



National Security Law Report

Volume 15, Number 2 STANDING COMMITTEE ON LAW AND NATIONAL SECURITY February 1993

Strengthening Congressional Oversight of Intelligence

by Robert M. Gates

Because of the unusually large turnout, many people were unable to get reservations for the February 18th breakfast with retired Director of Central Intelligence Robert Gates. For those who missed it, the text of Dr. Gates's remarks follows.

There are a number of subjects that are of interest to this group that I think will merit its involvement and its interest in the coming months. I don't intend to focus my remarks on them this morning, but they include economic intelligence and the role of intelligence in support of law enforcement. I would be happy to answer questions on those subjects after I finish talking about congressional oversight this morning.

We are in a very important period concerning a number of sensitive areas; and just as this group has played an important role in the past on the question of congressional oversight of intelligence activities, I hope it will involve itself in these other issues as well.

This morning I would like to talk to you about congressional oversight of intelligence and how it can be strengthened. This is a subject that I addressed not too long ago at the World Affairs Council in Boston. It is a subject that has, as I just mentioned, been of particular interest to the ABA's Standing Committee on Law and National Security for quite some time.

Over the past sixteen years, CIA and the intelligence community accountability and legislative oversight have grown enormously. With this oversight, CIA and the other intelligence agencies have become the most scrutinized intelligence organizations in the world. I think it is fair to say that it would be difficult, at best, for any secret intelligence organization to be placed under this microscope of intense review. And yet I believe that even under these circumstances the intelligence community not only remains effective and capable, it enjoys a legitimacy and an acknowledged role in our government and policy making that

Continued on page 2



More than 270 people turned out to hear former DCI Robert Gates address the February breakfast.

Record Breakfast Crowd Gates Opposes CIA Role in Industrial Espionage or Active Law Enforcement

Recently retired Director of Central Intelligence Robert M. Gates addressed a record crowd at the Standing Committee's February 18 breakfast at the International Club. His prepared remarks focused on congressional oversight of intelligence activities and are reprinted in full in this issue of the *Report*. Dr. Gates also made a number of insightful observations about other issues during the question and answer session, and he challenged the Standing Committee to play the kind of positive role in the anticipated debates over the use of the intelligence community for industrial espionage and for active law enforcement purposes that it has played over the years in the debate over intelligence oversight.

When asked about a possible CIA role in "economic intelligence," the former DCI observed that the CIA and other components of the intelligence community have been actively involved in some aspects of this issue for many years. For example, the community reports evidence that other nations are not living up to their international agreements to policymakers, and it is actively engaged in efforts to counter the

Continued on page 5

Gates on Oversight

Continued from page 1

is not shared by any other intelligence service in the world. I think it is fair to say that today there is not a single plan or ongoing intelligence activity that is not, in some way or another, subject to review by at least two committees of the Congress.

To give you some insight into the breadth of this relationship let me cite just a few statistics. In 1992, representatives of the agencies of the American intelligence community met more than 4,000 times with members and staff of the Congress, in either briefings or other kinds of meetings. The community provided over 50,000 documents to the Congress and responded to countless questions for the record or congressionally directed inquiries. Two subjects that I want to address this morning are of particular interest to the Congress: the budget and covert actions. First the budget.

Intelligence and appropriations committees of the House and Senate take very seriously their responsibilities to review the intelligence community budgets and examine planned intelligence expenditures in the billions of dollars. They scrutinize budget line items by the thousands, and in so doing they pass judgment on every plan and program. And congressional oversight of the budgeting process for intelligence does not end once the budget has been approved. The intelligence community must gain the approval of up to six congressional committees when it reprograms money beyond a minimal amount, and it must notify four congressional committees of any withdrawal of money from CIA reserve funds for contingencies. Furthermore, both intelligence authorizing committees and the House Appropriations Committee have created their own audit units, and these have access both at CIA headquarters and in the field to CIA's books and expenditures.

