



# National Security Law Report

Volume 16, Number 3-4 STANDING COMMITTEE ON LAW AND NATIONAL SECURITY March-April 1994

## Excerpts of Remarks

### Secretary of Defense Perry Addresses March Breakfast

*Secretary of Defense William J. Perry was the speaker at the Standing Committee's March 31 breakfast at the Capital Hilton Hotel. Excerpts from his remarks follow.*

Many friends and colleagues have asked me, "Why in the world did you take this job?" It is a fair question. I usually give a flip answer to it, but I thought a lot about it before I made my decision, and I thought I would share some of those thoughts with you this morning.

In sum, it came down to three things. The first has to do with the precarious ending of the nuclear threat to the United States. In my younger days, during the Cuban missile crisis, I was called back from California before the crisis had been yet announced to the public to examine the data which we were collecting on Cuba to try to understand what it all meant, and unfortunately it was very clear immediately what it all meant. In the course of the weeks after that, we approached a nuclear confrontation between the United States and the Soviet Union. It was my opinion at the time—and I was very intimately involved in the study of what was going on—that we were probably going to a nuclear war; and it was only with enormous relief a few weeks after that that we were relieved of that catastrophe.

In general, I have lived my entire adult life with the threat of a nuclear war hanging over my head, and that's true of everybody in this room. That cloud has been lifted with the end of the Cold War, but truly it is a very precarious lifting. What Russia

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*Photo courtesy ABA*

*Secretary of Defense William J. Perry addresses the Standing Committee's March breakfast program.*

### National Classification System Update

by William E. Conner

Congress and the Clinton Administration are moving closer to restructuring the nation's procedures for classifying sensitive information. All told, three security reviews were undertaken in 1993, and remedial legislation was recently introduced by both chairmen of the congressional intelligence committees. The Administration, meanwhile, is digesting the final report of the Joint Security Commission, as well as evaluating a proposed executive order on security policy and procedures. The results are mixed, but the trend clearly is toward greater openness.

### National Industrial Security Program

After protracted consultations with industry officials, President Bush established the National Industrial Security Program (NISP) by Executive Order 12,829 two weeks before leaving office. The NISP is intended to consolidate nearly 1,000 federal government industrial security programs and more than 300 security regulations into one comprehensive security program, thus curbing industry and

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and some of its neighbor states are trying to do today in terms of reforming their political, economic, and sociological systems—all simultaneously—has a very uncertain outcome.

In the meantime, while this reform is still uncertain, there are 25,000 nuclear weapons still in Russia. Therefore, it seems to me that our first objective is to nail down the gains which we have achieved with the ending of the Cold War and with the lifting of this threat of a nuclear holocaust. The best way we can do that, I believe, is to help the Russians in the dismantling of these weapons, help them in the conversion of their defense industries, help them in the reform of the former Red Army—do all of those things which move us towards a world in which we would feel safer and more secure.

The set of actions we can take to do that I tried to articulate in a talk I gave at George Washington University a few weeks ago, and I labeled that whole policy a “pragmatic partnership.” A “partnership,” because we have to work together with Russia to do it—they can not do it by themselves, we can not do it by ourselves, but we can help them do it. We cannot control that outcome, but we can and we must try to influence it.

Just last week, I was at Pervomaysk, which is one of the former Soviet Union operational ICBM sites. They took me down into the control center—it controls 100 different missiles with 800 warheads, all of which at one time were targeted at the United States. I watched the operators there go through their check out of the system. It was a truly moving experience, because these two young operators there, in their ability to control and to launch these 800 warheads, had the power to destroy every major city in the United States. That’s the kind of threat we have become accustomed to all of these decades.

After we left the control center, we went out to the silos and they took the lids off so I could look down and see the missiles. But I could also see that all of the warheads had been removed. This is the site where, pursuant to the summit agreement which President Clinton, President Kravchuk, and President Yeltsin signed in January, all of those warheads are being removed for dismantlement at facilities in Russia. As of this date, more than 120 of these warheads have already been sent back for dismantlement, and more are scheduled to go.

