strong support for the prohibition against “assassination” found in Executive Order 12333; but he argued that using deadly force against regime elites in response to armed international aggression was an act of lawful self-defense and not “murder”—which is a common element of virtually every definition of “assassination.”

The Gulf War showed that people like Saddam Hussein may not be deterred by the risk of losing 100,000 or even more of their soldiers. After all, Saddam sacrificed no less than 300,000 Iraqi troops in his war of aggression against Iran. One benefit of an international policy of sanctioning regime elites would

be enhanced deterrence, as radical leaders would likely be far more concerned if they believed their personal safety would be placed at risk by engaging in armed international aggression.

### **Dr. Paul Henze**

The next speaker was Dr. Paul Henze, a resident consultant at the RAND Corporation, who presented what he described as an “Overview of Options.” He argued that the end of the Cold War has left a “far more complicated, far more complex” world. But there was a positive side as well, as “the scoundrels of the world are much more limited in their options.”

Dr. Henze expressed concern that “we are still to some degree paralyzed by idealism, excessive idealism, and by proceduralism, preoccupation with rules that . . . may well be outdated and certainly ought to get a fresh look before we go on regarding them as sacred principles.”

A key problem, for example, is the classical view of “absolute sovereignty of nations,” which is not now the reality and has not been so for a long time. We also need to come to terms with the reality that many governments in potential trouble spots are extremely weak. Many of the most important institutions of modern States are not—and by our values ought not to be—part of the government.

In dealing with countries such as Somalia, which “has been stabilized by humanitarian intervention to some degree, but [is] still a highly divided country,” he suggested that it is “very questionable whether it has the resources within itself to resume effective statehood, effective operation as an independent state.” Therefore, we need to consider modern forms of what might even be called “colonialism.” Of course, “Colonialism is a very bad term, so one must not use it. And colonialism is always assumed to have been a process that was undertaken because of the greed and the ambitions of colonial powers; but if you look back at the history of the development of many colonies, they developed because there was disorder, and somebody stepped in and tried to create some degree of order, and that led step by step to the establishment of a colony.” Such efforts ideally ought not be the work of individual States, but should “wherever possible, be internationalized.” But “the concept of trusteeship is a valid one, and very seriously it needs to be revived.”

### **Dr. Eileen Babbit**

The fourth speaker on the panel was Dr. Eileen Babbit, from the Program on International Conflict

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## PANEL VIII

# Humanitarian Intervention: The Legal Limits and Parameters

The final panel of the conference addressed the topic "Humanitarian Intervention: The Legal Limits and Parameters." It was moderated by Sean Murphy, of the Office of the Legal Adviser to the Department of State.

### Professor Malvina Halberstam

The first panelist was Professor Malvina Halberstam of the Cardozo School of Law, a former Counselor on International Law to the Department of State. She defined humanitarian intervention as "the use of force by one State in the territory of another to protect persons who are in imminent danger of death or grave bodily injury, when the State in whose territory they are is unwilling or unable to protect them." As a key element of the doctrine, she said it was necessary that "the intervening state must withdraw once it has rescued those in danger or otherwise averted the danger." According to Professor Halberstam: "The test of the legality of the intervention should be the effect of the action, not the motive."

Discussing the legality of the doctrine, she noted that it had always been controversial but that even under customary international law, prior to the U.N. Charter, there were respected jurists and some States who endorsed the doctrine at least in theory. Those who opposed it generally argued "that such intervention would be misused by one State to gain control over another." While recognizing that this is a legitimate concern, Professor Halberstam argued that this was not a justification for denying the right of humanitarian intervention in a proper case. She reasoned: "[T]hat is not a reason to prohibit legitimate humanitarian intervention any more than would prohibiting legitimate self-defense or any other right because it may be misused. Every legal right can be misused."

Turning to the compatibility of the doctrine with the United Nations Charter, she argued that, properly understood, humanitarian intervention was not in conflict with Article 2(4) of the Charter (see box on page 22). "If a State intervenes to protect persons from imminent danger or death in another State because the latter is unwilling or unable to do so, and then withdraws, its actions are not directed "against the territorial integrity or political independence" of the State or otherwise "inconsistent with the purpos-

es of the Charter." Further, one of the expressed purposes set forth in the Charter for establishing the United Nations was the promotion of human rights, and "an interpretation of the Charter that prohibits humanitarian intervention would have a contrary effect."