The second area of special interest to Congress, as I mentioned, is covert action—actions which support the foreign policy objectives of the United States but cannot be achieved by overt means. The United States has the most elaborate set of checks and balances on its covert activities of any country on earth. Do you realize that most covert action proposals arise at the National Security Council or the State Department, but before any proposal for covert action moves forward it is subject to intense scrutiny inside CIA. The Covert Action Review Group, established by Judge

Webster and including the executive director, the four deputy directors of the agency, the general counsel, the directors of congressional and public affairs, and the controller, all examine the critical legal need issues of the particular covert action and also ask what we believe is the most critical question: "If this action becomes public, will it make sense to the American people?" Under the laws governing the

oversight of intelligence, covert actions are conducted only after the proposal has been reviewed and approved by the National Security Council, the Attorney General, and, finally, the President. The President's approval is embodied in a written presidential "finding" which explicitly acknowledges that the operation is important to the national security of the United States. For the last seven years, every finding has been briefed to the Congress within forty-eight hours of its signature.

Intelligence committees hold hearings to review new covert actions approved by the President, and they regularly examine all ongoing actions. These two committees not only know the nature of the covert action that we are undertaking, but they also know exactly how the agency is doing it and they monitor every dime that is spent on it. This is not a *pro forma* exercise. Congress can and has exercised control over CIA covert actions by denying the agency the funds needed to carry them out, just as it approves the funds for all the covert actions that are undertaken. Contrary to the image sometimes portrayed, most American intelligence officers welcome

Continued on next page



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congressional oversight; and *all*, whether they like it or not, are subject to it. Intelligence professionals see these congressional mechanisms as surrogates for the American people, insuring that our intelligence services operate within the law but also in ways that are consistent with American values. Congressional oversight, in the eyes of the intelligence professional, is a protection against the misuse of the Agency by executive authority; and congressional review of our intelligence publications and analysis helps guard our objectivity. Intelligence professionals believe that effective oversight is vital if intelligence is to have a future in this most radically democratic country in the world.

The vast majority of CIA employees have grown up under congressional oversight. More than seventy-five percent of the agency's population has entered on duty since the creation of the two intelligence committees. These professionals understand the rules and appreciate the value of and the reasons for oversight. Having said that, the process by which American intelligence agencies became accustomed to and positive about congressional oversight was a long and often difficult one. Especially in the first half of the 1980s, and occasionally afterwards, there were periodic crises of confidence brought on by concern on the part of the oversight committees that they were not being dealt with candidly or in a full and forthcoming manner. These concerns, in my view, were too often justified, at least in some measure. However, in recent years the relationship between American intelligence and the Congress has improved steadily to reach what I believe is a current excellent state.

Yet, just as the intelligence community has focused in recent years on improving its performance in this relationship, today I would like to reflect on several problems on the congressional side, which if addressed, could strengthen and enhance oversight while contributing to the further improvement of our intelligence. My first and most important concern is that very few members of the intelligence oversight committee or the appropriations committee appear to devote much effort or time to their intelligence oversight responsibilities. Only a handful of members in both houses have taken the time to visit the intelligence agencies and to make the effort required to gain some knowledge and understanding of what is a very complicated and sophisticated undertaking. This places an enormous burden on the chairman and ranking minority members of these committees. Now individual members will develop an interest from time to time in one or another aspects of our work and acquire some knowledge of that. But the number of those with broad understanding and real knowledge, in my judgment can be counted on the fingers of one

hand, and that is after fifteen years of continuous oversight. At the same time, there are too many instances of members of our committees having important misunderstandings, misconceptions, or just wrong facts about U.S. intelligence, including about their own legislation governing our activities.

Most members of Congress are among the hardest working people I have ever met. They have many committee assignments, they must carry out their responsibilities to their constituents, and they have a multitude of other obligations. The sad result is that committee hearings and briefings are usually not well attended and it is my experience, at least through the end of the last session of Congress, that the record is getting worse, not better.