So this first objective is to do everything we can to keep the world from drifting back into a Cold War. A new Cold War would be very different from the

last one. The Soviet Union is gone, the Warsaw Pact is gone. Russia remains, and the 25,000 nuclear warheads remain. It would still be very threatening, and we should do everything we can do to keep us from drifting back into any version or any form of that Cold War. That will not be an easy task. It will challenge our best efforts to keep that from happening.

The second objective goes off in a different direction, but it is related to the fact that the Cold War is over. In this post-Cold War world, the situations in which military power can or should be used are nearly all ambiguous. In nearly all situations, if we use the power, we are using it to support limited political objectives. In the Second World War, we used all of the power we had to achieve an all out victory—including the use of nuclear weapons.

Now, our military forces could be involved in a regional war and they are frequently involved as part of UN forces in peacekeeping operations. Each one of these operations is *sui generis*; but they all have one thing in common, and that is that military forces are there to support very limited political objectives, and therefore there has to be a very selective use of force or even the threat of military force. I envision as a primary role of the Secretary of Defense advising the President how and when to use military force, and, conversely, when not to use military force when it is not appropriate.

For any established foreign policy which we have, a paramount question for the Secretary of Defense is how can we best use military force to support that policy or how can we best refrain from using military force. The converse to that is equally important. It is, when we are trying to establish a new

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## February 17 Breakfast

# Ambassador Miller Provides Rules for Low Intensity Conflict

*Ambassador David C. Miller, former Special Assistant for National Security Affairs to President Bush, addressed the Standing Committee's February 17 Breakfast at the International Club. Excerpts from his remarks follow.*

I was very concerned in 1992 that many foreign policy executives, political pundits, academics, and elected officials believed that, with the demise of the Soviet Union, we were suddenly cast rudderless on the foreign policy sea.

Today's confusion, I think, comes not from a great sea change or a dense fog looking forward; it comes from ignoring the fundamentals of foreign policy and military management we learned over the past fifty years. The confusion comes from believing that the disappearance of the Soviet Union wiped the compass rose clean. It did not.

I will argue two points: First, that the very same basic pillars of foreign policy and military management that allowed us to prevail over the Soviet Union apply today; and second, that Third World low intensity engagements were waged throughout the Cold War giving us specific verifiable data on how to proceed or not proceed. The tragedy is that people have become so mesmerized with peering into the fog that they haven't looked back behind at the channel markers and buoys that have been put in place over the past fifty years.

As low intensity conflict must fit into an overall policy structure, let me begin with the three pillars on which our victory over the Soviet Union stood. They are simple. We had a theory of engagement. We had weapons systems to support the theory.

And we had a management structure to implement the theory. That's not so difficult. We need to develop these three components of foreign policy and military asset management.

Let me talk a little bit about a theory of engagement. The projection of diplomatic and military force must take place within some framework. The framework is either developed and implemented by policy makers or it is thrust upon them by forces in their country. Today we are drifting closer to the second model. To state the two obvious problems, first we are faced with the media and the marvelous tool of the small portable television camera. This gives our policy makers a challenge of facing painful images on the television at night. If they have no coherent policy framework with which to respond to those images, they are then forced to respond to public pressure.

The second problem, I would argue, is the sheer magnitude of our military capability. There are so many situations where we have the capacity to intervene, and at least on the surface improve conditions, we must not allow capacity to drive us into situations where there really is no long run national interest. If we're in Mogadishu, why not the southern Sudanese crisis? Why not Haiti? Liberia is a country to which we have had ties for a hundred years, and we didn't intervene in Liberia. If Bosnia, why not other countries to the east?

Any sustainable foreign policy must rest on the citizen's perceptions that our country is protecting or advancing his or her interests. Any sustainable theory of engagement must rest on our citizens' willingness to sacrifice wealth, and ultimately their children, because they believe that the threat is so severe that it is worth the sacrifice.

Let me make some very sweeping assertions based upon this principle. There is no threat to our citizens that justifies further casualties in Mogadishu or the expenditure of more military assets.