When humanitarian intervention is utilized to protect the nationals of the intervening State, the operation may also be justified under the inherent right of States to use force in self-defense as recognized in Article 51 of the Charter. But Professor Halberstam argued forcefully that humanitarian intervention should not be limited to such circumstances.

The post-Cold War era has brought with it an invigorated Security Council and increased demands for humanitarian intervention under U.N. auspices. Critics of this development point to Article 2(7) of the Charter (see box on page 18), which prohibits U.N. intervention in matters that are essentially within the "internal affairs" of States. Professor Halberstam dealt with this argument by saying:

Since I agree with those who take the position that the U.N. Charter did not abolish the right of humanitarian intervention, I do not think U.N. action is necessary to authorize it. Nor do I think the Charter confers any special powers on the U.N. to take action in this area. In this respect, I agree with those who take the position that Chapter VII of the Charter, which provides for the imposition of various sanctions by the Security Council, including the use of force, is limited to situations in which the Security Council finds a threat to the peace, breach of the peace or act of aggression; and that language was clearly intended to apply to international threats to the peace, not to internal acts.

The Security Council can, of course, take the position that the danger of imminent death or grave injury to a large number of persons within a State also constitutes a threat to international peace, as it did in condemning Iraq's repression of the Kurds in 1991, and as it did in authorizing use of force in Somalia in 1992. In today's interdependent world, that may well be true in most, if not all, situations. I think there is no objection to collective action under the auspices of the U.N., and it might even be preferable should States wish to do so. We should be wary, however, of limiting humanitarian intervention to collective action authorized by the Security Council. The legality of humanitarian intervention should not be subject to the veto power of any one State.

She concluded by arguing that while humanitarian intervention ought to be limited "to situations in which there is a danger of imminent death or injury," that did not mean "that intervention cannot be legal in other situations." For example, she argued in connection with the U.S. intervention in Panama in December 1989, that "use of force in support of a democratically elected government that is barred from taking office or deposed by force is lawful."



## Professor Fred Morrison

The second speaker on the final conference panel was Professor Fred Morrison, of the University of Minnesota Law School. A former Rhodes Scholar with a Ph.D. from Princeton and a J.D. from the University of Chicago, Professor Morrison also served as Counselor on International Law to the Department of State. Rather than limiting his comments to the narrow topic of "humanitarian intervention," he spoke in broader terms about "intervention."

Noting that the arguments for and against intervention are compelling, he traced the development of legal thinking from the "classical" period through the end of World War I, to the "traditional" period—characterized by the Kellogg-Briand Pact of 1928, outlawing armed force as an instrument of policy—during which "the right to cross-border action was increasingly limited, and the doctrines of national sovereignty and political independence increasingly amplified."

The "modern period" of "the United Nations and collective security," drew from both earlier periods; but it drew its general principles from the traditional period, "emphasizing national independence and the

freedom of States from threats to their political independence and territorial integrity." On the other hand, the "collective security mechanism, especially Chapter VII, drew intensely from the classical period." With a few notable exceptions, the Cold War period made most of Chapter VII "illusory," and most conflicts were dealt with under Article 51 (see box below).



*Professor Fred Morrison, a former Rhodes Scholar, provided an historical overview of the law governing intervention.*

In the post-Cold War era, there are now three recognized legal bases for collective intervention:

- First is the Chapter VII approach, which has involved an expansion of the concept of "threat to the peace" and is illustrated by United Nations action to assist the Kurds in Iraq and to restore order in Somalia.
- The second approach is through Article 51, through which a recognized government can "invoke the assistance of its friends and neighbors in dealing with insurrection and domestic violence."
- The third approach involves regional action under Chapter VIII of the Charter.