Let me give you a couple of examples. We had a single budget hearing for FY 1993 in the Senate Intelligence Committee last spring, almost a year ago. The heads of all the intelligence agencies were present. Of the fifteen members of the committee, the Chairman and a handful of members, perhaps three or four, showed up. A half hour or so into the hearing it was recessed for a vote, and when the hearing resumed, the Chairman and only two or three members returned. All but the Chairman were gone within twenty minutes. The result is that for the single most important hearing of the year, on the budget of the entire intelligence community at a time of great change, only Chairman Boren was present throughout. By the same token, the next day there was a hearing on covert actions. Twelve out of fifteen senators attended and stayed throughout; and that was for a covert program that involves but a fraction of one percent of the intelligence budget and is just one-tenth the size of the program two years ago, and where there are virtually no controversial activities underway. Budget hearings on the House side were often attended only by the chairman and the ranking minority member and a very small number of others technically dropping in for a few minutes at a time. I know that the members can read the record of the hearings, but how many really do? The result is that enormous responsibility then falls to the staff of the committee. They are neither elected nor confirmed by anyone, and yet they acquire enormous influence on the structuring of issues as well as the attitudes and votes of the members.

My concern, then, is not oversight but the lack of attention, knowledge, and time on the part of too many members of the intelligence and appropriations committees. This in turn means that in this most sensitive area of the American government anonymous staff members with little or no experience in intelligence or its use by the executive acquire enor-

Continued on next page

Gates on Oversight . . .

Continued from page 3

mous power over the programs and directions of American intelligence. To make matters worse, congressional rules approved in the mid-1970s establish time limits on members' service on the intelligence committees—eight years in the Senate and six years in the House. As a result, just about the time an interested or concerned member begins to acquire some knowledge or understanding of our work, he or she is rotated off the intelligence committee, unlike most of the other committees of the Congress.

So my major complaint with congressional oversight of intelligence is that there is not enough of it. That is, by the members of Congress themselves. Now I am not blaming them. I know how the system in Congress works, and I know that the situation I described prevails in nearly all other areas of government as well. But as we reduce the size of our military and undertake major changes in the structure and size of American intelligence, I would argue strongly that these decisions are too important to be left to staff. Those in Congress who are selected to these committees, and I am told that there is high interest in joining these committees in both houses, should be expected—especially in this particular time of great change—to invest the time necessary to gain an understanding of the intricate and fragile system that they seek to change. I believe that our national security depends upon it.

The second concern that I have involves the way the Congress is organized to deal with our budget. Again, the intelligence community is just one of a number of government entities affected by a major problem already identified by congressional reformers. In the past years the Chairmen of our two intelligence committees have devoted enormous effort to reviewing our budget in great detail and making recommendations with respect to that budget. Until recently, the appropriations committees were willing to defer in considerable measure to the intelligence committees and would usually see to it that the appropriations bills paralleled the recommendations of the intelligence authorizing committees. However, in the last two years or so, the appropriators have shown considerably less willingness to defer to the intelligence committees with the result that these two bills—the intelligence authorizations bill and the appropriations bill—are often very different. As a result, when the appropriators tell us to do one thing and the intelligence committee have not acted or disagree we are paralyzed, caught in the middle.

Let me give you an example. Last year the appropriations committees approved several hundred million dollars more for intelligence than did the autho-



Standing Committee Chairman John Shenefield (center) chats with Brent Scowcroft and Robert Gates at breakfast.

rizing intelligence committees. We went back to all of the committees last spring and asked that a substantial portion of the money be approved by all the committees so that we could enhance our efforts on non-proliferation, counter narcotics, and certain other high priorities. Everyone agreed with our intended use of the money, but because of minor differences and procedural squabbles among the appropriations, intelligence and armed services committees it took us five months of intensive effort to get these transfers approved. I don't know anyone in the Congress who believes that is the way the system is supposed to work.