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## Nonproliferation Conference Set for June 10-11

The Standing Committee and the University of Virginia Center for National Security Law will co-sponsor a conference on Friday and Saturday, June 10-11, 1994, on the topic "Nonproliferation of Weapons of Mass Destruction." The conference will take place at the International Club, 1800 K Street, NW, Washington DC.

Few national security law issues are as important in the post-Cold War era. While the final details are still being worked out, this promises to be a major conference on a topic of great interest to the Standing Committee. Mark your calendars now and plan to attend. Further information will appear in the May issue.

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government security costs. President Bush directed that a comprehensive NISP Operating Manual (NISPOM) be issued within one year; however, last December, by Executive Order 12,885, President Clinton extended the NISPOM implementation deadline until June 30, 1994 in order to incorporate the findings of the two other security reviews.

### PRD-29

On April 26, 1993, President Clinton issued Presidential Review Directive (PRD) 29 authorizing a "top to bottom" review of the national classification system. The review process is being conducted by a 24-member interagency task force chaired by the director of the General Services Administration's Information Security Oversight Office (ISOO). PRD-29 directed that the interagency review process would last from May 1 to November 19, 1993, when the ISOO would forward to the National Security Council a final draft of the proposed executive order. This proposed executive order would revoke the current executive order on national security information, President Reagan's 1982 Executive Order 12,356. PRD-29 required the task force to formulate an executive order that would reduce overclassification; declassify enormous quantities of previously classified information; and would increase individual accountability for the operation of the security classification system. On November 10, 1993, however, the director of the ISOO submitted the proposed executive order to National Security Adviser Anthony Lake with the following disturbing qualification:

Many of the agency representatives on the task force do not share my enthusiasm for this draft and do not endorse it. They have serious reservations about many of its provisions, especially those that pertain to automatic declassification. We could not achieve a consensus draft within the time frame called for in the Presidential Review Directive. In my view, given the diversity and intensity of opinion, we could not produce a consensus draft even if this time frame were increased significantly.

Due to the "serious reservations" encountered by the Administration, the proposed executive order was revised, and a new draft, dated March 17, is under consideration. Although this latest draft is a significant improvement over earlier drafts, it nevertheless would establish the most open policy on Government records since the start of the Cold

War. The 52-page draft order, entitled "Classified National Security Information," would:

- Require original classifiers to keep information unclassified or declassify information if they determine that the public interest outweighs the need for classification;
- Retain three general classification levels: Top Secret, Secret, and Confidential;
- Prohibit classification when there is a reasonable doubt about the need to classify;
- Abolish the indefinite duration of classification, or "Originating Agency's Determination Required" (OADR);
- Establish a maximum life span for all classified information (10 years for Top Secret and Secret, 6 years for Confidential) with 7 exceptions;
- Prohibit the reclassification of information after it has been declassified and released to the public under proper authority;
- Limit special access programs to meet narrow, specific criteria;
- Establish three new government organizations to provide advice on security matters, and to serve as the last appellate authority for classification challenges and mandatory review appeals and expand greatly the responsibilities of the ISOO;
- Require all originating agencies to establish a systemic declassification review program for all records that are 25 years old; and
- Establish a government-wide database of declassified information.

### Joint Security Commission

In addition to the NISP and PRD-29, last May the Clinton Administration established a combined CIA and DOD Joint Security Commission to "get rid of unnecessary bureaucracy, identify significant savings and improve efficiency [in government]." Following nine months of consultations with Administration officials, members of Congress, representatives from private industry, and public interest groups, the 10-member Commission issued a 157-

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foreign policy to deal with a new situation, to assess the role of military power in the various alternative foreign policies that are being considered so we can wisely chose a foreign policy based on an informed judgment of how the military power could or could not support the objectives of that policy.

I gave a talk a few weeks ago on the use of military power in Bosnia—how it could and could not be used, what foreign policy objectives it could support and which ones it could not support. It was intended to be informing on the very important question: What can we be doing now, in this period in Bosnia, to move us toward a peace agreement? There was a second, correlated question: If we reach a peace agreement in Bosnia, how can military power be used to sustain and support that peace agreement? So the second objective I had was to help formulate a new philosophy of how our military power can be used to support our foreign policy objectives in the very ambiguous situations we are faced with in the post-Cold War era.

