



# National Security Law Report

Volume 15, Number 7 STANDING COMMITTEE ON LAW AND NATIONAL SECURITY July 1993

## Text of Luncheon Remarks

### **Kamplerman Says Europe Must "Reach for the 'Ought'"**

*Ambassador Max Kamplerman delivered the keynote address following lunch at the Standing Committee's "Anarchy in the Third World" conference on June 3. His remarks follow.*

There was a time when one could use the term "anarchy" in describing the Third World, thereby contrasting the abysmal condition found principally in Africa and Asia with the stability and order to be found in Europe. In relative terms, that contrast still holds true, but all of us are increasingly conscious of the growing anarchy and lawlessness that have reared their heads in Europe as well. The Swedish social scientist Gunnar Myrdal many years ago 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 would then be possible to measure the ought with the is, with the reality. If the reality did not measure up to the ought-to-be, then we had the option of altering that reality by changing the is, if we still wanted to abide by our values and our objectives. To apply that insight to the current nature of international politics, one can see that Europe has in our time taken major steps toward arriving at a consensus of what ought to be. And that was reflected, as John indicated to you, in the Helsinki Final Act of 1975, and then further refined and elaborated upon in the concluding CSCE documents of Madrid and Vienna in the mid-1980s, followed by the Copenhagen concluding document in early 1990 and the Declaration of Paris in November 1990, as well as by the CSCE Conference on the Human Dimension in Moscow in 1991. Now the strong feeling of impotence that per-

meates Europe today is sharpened by the realization that the violence in the former Yugoslavia, the ethnic tensions in the former Soviet Union and throughout Eastern Europe, the growing European anti-Semitism, even where there are few or no Jews, the intolerance against foreigners, all these realities, Europe is aware, are inconsistent with the ought of Europe.

This reality is discouraging, depressing, and disappointing, as Europe has so far demonstrated a failure to come to grips with the rampant challenges to the ought. American refusal to exercise leadership has contributed to this lack of direction and rootlessness, but the existence of the ought, in my opinion, the existence of standards, goals, and rational objectives, should give us some encouragement that a motivation exists for Europe belatedly to come to grips with the need to defend, uphold and insist upon reaching for the ought. And this at the very minimum requires us and Europe to assert a fundamental principle that

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## Annual Meeting Programs

### **New York Panels to Address Proliferation, Peacekeeping, and War Crimes**

In addition to its own blue ribbon "presidential showcase" program on "The Role of Law in Preventing Proliferation of Weapons of Mass Destruction," the Standing Committee will cosponsor two important programs at next month's ABA Annual Meeting: a program on "Blue Helmets: Military Forces for the United Nations?" and another entitled: "Crisis in the Balkans, Part II: From Nuremberg to Bosnia—Should the U.N. Prosecute War Criminals?"

Moderated by John Shenefield, the proliferation panel will feature a distinguished group of experts, including former Director of Central Intelligence William Colby, Acting Arms Control and Disarmament Agency Director Thomas Graham, former Chief U.N. Inspector in Iraq David Kay, CIA General Counsel Elizabeth Rindskopf, the Senior Director for Non-Proliferation on the National Security Council Staff,

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there can be no profit or gain resulting from violence and aggression.

Now the existence of a strong ought in Europe provides this sharp contrast between the dismal events in Europe and the tragedies we see in the Third World. The reason one can describe the Third World today as one of anarchy is that there is as yet no agreed upon definition of what ought to be. The Charter of the United Nations, to which all states ostensibly subscribe, has set forth a preliminary set of national standards for responsible international behavior, but up until quite recently even that standard has had no strong conviction or commitment behind it, no method of enforcement, no moral or military stature behind it, and no mechanism demanding respect.

Let me approach this question from a personal historic perspective so that you at least know where I am coming from. During my early childhood, one lifetime, there were no vitamin tablets, no antibiotics, no television, no dial telephones, no refrigerators, no FM radio, no synthetic fibers, no dishwashers, no electric blankets, no airmail, no transatlantic airlines, no instant coffee, no xerox, no air-conditioning, no frozen foods, no contact lenses, no birth control pill, no ballpoint pens, no transistors. You and I could go on and on. During the lifetime of most of us in this room, medical knowledge available to physicians has increased perhaps more than tenfold. More than 80 percent of all scientists who ever lived, it is said, are alive today.