The intelligence community also is becoming vulnerable to another common practice in Congress, but one from which we heretofore have been protected—insistence by individual members on the funding of pet projects before they will approve the intelligence budget. At a time of significantly declining resources, this is a dangerous trend that threatens to weaken our intelligence capability by forcing the community to spend money for programs that it does not seek and that it finds wasteful.

Let me conclude by making three recommendations for strengthening congressional oversight. First, Congress should end the practice of rotating members on the intelligence committees. The fear in 1976 that members of the committees would be co-opted or corrupted by the intelligence services, and thereby lose their ability to be critical, has proven unfounded. At the same time the rotation has contributed to a lack of expertise, knowledge, and experience on the part of members of the oversight committees of what U.S. intelligence does, how it does it, and how it can be improved. If it is politically too hard to end the rotation, at a minimum the period of service should be expanded substantially. As Representative Lee Hamilton said in an address at the University of Virginia in December 1986: "the large turnover of committee

Continued on next page

membership every six years produces a loss of institutional memory that hinders effective oversight."

Second, I urge the returning members of the intelligence committees and the new members to take especially seriously their responsibilities on the oversight committees and to give them high priority. For the good of the country, they need to make the time available to learn about the intelligence agencies they oversee—how they do their work, how well they perform, the quality of the people, how they can be improved, and what intelligence capabilities this country needs for the future.

Third, and finally, and although I realize its a naive request, I hope that the congressional leadership, as part of the reform process, can do something about the conflicts between the authorizing committees and the appropriating committees because problems created by the disparity in their respective legislation are imposing a great cost on the intelligence community, both in terms of effective management and the ability to deal with high priority issues. In the first nine months of 1992, I personally had some hundred and twenty meetings, briefings and hearings on Capitol Hill. Building on the efforts of my predecessor, Judge Webster, over a period of several years to improve our relationship with Congress, one of the achievements of the past sixteen months about which I am most proud is the absence for the first time of a single major problem, incident, or controversy in our dealings with the two intelligence committees. Last month, before leaving office, I reissued guidance to every employee of CIA and the intelligence community who might appear before Congress that stresses four principles of testifying—as first articulated by Judge Webster: candor, completeness, correctness, and consistency. I am confident that Jim Woolsey will devote the same effort in collaboration with other leaders of the community to extending this period of cooperation and confidence building between the intelligence community and the Congress. I strongly support congressional oversight of intelligence activities, I believe that it is a deeply needed check in our system. But it is also a measure in how far we have come in sixteen years, that it is now the intelligence

professionals who call for a further strengthening of congressional oversight. It is for members of Congress to accept that responsibility.

Dr. Gates retired as Director of Central Intelligence in January.

Industrial Espionage . . .

Continued from page 1

fifteen to twenty foreign intelligence services now engaged in targeting American businessmen and corporations. But Gates spoke out strongly against the idea of involving the intelligence community directly in the business of industrial espionage, a proposal he termed "a moral and legal swamp." Among other things, such a policy would "inhibit the ability of the American government to go back to foreign governments that are engaging in this type of activity themselves and try and make them stop it."

When asked about involving the intelligence community more deeply in "law enforcement" activities, Gates drew a distinction between "passive intelligence support"—the making available to law enforcement agencies information already in the hands of the intelligence community which might assist in performing law enforcement tasks—and "active support for law enforcement," such as allowing law enforcement agencies to task CIA resources to gather information or actually assigning intelligence community personnel to take part in arrests or other law enforcement activities. While the former was acceptable, Gates warned against direct involvement: "I would not like to see us breach the line established in 1947 that keeps the intelligence agencies out of domestic law enforcement activities."