The third objective I had is in a different direction altogether, but still related to the special problems attendant to the ending of the Cold War. That is: How do we manage properly the drawdown of the forces we have in the post-Cold War era? We have a factual input to the problem, which is that the resources supporting Defense will be decreased by about 40 percent from 1986 to 1996. The actual number is 41 percent, as we now forecast it. The question is, with this 41 percent reduction in force, how do we come out at the other end of that, while smaller, with a military force that is still effective?

That this is an important question to answer is indicated very clearly in history, because we have gone through two major drawdowns in my lifetime—one of them after the Second World War and one of them after the Vietnam war. After the Second World War, we went from what was clearly the world's largest and most powerful military force to, five years later, almost being pushed off the Korean peninsula by a third-rate regional power known as North Korea. So there was something done wrong in the way that we made the drawdown at that time.

After the Vietnam war, we had a drawdown about comparable to the one we are going through now. By the end of that drawdown, General Meyer, Chief of Staff of the Army at the time, proclaimed that we had a "hollow" Army—and he was right. What we had done, in that drawdown, was we concluded that with the reduction in resources we should not, or could not, reduce the force structure. So we maintained

the force structure while the resources were going down, and took all of the reductions out of the support for those forces and out of the modernization to equip the forces. The consequence was entirely predictable, which is after five or six years of doing that we ended up with a hollow force.

Well, now we are going through the third drawdown since the Second World War, and this time we've got to get it right. That gets me to my third objective, which is getting it right this time. We have inherited a legacy, because today we have the most effective military force in the world. We saw this demonstrated in Desert Storm. The challenge, then, to us is to preserve that legacy even as we have a reduction in the force.

It is my opinion we can maintain still a very effective military force in the United States, and one that can achieve the foreign policy objectives I imagine with which we will be confronted. But we can only do that if we bring it down correctly. The first, and most important, requirement is that we have to bring down the size of the force. We can not manage a reduction of resources of 40 percent with the same size force—as we tried to do after the Vietnam war.

Fortunately, this time our military leadership agrees with that judgment and is leading the way in proposing force structure reductions. Those are well underway today, and will be completed in another year or two. That gives us the basis for managing this properly. We have in the all volunteer force in the Army today a resource which is of enormous value. Unless you have been with, worked with, trained with any of these military people in the last five or ten years, you don't appreciate the quality of the military force we have today. They are competent, they are dedicated, they are well-trained.

I had a very interesting discussion with General Sergeyev a few months ago, after he had visited the United States and went on a tour of our military bases and met with hundreds of our military people—including hundreds of enlisted people and NCOs. He told me after his tour that he was absolutely convinced the first few days of the tour that we were conducting sort of a Potemkin village for him, that we had gotten some of our best qualified officers and dressed them up in enlisted men uniforms and introduced them to him. Finally, by the end of the tour, he became convinced that this was real. He was finally able to accept and believe the quality of the people in our armed forces today. He said, in summary, that the US Army has the best NCOs in the world today—and that's what makes your military so effective today. It is more compli-

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cated than that, but that is true.

The second part of our legacy is the leadership in our military forces today. In the mid-70s, after the Vietnam war, the junior grade officers—the Lieutenants, Captains, and Majors—split into two categories. Some of them said that “the political leadership in this country led us to failure in Vietnam,” and they quit the Army in disgust at that stage. The other category said “there was something we weren’t doing right here, we have to rebuild this Army,” and they committed to stay in and rebuild it.

Well those Captains and Majors are today the three- and four-star generals that have rebuilt the US military as we went from the conscription force to the all volunteer force. They provided the leadership, the new doctrine, and the new tactics which made the US military the most effective group in the world today.