The average lifespan keeps steadily increasing. Advanced computers, new materials, new biotechnological processes, are altering every phase of our lives, our deaths, even our reproduction. We're living in a period of information power with the telefax, electronic mail, the supercomputer, high definition television, the laser printer, the cellular telephone, optical disk imaging, video-conferences, the satellite dish. And combining these instruments produces near miracles. No generation since the beginning of the human race has experienced and absorbed so much change so rapidly, and it's only the beginning. As an indication of that, more than 100,000 scientific journals annually publish a flood of new knowledge that pours out of the world's laboratories.

These developments are stretching our minds and our grasp of reality to the outermost dimensions of our capacity to understand them. Moreover, as we look ahead, we must agree that we have today only the minutest grasp of what our universe really is. We barely understand the human brain and its energy and the endless horizons of space, and the mysteries

found in the great depths of our seas are still virtually unknown to us. Our science is indeed a drop, and our ignorance remains an ocean.

We're brought up to believe that necessity is the mother of invention. I suggest the corollary is also true: invention is the mother of necessity. Technology and communication are necessitating basic changes in our lives. Information has become more accessible in all parts of the world, putting totalitarian governments at a serious disadvantage. The world is very much smaller. Asia and Africa are now next door neighbors. There is no escaping the fact that the sound of a whisper or whimper in one part of the world can immediately be heard in all parts of the world and consequences follow. But the world body politic has not kept up with these scientific and technological achievements.

And just as the individual human body makes a natural effort to keep the growth of its components balanced, and we consider the body disfigured if one arm or leg grows significantly larger than the other, so is the world body politic disfigured if its knowledge component opens up broad new vistas for development while its political and social components remain in the dark ages. And I suggest to you that what we have been observing and experiencing in the dramatic political changes that have been absorbing our attention is a necessary effort by the body politic to catch up with the worlds of science and technology.

No matter where people live, I am convinced that parents desire better things for their children than they experienced. Now, in our culture, this could mean that we want our children to grow up to be professors at the University of Virginia or lawyers or doctors or accountants, while in other cultures realistic objectives set in and say, well, we want our children

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## Point of View

# Firmer Stand Needed on North Korean Nukes

by Robert F. Turner

The press reports from Geneva on the second round of U.S.-North Korean talks aimed at "resolving the nuclear issue" (14-19 July) are not encouraging. This issue has become a test case of the effectiveness of the International Atomic Energy Agency (IAEA) and, more broadly, of the world community's seriousness about the issue of nuclear proliferation. The lack of success reflected in the joint statement made in Geneva provides cause for alarm, and could have consequences not only for the security of the Pacific region but as far away as Ukraine.

The current crisis began in February, when North Korea refused to permit the IAEA to conduct a special inspection of two suspected waste sites near the Yongbyon nuclear reactor, about 60 miles north of Pyongyang, which were thought to contain evidence of nuclear weapons development efforts contrary to the 1968 Nuclear Nonproliferation Treaty (NPT). North Korea acceded to the treaty in December 1985, and in so doing accepted a legal obligation under article 2 "not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices . . ." On March 12, under strong international pressure from the IAEA and several NPT parties, Pyongyang gave the three month notice required by article 10 to withdraw from the NPT.

On April 1 the IAEA Board of Governors issued a finding that North Korea was in non-compliance with its safeguard obligations under the NPT; and on May 11 the Security Council passed a resolution urging North Korea to comply with the safeguards by a vote of 13-0-2 (China and Pakistan abstaining). After years of refusing to negotiate face-to-face with North Korea because of its support for international terrorism, the United States then began a series of direct talks aimed at resolving the crisis. Only hours before this withdrawal was to take effect, the DPRK announced on June 11 that it had "suspended" its withdrawal.

The six days of talks appear to have produced nothing positive other than a North Korean promise to "begin consultations with the IAEA on outstanding safeguards and other issues as soon as possible" and an agreement by the U.S. and North Korea "to meet again in the next two months . . ." This provides little reason to cheer; after all, Kim Il Sung's negotiators dragged the Korean War talks out for more than two years before an inconclusive cease-fire was agreed to

forty years ago this month. Even more alarming, the unilateral U.S. press statement issued at the conclusion of the second round of talks stated that the United States "expect[s] the DPRK to accept regular IAEA inspections." There is some ambiguity here, but the term "regular" is widely used to distinguish the least intrusive form of IAEA inspection from the "special" or "challenge" inspection requests believed essential by the IAEA and rejected by Pyongyang.