Professor Morrison said there were really two additional bases of authority for intervention: "humanitarian intervention," as discussed by Professor Halberstam, and what he characterized as a *res nullius* situation—like Somalia and perhaps soon Liberia—where it can be argued "there has ceased to be any sovereignty in the area and therefore any intervention is not a violation of anybody's political independence or territorial integrity because there is no State there."

## Colonel James Terry

The final speaker on the humanitarian intervention panel was Colonel James Terry (U.S.M.C.), the Legal Counsel to the Chairman of the Joint Chiefs of Staff, who received his S.J.D. from George Washington University School of Law. He focused his remarks in "practical terms about the application of certain of these legal principles through our ongoing operations."

He sought to identify a series of "assumptions which we as U.S. citizens must make about our involvement

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### U.N. Charter Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

## Panel VIII—Humanitarian Intervention . . .

*Continued from page 25*

in the humanitarian area.” First, he suggested that we were moving toward greater and greater reliance upon the Department of Defense in dealing with humanitarian problems; but he emphasized the importance of having the Agency for International Development, State Department, and other agencies and non-governmental organizations continue to play “a significant role . . . .” Second, in the post-Cold War era it is likely that most of our operations will be “at the behest of the United Nations, if not directly blue-helmeted operations . . . .” Third, many of the operations will be in response to “internal” crises in foreign places, such as to alleviate suffering in Liberia, Sudan, and Chad.

Col. Terry’s fourth assumption is that the United States will have to play a major role in most of these operations, not just because as a nation we are concerned about humanitarian problems, but also because we have certain capabilities—such as airlift—that allow us to project forces quickly and with a sustainment capability, and this makes us “the force of choice” for the United Nations.

As a fifth point, Col. Terry suggested that the increased demands on the United States to respond in such situations is going to create problems in terms of our existing resources available for such operations. Sixth, we need to recognize that “there is going to be a new and very distinct political flavor incorporated into many of the upcoming humanitarian interventions.”

Seventh, he argued “there must be a greater involvement under Chapter VIII of regional organizations” in responding to humanitarian problems. We must learn to involve NATO, CSCE, the OAS, and other regional organizations more effectively. And, finally, he argued that “there are aspects of Chapter VI and Chapter VII, both classical peacekeeping and enforcement requirements, in nearly every operation which we’ll be called upon to participate in.”

While praising the leadership of the U.N. Under Secretariat for Peacekeeping, Col. Terry argued that the office was seriously undermanned. With 32 individuals to manage 28 ongoing U.N. peacekeeping operations, the job “is not getting done . . . . It’s simply impossible.”

Even if we provide additional assistance—and we are already providing “an operations directorate and [an] intelligence directorate to the U.N.”—in the long run “it is going to certainly take a greater commitment on the part of not only the United States, but also the other major member States,” if the job is going to be done right.



*Colonel James Terry, Legal Counsel to JCS Chairman Colin Powell, discussed humanitarian intervention.*

## Panel VI—Strengthening the U.N. . . .

*Continued from page 19*

### Ambassador Elliot Richardson

The final speaker of the morning was Ambassador Elliot Richardson, whose four cabinet posts have included service as Attorney General and Secretary of Defense. He argued that we need to address the problem of burden-sharing in international peacekeeping operations, saying: “It is totally unrealistic in the long term to expect that the United States should deploy an expeditionary force comprising 75 percent of any coalition brought to bear even in a situation of such naked aggression as occurred in the Gulf.” He continued: “The assumption that the United States should maintain such a capability indefinitely, continuing to bear a comparably disproportionate share of the cost and indeed be prepared again to assume a comparable share of the blood risk” is “totally unrealistic.”

It is imperative that regional organizations be willing to undertake a substantially larger role within their regions, according to Ambassador Richardson, and he commended the OAS for the measures that had been described by Ambassador Caminos.

In addition, he argued that it was important for the world community to set some standards in advance for multinational intervention, calling for “the progressive development of a clearer understanding of what kinds of conduct by a State against its own people are beyond the pale of civilized acceptability. Simply to define such standards would get us somewhere. To supplement the standards by a fact-finding process and to let the findings then become the basis for the imposition of such sanctions as can be mustered would get us further.”