The other part of this getting the drawdown right is dealing with the drawdown in the defense industry. While we are having a 40 percent reduction in resources we are reducing our procurement of military equipment by about two-thirds. If you are in a defense industry, that means your market is decreasing by about two-thirds. The problem of restructuring and reconsolidating the defense industry in the face of this drawdown is a very substantial one indeed, and we do not want to end up with a hollow industry any more that we want to end up with a hollow Army. To do that is going to require some imaginative and energetic leadership, a fundamental part of which is to take this defense industry—which has been standing in splendid isolation for decades—and integrate it in with the rest of our industry. To do that, we have to make massive changes in the regulations by which we procure equipment and the imposition of something called “military specifications.” We are undertaking that task as I speak here. It is a very difficult and challenging task, but if we succeed it will give us the basis of having a strong defense industry at the end of this drawdown.

In summary, then, I undertook this job to try to achieve three objectives. All of them are related to the ending of the Cold War. The first was addressing what actions we could take in this government and in this Defense Department to prevent a drift back to the Cold War. The second was to reformulate a policy for the use and the threat of the use of military power in these post-Cold War contingencies, all of which have limited policy objectives. The third of

which is in the drawdown that is going on in the military forces and the defense industry—to get it right this time.

## Classification System . . .

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page report, entitled “Redefining Security,” on February 28. In testimony before the Senate Select Committee on Intelligence (SSCI) on March 3, Commission Chairman Jeffrey H. Smith announced the Commission’s principal findings:

- (1) The current Cold War-era security system must be changed;
- (2) There is no effective method for evaluating the threat and developing appropriate countermeasures; and
- (3) There is no central mechanism to develop security policy or oversee its implementation.

Mr. Smith went on to explain the Commission’s principal recommendations:

- (1) Devote greater attention to personnel security and counterintelligence;
- (2) Increase safeguards for information management systems;
- (3) Establish a Security Executive Committee as a subcommittee of the National Security Council to develop government-wide security standards;
- (4) Radically simplify the classification system to include only two levels of classification: Secret and Secret Compartmented Access; and
- (5) Develop a methodology to account accurately for security costs.

## Calendar of Events

**May 19**—Breakfast Meeting, International Club (Speaker: The Honorable Doris M. Meissner Commissioner, Immigration and Naturalization Service (INS))

**June 10-11**—Conference on Nonproliferation of Weapons of Mass Destruction (see box on page 3).

The Commission will remain in place until June 1, 1994 to assist the Administration in implementing the Commission's recommendations.

## Congressional Reaction

SSCI Chairman Dennis DeConcini (D-Ariz.) and House Permanent Select Intelligence Committee (HPSCI) Chairman Dan Glickman (D-Kan.) both introduced legislation in early March that would amend the National Security Act of 1947 to provide a statutory basis for classifying information, to reduce the number of classified documents, and to limit the length of time they can be classified. S. 1885, the "Security Classification Act of 1994," would require declassification of Secret government information after 10 years and declassification of Top Secret material within 15 years. H.R. 3927, the "Information Security Classification Act of 1994," would limit classification to 6 and 10 years for Secret and Top Secret material, respectively. Both bills, however, provide for exemptions for particularly sensitive information. In addition, both bills would restrict the levels of classification to only Secret and Top Secret.

While the Clinton Administration is busily engaged in reviewing and refining the executive order, the two intelligence committees will likely hold hearings on the proposed legislation. CIA General Counsel (and Standing Committee member) Elizabeth Rindskopf recently testified before the HPSCI that reform by executive order was preferable to statutory reform. The Administration will likely promulgate the executive order in an attempt to preclude congressional action. However, should either the executive order or the legislation (or both) come to fruition, the result will be greater government openness and a revamped security system. In the meantime, expect a spirited debate

between those who argue the reforms go too far, and those who contend they do not go far enough.

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Baring a massive refugee flow from Haiti, it is unclear to me whether an intervention in Haiti is worth the price. Any major military commitment in Bosnia—airstrikes, or 25 to 50 thousand peacekeeping troops on the ground—is a questionable proposition. There may be a case for Bosnia which is open to at least another hour's worth of debate; but it will take greatly improved presidential leadership, I believe, to convince the American public that if their children start coming home in body bags it is worth that price.

On a more positive note, let me argue some cases where I believe you will find sustained support. First of all, I think the prevention of the spread of nuclear, chemical, and biological weapons to hostile or unstable governments is something the American public will support. For threats to vital economic interests, such as Middle East oil or freedom of the seas or air travel, I think you will find support. I do believe that the international drug war is an account that could receive public support with a bit stronger leadership.