The down-sides of the Geneva talks are serious. North Korea has apparently successfully defused the sense of crisis that existed earlier in the year (see *Report*, "National Security Agenda," May and June 1993), and has done so without significant concessions in its nuclear weapons development program. Specifically, it has not agreed to any IAEA access to the disputed waste sites or to comply with any future IAEA demands for special inspections.

Equally importantly, there are strong indications in the joint statement and from the press accounts that the United States approach to the negotiations is to rely primarily upon positive incentives rather than trying to compel the DPRK to abide by its international legal obligations. In addition to promising not to use force against North Korea and not to deploy nuclear weapons to South Korea, the U.S. negotiators apparently have at least suggested that the United States might sell more modern nuclear reactors to Pyongyang and might provide formal diplomatic recognition and perhaps trade benefits to the regime as well. It is also reported that the United States agreed to cancel joint military maneuvers in South Korea as further evidence of its good faith. If the North Korean press is any indication, Pyongyang is treating the mere fact that the United States is now engaged in face-to-face negotiations as a major diplomatic victory—and it has given up nothing for this and other U.S. concession other than a promise to "talk" to the IAEA.

To be sure, there could be real benefits in replacing the existing North Korean graphite moderated reactors with light water reactors—from which it is more difficult to divert nuclear materials without detection for nuclear weapons programs, and for which Pyongyang would need a continued supply of foreign plutonium that could be cut off if further weapons development efforts were uncovered—but the underlying tone of the negotiation is that the United States is prepared to "buy off" Pyongyang in an effort to get some controls on its illegal nuclear programs. This sends exactly the wrong signal to Ukraine and other former Soviet states which now are being asked to surrender the nuclear weapons now on their territory (see *Report*, "National Security Agenda," May 1993), and it also rewards Pyongyang for conduct that has been clearly contrary to international law.

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## Kamleman Remarks . . .

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at least to have something, enough to eat, more than we have had. But this communication and scientific revolution that we have observed and that I am attempting to highlight for you is changing all of that because with communication and television and radio people in all parts of the world see that the developments of modern technology are only an hour away or two hours away or three hours away at the most, and if the parents don't change their aspirations to say for our children we want that, the children are saying it for themselves: We want that. We demand that, and there is no way they will be denied given the nature of the world in which we now live.

The promises and realities of modern technology for better living cannot be hidden, and their availability cannot long be denied. The communication age has opened up the world for all to see. The less fortunate are now aware that they can live in societies including their own which respect their dignity as human beings, and from radio and television they know such societies are only hours away, and they want that dignity and better living for themselves and for their children, and they don't wish to wait.

Now what is clear is that keeping up with scientific and technological opportunities requires an openness to information, an openness to new ideas, and the freedom which enables ingenuity to germinate and to flourish. A closed, highly controlled society cannot compete in a world experiencing an information explosion that knows no national boundaries. Peoples now trapped in the quagmire of ancient, ethnic and national grievances and enmities will soon come to recognize that they are thereby dooming themselves, their children and grandchildren to become orphans of history, lost in the caves of the past. There is room for ethnic, national, religious, racial and tribal pride, but if that drive for self-identification is to produce respect and self-realization for the individual and for the group, that drive must be peaceful and must be in harmony with the aspirations of others in our evolving interrelated world community.

As national boundaries are buffeted by change, the nations of the world become evermore interdependent. We are clearly in a time when no society can isolate itself or its people from new ideas and new information anymore than one can escape the winds whose currents affect us all. National boundaries can keep out the vaccines, but those boundaries cannot keep out the germs or the thoughts or the broadcasts, and this suggests among many other implications the need to reappraise our traditional definitions of sovereignty. The requirements of our evolving technology are increasingly turning national boundaries into

patterns of lace through which flow ideas, money, people, crime, terrorism, nuclear missiles, all of which have no respect for national boundaries, and one essential geopolitical consequence of this new reality is that there can be no true security for any one country in isolation.

We must learn to accept in each of our countries a mutual responsibility for the peoples in other countries. It is, therefore, appropriate that a group such as this, which in the past has concerned itself primarily with national security questions as they affect the United States and Eastern Europe or the Soviet Union, should now be directing its attention to the Third World because it is part of our world. It is indispensable for us to pay attention to this world. And though I'm not as familiar with that part of the world as I would like to be, I see signs that that world is also beginning to understand the requirements of developing an "ought" against which they can measure the "is."