## Panel V—Cambodia . . .

*Continued from page 17*

United Nations should “support the new government’s efforts to destroy finally and forever the Khmer Rouge.” Cooperative credit banks should be established to extend credit to farmers, and financial incentives should be provided to encourage Vietnamese settlers to return to Vietnam. Much could be done to rebuild Cambodia’s infrastructure—building roads, schools, training teachers, etc. Every program ought to be evaluated as to whether it will strengthen or weaken democracy, and we need to realize that in the circumstances of contemporary Cambodia, building democracy will be a gradual process.

Dr. Stanton emphasized the importance of holding Khmer Rouge leaders ultimately accountable for the slaughter of past years—ideally through trials before an international tribunal.

[The truth is that the Khmer Rouge leaders are not about to reform. They must be captured and confined. They must be put on trial and then imprisoned. The United States should assist the new government by supporting establishment of an international tribunal to try the Khmer Rouge leaders, and I believe that that could be a considerable assistance that our government can render because we possess great amounts of evidence that could be used in such trials.

### Dr. Larry Diamond

The final speaker on the Cambodia panel was Dr. Larry Diamond, Senior Research Fellow at the Hoover Institution on War, Revolution and Peace. He began by agreeing with Dr. Stanton that “[t]his is going to be a long process; it is going to be incremental.” He was also surprised and pleased that no one on the panel had suggested seeking to build “a broad coalition front” to bring in and “pacify” the Khmer Rouge. Unfortunately, however, we need to recognize that:

If we are going to crush and defeat the Khmer Rouge, we’re in for a long, bloody, anti-insurgency struggle, and 22,000 U.N. troops aren’t enough. In fact, if you want to actually capture the Khmer Rouge leaders and bring them to trial, we’re probably going to have to double, at a minimum double, the number of U.N. troops that are in Cambodia today . . . . Now, my preference would be to do exactly what Dr. Stanton said. I think these people are as close to Nazis in their attitude toward any kind of human and moral vision of the world, as we’ve had since the end of World War II, and they deserve the same fate as Adolf Eichmann. But it’s going to require a lot of force and determination to do that.

While it is important for moral reasons to try to apprehend and try the leaders, if the lower level

insurgents are to be persuaded to surrender, come in from the jungle and turn in their weapons, there has to be some sort of amnesty for them. The strategy must include some plan to reintegrate them into society.

Dr. Diamond characterized Cambodia as “a major test of whether, if the world commits itself collectively to try to turn back the tide of anarchy, autocracy and evil—and I think it is important that we not shy away from using that word, ‘evil,’—we can succeed, particularly when we seek to do it in a systematic and legitimized way through the U.N. as we’ve tried to.”

As a political matter, given the anti-democratic nature of the contending forces, the next step should be to try to produce a constitution “that is not majoritarian in nature, not winner take all in nature, but that facilitates coalition government in the future.” If Cambodia can begin with power sharing, an independent judiciary can be built up over time, and the long-term prospects for democracy will be much better.

To be sure, it will not be easy. But “there are a lot of instances in the world where democracy begins with formal democratic institutions without democrats. Cambodia will not be the first case. And frequently democracy gains a [foothold] in a difficult conflict situation because it is everybody’s second-best solution when they realize that they can’t conquer power unilaterally.”

One very important step is that the world community must pressure Thailand and “tighten economic sanctions on the Khmer Rouge.” Dr. Diamond concluded with some “lessons learned,” including the important principle that we lack the resources to intervene everywhere and must therefore “make some tough choices about where to intervene.” But once that decision is made—and Dr. Diamond felt the right decision was made with respect to Cambodia—we must “finish the job when we start it unless there are overwhelming reasons why it can’t be done . . . . Especially early on in this process of international intervention, we’d better finish the job we start or the world might just throw up its hands and give up on the whole challenge.” He also noted some “tactical” lessons of the Cambodia experience, such as promoting a common doctrine and common language for U.N. forces in such operations.

During the question period, former National Security Council Legal Adviser Nicholas Rostow took the floor and sharply challenged the suggestion made by several of the panelists that the Reagan administration had “supported the Khmer Rouge.” He said U.S. policy has been consistently to support “the non-communist resistance” in Cambodia.