Academic rhetoric and TV images are not adequate to make foreign policy. You cannot ask the citizens to support an engagement and sacrifice their children and their tax dollars unless they believe there is a severe threat to them or a national interest to protect adequate to make that sacrifice.

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## Standing Committee on Law and National Security

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It is a fool's errand to start down that road unless you believe you can pass that test at the end.

Let me offer one concrete idea, the concept called "program management" that has been accepted in American industry for the last twenty years. Our government is not capable in many ways of taking a program manager for the Haitian engagement and TDY'ing to that person individuals from every agency under that program manager's line control; but if we want to run effective engagements I think at some point we might think about the concept of program management.

If we get these three fundamentals in place, then I think we need to look at the three key elements of success for low intensity engagements that we observed over the past forty years: legitimate partners, regional allies, and a definition of "success" that is realistic and achievable.

Let me talk a little bit about partners. A critical element in the ultimate success of a low intensity engagement is selecting and supporting a legitimate partner. In Afghanistan, an overwhelming majority of Afghans wished to see the Soviets withdraw and the downfall of that puppet government. They supported a resistance. Likewise in Angola, there was no doubt that Jonas Savimbi was an effective and charismatic leader. Support for the Government of El Salvador was okay. In contrast, support for the Contras in Nicaragua was limited.

As we look to the future, finding legitimate partners may not be as easy as it was in the past. During the Soviet occupation of Afghanistan, we occasionally had to deal with partners whose virtues took some searching. Shortcomings were overlooked, and today that's going to be harder. It was easier, because at that point our goals were clear—we were after the Soviet Union—and this probably won't hold today. So, as you look to the future, it seems to me that the American public is going to ask American policy makers to set a higher national standard in picking partners. The public is going to expect us to risk lives only where local partners reflect many of the values that we hold dear.

The second element is regional allies. In most cases, before the issue of US military intervention comes up, low intensity situations have festered for some time. Issues such as the procurement of CB weapons, nuclear weapons, or active involvement in narcotics trade, or threats to vital economic interests, have all been growing. Thus, the level of concern in the "neighborhood" should be relatively easy to see.

Furthermore, international and regional organizations—such as the UN, or the OAS, or the OAU—should already have evidenced some level of support for our involvement. To a considerable degree, the success of our effort in Afghanistan and Angola depended upon the support of regional allies such as Pakistan or Saudi Arabia or South Africa. For different reasons, these allies had a heavy commitment, coincident with our own, to see our policies succeed. These regional allies provided not only a geographic base, but their military and diplomatic backing. Had we enjoyed such broad support in Central America, it would have been easier to succeed in that region.

The final component is a definition of "success" that is agreed upon before engaging. The days of defining success as a military or political victory against the Soviet surrogate or the maintenance of an ally in power are largely over. The American public expects major US involvement overseas, especially if it occasions the use of military force, to leave the world a better place.

A classic illustration of this comes from Operation Just Cause. While the immediate objective was to remove Noriega, it immediately became clear that, having done this, there was more to be done in order to restore Panama as a responsible member of our neighborhood. And it did not take long for the press and the public to begin asking whether our intervention had been worthwhile. It was a spectacular arrest. But if there is as much drug trafficking and money laundering today as there was under Noriega, what did we achieve?

Or, if you want to look at Kuwait, if the Royal Family is not moving toward democratic government very rapidly, have we really improved things in Kuwait in the sense of finding people whose values we are proud of and are pleased to work with?

Let me sum up very simply: I think that the future is obscure if you don't learn from history. The post-Soviet environment will be constructed with precisely the same components with which the Soviet environment was constructed. You have to have a coherent theory of engagement, it has to rest on broad support of the American public—and, if you're serious, that means support including the death of their children and the taking of their tax dollars.

If you look at the low intensity conflict arena, there are three keys that were there during our confrontation with the Soviet Union and they will be there in the future. You have got to have responsible partners, you've got to have regional allies, and you had best know what you want to achieve before you begin. It's not complex.