Addressing the topic of covert operations—which he had noted in his prepared remarks had decreased by ninety percent since 1991 and now totals far less than one percent of the intelligence community budget—Dr. Gates noted that "only controversial covert actions become public" and that the congressional intelligence committees "have been pretty support-

Continued on page 6

Standing Committee on Law and National Security

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The National Security Agenda

Debate over Intelligence Budget Anticipated—The appointment of Senator Dennis DeConcini (D. AZ) to chair the Senate Select Committee on Intelligence has led to speculation that a major fight may occur over funding the intelligence community. DeConcini led efforts last year which cut the intelligence community budget by \$1.6 billion, and he was quoted by the *New York Times* (Feb. 1) as believing the collapse of the Soviet Union means that U.S. espionage activity no longer needs to be “on the cutting edge.” The new chairman was quoted by the *Times* as having said: “We don’t have to be ahead of the curve as we once were.”

United States Endorses U.N. Rapid Deployment Force—On February 1, Secretary of State Christopher reportedly informed U.N. Secretary-General Boutros Boutros-Ghali that the United States now favors the idea of a U.N. rapid deployment force to provide a quick reaction capability for regional crises. The Bush administration had stopped short of embracing the idea, first proposed last year in the Secretary-General’s “An Agenda for Peace” report.

DPRK on Collision Course with IAEA over Nuke Site Inspections—After many years of rising international concern that North Korea was seeking to develop a nuclear weapons capability, last spring the Pyongyang regime agreed to accept visits by International Atomic Energy Agency inspectors. Various intelligence sources have raised concerns about activities at two buildings at Yongbyon, and concern increased further when it was reported by Tass on 9 February that the Russian government had stopped a group of 60 Russian scientists and nuclear weapons/missile technicians at the last minute from boarding an aircraft to North Korea last October. Some experts believe that North Korea may already have an explodable nuclear device, while others believe such a development is likely within a few years. After having been embarrassed by its failure to control the Iranian nuclear weapons program, the IAEA is reportedly considering demanding an unprecedented special inspection; and if North Korea continued to deny IAEA inspectors access to Yongbyon the matter could be referred to the U.N. Security Council for action.

Second Libyan Poison Gas Plant Disclosed—According to press accounts, U.S. and German intelligence agencies have uncovered the existence of a new poison gas plant being constructed underground near Tarhunah, about 40 miles southeast of Tripoli. This would augment a similar facility at Rabta, 25 miles southwest of Tripoli, which is thought to be the largest chemical weapons plant in the third world. Experts said the new plant would probably be completed in about three years and would produce deadly mustard gas. A German government spokesman admitted that some of the equipment for the new facility had been exported by German firms that may not have realized the true purpose of the plant, but added that “many other” western European firms also played a role and claimed new German export laws would outlaw such shipments in the future. Since April 1992, all weapons-related exports to Libya have been embargoed by resolution of the U.N. Security Council in response to Libya’s failure to extradite suspects in the 1988 terrorist bombing of Pan Am Flight 103 over Scotland. Although Libya had indicated it might join more than 120 States which signed the historic Chemical Weapons Convention concluded in Paris in mid-January following two decades of negotiations, it failed to do so. (Three other States thought to have experimented with chemical weapons—Iraq, Vietnam, and North Korea—also refused to sign.)

Industrial Espionage . . .

Continued from page 5

ive” of recent covert programs. He expressed the view that “large paramilitary covert activities” like U.S. support for the *Contras* in Nicaragua in the early-to-mid 1980s were “a product of the Cold War,” and the need for such programs “has largely dissipated with the end of the Soviet Union.”

In response to another question, Dr. Gates expressed strong concern about “the linkages between the cartels in Latin America, the United States, Italy, Western Europe, Russia, and the Asian gangs” and other aspects of contemporary organized crime. When

asked whether congressional oversight had produced any “chilling effect” on the willingness of other intelligence services to cooperate with the United States, Dr. Gates said “this is one of those cases where it is hard to prove the negative,” but said “my own view is that it does not. I haven’t noticed, over the years, a reluctance on the part of foreign services to deal with U.S. intelligence or to share information” Ultimately, he argued, “there is no question . . . who the eight hundred pound gorilla is in the intelligence world,” and “(t)hose foreign services need us in most respects more than we need them”