## Panel VII—Modalities of Intervention . . .

*Continued from page 23*

Analysis and Resolution at Harvard University. Drawing upon many years of experience with both international and domestic mediation and conflict resolution, she suggested that a possible response to some of the problems raised by the conference was “mediation with muscle.” She explained:

Mediation with muscle exists when the mediator comes to the table with leverage, with resources that they can bring, political, economic or military, that have the potential of changing the calculation of the disputing parties so that it either enhances the benefits or increases the costs of the alternative of violence to negotiation. . . . [O]ften in these sorts of conflicts the parties are not seeking such an intervention, they’re not seeking a mediator. The mediator usually initiates the process and has to bring the parties to the table by the exercise of this leverage. And the way that they do that is primarily through their potential to effect the cost and benefits that the parties calculate about coming to the table versus continuing in their violent action. And they can do that with carrots and sticks; carrots being the kind of incentives like guarantees of underwriting or promoting the solutions that are reached in the mediation process, economic benefits that can be provided to the parties; sticks like the threat of force, the threat of economic sanctions, the threat of . . . killing or coming after their leadership, some of the things that have been discussed here today . . . .

Dr. Babbit argued there were three key elements to success in “mediation with muscle”:

- “The most important element of this kind of leverage is that it be credible, . . . this leverage is only successful to the point that the parties believe that the mediator not only has the resources but has the will to carry it out.”
- The mediator must have “standing,” not in a legal sense but in the sense that the mediator be recognized by the parties to have a leadership role—either because of individual accomplishments or by virtue of representing a respected institution.
- Third, the mediator must have “authorization or a mandate” to influence the outcome.

Applying these tests to the crisis in Bosnia, she concluded that, “at least initially, Mr. Vance and Lord Owen did, in fact, have standing . . . .” They also had “authorization,” but it was “very limited.” “They were . . . able to promise U.N. monitoring and possible enforcement of the terms of any agreement, but they had no credible threat of force behind them, and I

think in this case, that was absolutely necessary and it really compromised their leverage in terms of the agreement that they were able to put together.”

“[M]ediation is much harder the further into the crisis the conflict goes, and . . . preventive measures and preventive diplomacy” may be preferable. One big benefit of a mediated approach is that, “If all parties agree to the solutions, they are much more likely to carry out those commitments because they’ve been part of creating them . . . .”

### Major James Johnson

The final speaker was Major James Johnson, of the U.S. Army Judge Advocate General School, who discussed the role of military action. He structured his remarks around the “litmus test” set forth in 1984 by Secretary of Defense Caspar Weinberger—often termed the “Weinberger Doctrine”—which, while criticized by many and not officially embraced by subsequent administrations, he felt had been at the heart of military intervention policy since it was first proclaimed. Major Johnson—who, like many other government participants in the conference, stressed that he was presenting his personal views—said that the Weinberger Doctrine had resulted both from the Vietnam experience and from “an overreaction to Beirut,” where 241 Marines were killed by a terrorist bombing in October 1983. He argued it was an “overreaction” to what was really an “enforcement action” rather than a “peacekeeping operation.”

The first element of the doctrine was “that any deployment of U.S. forces abroad should first be deemed vital to national interests.” Second, the United States should only deploy forces “with a clear intention of winning.” The deployment “should be carried out with clearly defined political and military objectives,” and “any deployment of U.S. forces must be continually reassessed and adjusted if necessary.” Deployments “must have the support of the American people and their elected representatives in Congress,” and force should “only be used as a last resort,” after negotiations and other non-violent approaches have failed or proven ineffective.

Major Johnson concluded that the Weinberger Doctrine is “alive and well,” despite the fact that the last two presidents have not formally made reference to these principles; but he concluded that the Clinton administration “possibly is expanding” the definition of “vital interests . . . .” Pure “peacekeeping” missions, involving small forces in “low threat environments,” pose less of a problem; but more serious operations, like those discussed in connection with intervening in Bosnia, are likely to be evaluated in the light of the Weinberger tests.