I was invited not so long ago to attend a conference of the heads of a number of African states. The subject matter: what can Africa learn from Europe's Helsinki Final Act and the CSCE process? I will say that invitation came before the obvious failure of Europe to deal with its first serious trial. It came at a time when there was a sense of euphoria and optimism about Europe. But be that as it may, Europe will come to face that trial, but what is interesting to me is that those people in Africa are going to have such a conference, are going to be exploring this issue. Not so long ago I was invited to testify before a Senate committee on the applicability of the CSCE process to the Middle East, again, an area of trouble, an area of difficulty. What can we do—in all cases, incidentally to the extent that my participation is present, it is the requirement that there be an agreement on what ought to be, on the ought against which the is is to be measured.

I am constantly receiving visits from diplomats from China and Japan about the CSCE, both interested, deeply interested, and strangely enough, interestingly enough, Japan went so far as to ask for a kind of official observer status within the European CSCE process, and Europe granted that right. So that Japan now has a kind of participation in that area. Now I realize that there are some implications to what I have been asserting here, and I hear the argument

### Calendar of Events

**August 8-9**—Annual Meeting programs in New York (see article on page 1 for details).

**October 7-8**—Third Annual Review of the Field Conference (International Club)

that we in the United States must be limited in our role because we cannot be the policeman of the world. I've heard that ad nauseam. I respectfully suggest that no community, and our nation is an integral part of an economic, technological, scientific and political world community, no community can survive, let alone flourish, without a police force. We have an obligation to be part of such a force with diplomacy, our first and major responsibility backed, I suggest, by the readiness to use force as a last resort. Without that readiness to use force, diplomacy is significantly weakened, and that must be an integral part of our country's arsenal as we look forward to our responsibilities and as we begin to face really a new century that is evolving. Thank you.

## Annual Meeting Programs

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and former U.S. Ambassadors to China, Korea, and the Geneva Disarmament Committee. Representatives of the business community and the U.S. Senate will also take part in the program, which will take place on Sunday, August 8, 1993, from 2:00 to 4:00 PM in the Music Box Complex, 6th floor, Marriott Marquis Hotel, 1535 Broadway, New York City. The presidential showcase will be cosponsored by the Section on International Law and Practice, the Section on Individual Rights and Responsibilities, the Standing Committee on World Order Under Law, and both the Law Student and Senior Lawyer Divisions.

On the following day, Monday, August 9, the Standing Committee will cosponsor two programs with other ABA groups. From 9:00-11:00 AM the Section of International Law and Practice will present a panel entitled "Crisis in the Balkans, Part II: From Nuremberg to Bosnia—Should the U.N. Prosecute War Criminals?" Panelists include former State Department Legal Adviser (and Standing Committee member) Monroe Leigh, Professor Cherif Bassiouni (a member of the U.N. Commission of Experts Investigating War Crimes in the former Yugoslavia), Serbian Lawyer Srdja Popovic (who will be receiving the 1993 Rule of

Law Award from the Section on International Law and Practice earlier in the program), and a representative from the United Nations. The panel will take place in the Astor Ballroom on the seventh floor of the Marriott Marquis Hotel. In addition to the Standing Committee on Law and National Security, this program will be cosponsored by the Section on Litigation, the Section on Individual Rights and Responsibilities, and the Standing Committee on World Order Under Law.

The issue of war crimes trials has been of special interest to the Standing Committee, which was the primary sponsor of a resolution calling for war crimes trials for Saddam Hussein and other Iraqi war criminals that was approved by the ABA House of Delegates at the 1991 annual meeting in Atlanta. Approved without opposition and with broad cosponsorship, the 1991 resolution was the first time the ABA had taken a position on the subject of war crimes trials.

Between 2:00 and 5:00 that afternoon (August 9), the Standing Committee will join the Standing Committee on World Order Under Law, the Sections of Individual Rights and Responsibilities, and the Section of International Law and Practice in cosponsoring a program entitled "Blue Helmets: Military Forces for the United Nations?" Moderated by former Standing Committee member John Murphy, the program will include General Indar Rihyke of the U.S. Institute of Peace, Dr. David Scheffer of the Office of the U.S. Permanent Representative to the United Nations, *New York Times* journalist Anthony Lewis, and a representative from the Pentagon. Among the issues to be addressed by the panel is the desirability of establishing U.N. military forces through agreements between member States and the Security Council, as envisioned by article 43 of the Charter or whether the United Nations should establish a force of volunteers.

Advance registration is not required. For further information about any of these programs, contact Holly Stewart McMahon (see box below).

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## North Korean Nukes . . .

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It is true that developing nuclear weapons is not, by itself, illegal; doing so in violation of the NPT, however, is illegal—and the governing body of the IAEA has found such a breach. Pyongyang's announcement that it would withdraw from the NPT did not cure its prior breach of a duty to the 158 other parties to the treaty, who have every right to insist that any illegal progress made toward developing nuclear weapons while North Korea was a treaty party be undone.

Furthermore, North Korea is something of a special case. On June 25, 1950, by Resolution S/1501, the U.N. Security Council determined that North Korea's aggressive attack against South Korea constituted a "breach of the peace" and authorized a military response. Kim Il Sung was Secretary General of the Korean Workers' Party at that time, and he remains in that position today. Just as the Security Council compelled Saddam Hussein to abandon his nuclear weapons development program and to accept special safeguards following his aggression against Kuwait, articles 39, 41, and 42 of the Charter certainly give the Security Council the authority to compel another aggressor who has broken the law and constitutes a clear "threat to the peace" to do likewise.

To be sure, China has a veto and obtaining Security Council approval for collective action may require some creative diplomacy and leadership by the United States. It is in China's clear self-interest to oppose nuclear proliferation to the Korean peninsula (which, in turn, could lead Japan to reconsider its own non-nuclear policy), China's relations with the DPRK are currently strained, and there are reliable reports that China is already prepared to abstain if the Security Council finds it necessary to impose economic sanctions on Pyongyang. Ultimately, China has far more reason to acquiesce in even firmer action to keep nuclear weapons out of North Korea than it had to allow firm action against Iraq in 1990. If China does ultimately prove intransigent, perhaps collective defensive action with other States in the region will need to be explored. But a policy of trying to "buy off" North Korea with promises of diplomatic recognition and modern nuclear reactors suffers from the same shortcomings that accompany any effort to pay ransom to hostage takers—it rewards dangerous and illegal conduct and signals other potential violators that there are benefits to such behavior. The weakness of the U.S. negotiation position may well undermine the IAEA and have consequences far beyond simply permitting North Korea to continue developing nuclear weapons while "talking" to the United States and the IAEA.

With respect to North Korea, there are other reasons for concern today. After 44 years in office, Kim Il Sung will turn 80 on April 15, 1994. Late last December, he turned over the position of Supreme Commander of the Korean People's Army to his radical son, 50 year old Kim Jong Il, who may be even more militant than the aging current dictator; and many experts anticipate a further transfer of power on or before next April 15. Already KWP Secretary and designated "heir apparent" for nearly two decades, the younger Kim is widely credited as having masterminded the 1983 bombing of a Rangoon mausoleum, which was aimed at assassinating visiting South Korean President Chun Doo Hwan and succeeded in killing four of his cabinet ministers and his Ambassador to Burma. A total of 19 people were killed in the blast, with nearly 50 others wounded. Kim Jong Il is also believed to have been responsible for the November 1987 bombing of Korean Air Flight 858 off the coast of Burma which killed 115 people.

North Korea is already one of the most Stalinist regimes in the world—with an estimated 100,000 or more political prisoners and a death sentence for criticizing the party—and how firmly the world community responds to its illegal nuclear weapons program may well affect how the regime behaves once the inevitable transition takes place. Just as assurances by Secretary of State Acheson and others in early 1950 that the United States would not respond directly to aggression in Korea was clearly a factor in the elder Kim's decision to invade the South that June, a signal of weakness and indecisiveness today may well embolden his successor—particularly if that weakness results in North Korea being able to continue its covert nuclear weapons program. It is worth noting in this connection that North Korea has recently successfully tested its new Rodong 1 missile believed capable of delivering a nuclear device anywhere in South Korea and to parts of Japan.

One of the many problems that needs to be addressed is the significance of the North Korean "suspension" of its withdrawal from the NPT. While the State Department reportedly believes that this has the same effect as a withdrawal of the required three month notification, it is quite likely that Pyongyang would argue that—having already given the required notice and simply "suspended" its operation—North Korea could at any point in the future announce the withdrawal of its "suspension" and be immediately free of the constraints of the treaty. Without passing judgment upon the merits of either argument, it would seem useful to clarify the situation if the United States is serious about bringing the North Korean nuclear program under control before the situation deteriorates even further.