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Combating Proliferation With "Catch-All" Statutory Provisions

by Robert Rudney

Background

On September 27, 1993, President Clinton announced his "Nonproliferation and Export Control Policy" agenda designed "to promote effective nonproliferation efforts and integrate our nonproliferation and economic goals."¹ While the President reiterated his commitment to combating the proliferation of weapons of mass destruction, the subsequent liberalization of controls on critical dual-use technologies (primarily computers) raises important political, strategic, and legal questions about how to keep these technologies out of the hands of proliferator states. This article represents analysis of one strategy for maintaining this control—"catch-all" provisions for controlling all exports and services to a destination known to be engaged in proliferation activities. Debate over reauthorization of the Export Administration Act (now scheduled to expire on June 30) is serving to bring many of these issues to congressional, business, and public attention. Should a "catch-all" strategy become one focus of U.S. nonproliferation policy, it would be clearly in the national interest to persuade leading industrial nations to develop parallel export control regulations.

The Bush Administration began to grapple with these issues on a unilateral basis through its Enhanced Proliferation Control Initiative (EPCI), announced on December 13, 1990 (at the height of the

Kuwait crisis). In addition to extending the chemical weapons precursor list, the EPCI introduced "catch-all" provisions to prohibit *any* exports to a facility involved in the design, development, production, or use of missiles or chemical or biological weapons. According to Commerce Department regulations, the EPCI imposed

foreign policy controls on exports to specified destinations when the exporter knows that the commodities, technical data, or software will be used in the design, development, production or use of missiles or of chemical or biological weapons, or are destined for any such facilities or to any destination when the exporter is informed by the Bureau of Export Administration (BXA) that a validated license is required due to an unacceptable risk of weapons-related use.²

The BXA may inform an exporter at any time of "an unacceptable risk" of diversion to proliferation activities, thereby requiring a validated license for

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National Security Issues Facing the New Congress

by L. Britt Snider

One might be inclined not to expect much from 1994 in terms of significant national security issues coming to the fore in Congress. The Cold War is over. Budget constraints leave little room for new initiatives. With the shift at the top in the Defense Department, it will take a while longer to sort out roles and policy positions. For Congress, it is an election year and a year when the domestic agenda (e.g., health care reform, welfare reform, and crime) will take center stage. Key figures, like the Chairmen of the two intelligence committees, are in the last year of their tenure.

Notwithstanding these factors, however, Congress well may end up grappling publicly with a number of issues in the national security area before the curtain rings down on the 103d Congress next fall. Some of these fall into the category of

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shipments to this destination. Along similar lines, a U.S. person knowing of such end-use activities cannot engage in any contract, service, or employment in support of such activities, or participate in such activities (even through financing, transporting, or freight forwarding). These provisions for required licensing also reiterated previous "catch-all" restrictions on nuclear proliferation activities.³

Much attention has been focused on the Commerce Department's failure to define "know" in the interim guidelines. However, "the Department believes that existing case law and judicial interpretation provide adequate guidance to exporters."⁴ It is assumed that, in all such cases of suspected proliferation activities, there will be a strong presumption of denial of any licensing application.⁵ Significantly, the EPCI regulations appear to require either actual or constructive knowledge, not merely a "reason to know" or "should have known" standard.

"Catch-All" Advantages

"Catch-all" provisions are designed to "capture" dual-use items that may not be specifically enumerated on published control lists, owing to rapid progress in technologies and growing diffusion of these technologies within both the civilian and military sectors. The result is that control lists are often obsolete, and control authorities have inadequate guidelines by which to make licensing decisions.

In principle, "catch-all" provisions obviate these problems by aiming controls at proliferant destinations, rather than commodities or technical data. In cases of blatant proliferation activities involving weapons of mass destruction or the means of their delivery, the U.S. Government should have the legal authority to constrain, in an expeditious manner, the supply of all U.S. goods and services that could materially contribute to the furtherance of these activities.⁶ It is important to be able to control the supply of software, technical data, services, and employment of U.S. persons (as well as commodities), since it is often these intangible assets that proliferator states lack in their weapons programs. For example, the *Banca Nazionale del Lavoro* (BNL) scandal demonstrates the importance to proliferator-states (in this case, Iraq) of Western financial services, which are also controlled under "catch-all" provisions. Not all license applications need be denied under these provisions; rather, selective approval of licenses could provide the government

with a means for monitoring activities at a suspect site.

"Catch-all" provisions also reflect the recognition that proliferator states may attempt to procure "low technology" dual-use items that may not be on control lists; the best example of this tendency is Iraq's heavy investment in "antiquated" electromagnetic isotope separation techniques for enriching uranium. In April 1991 testimony, Richard A. Clarke, then Assistant Secretary of State for Political-Military Affairs, summed up "catch-all" advantages:

[B]eneath this entire set of complicated regulations, we have put a safety net that says we can go to an individual company and inform them that what they are about to do would contribute to proliferation and therefore require them to get a license that would allow us to deny the sale.⁷

Past experience has demonstrated that U.S. (and other Western) suppliers have not exercised a maximum of intelligence coordination or vigilance in dealing with suspected proliferators. A case in point is the recent Commerce Department seizure of a Sun SPARC computer workstation, scheduled to be shipped from Satellite Technology Management Inc. of Costa Mesa, California, to the national broadcasting organization of Iran.⁸ In such cases, a destination-based approach to control, as in "catch-all" provisions, provides a much clearer legal constraint than a commodity-based approach.

"Catch-All" Disadvantages

Application of EPCI "catch-all" provisions has also attracted extensive criticism from legal ex-

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Mary C. Lawton (1935-1993)

by H. Lawrence Garrett III

The American people need to understand more about the people who work for them in their government, who are tireless in their efforts to protect and preserve our way of life. Regrettably, more often than not, it takes a traumatic event, such as the loss of a colleague or dear friend, to cause us to pause and reflect upon such people and the contributions they have made.

When we think about the many blessings we enjoy as citizens of this great country, we must realize that they are, in large part, the result of the selfless efforts of people such as Mary C. Lawton. Mary dedicated her professional life to preserving and protecting the United States of America; striving not in the spotlight of high public office but as an ordinary citizen whose only desire was to contribute, in her own steadfast way, to the preservation and security of this country.

A native of Washington DC, Mary died at her Bethesda, Maryland home on October 25, 1993 of a pulmonary embolism. At the time of her death, Mary was the Counsel for Intelligence Policy and Foreign Intelligence Surveillance in the Department of Justice. She was 58 years old and had served her country for 33 years.

Mary Lawton was a 1957 *magna cum laude* graduate of Seton College in Pennsylvania. After graduating first in her class at Georgetown University Law School in 1960, she began her long, distinguished public service career as an attorney-advisor in the Office of Legal Counsel as part of the Attorney General's honors program. She worked in the Office of Legal Counsel for 19 years, and rose to become, at a very young age, the highest ranking woman in the career civil service. She was appointed as Deputy Assistant Attorney General in 1972.

Mary left the Justice Department in 1979 to become General Counsel for the Corporation for Public Broadcasting. In 1980, she served in the Office of the Counsel to the President of the United States; returning to the Justice Department in 1982 as Counsel for Intelligence Policy in the Office of Intelligence Policy and Review. During her many years of public service, Mary received numerous honors and awards for her work, including the Department of Justice's John Marshall Award, the Attorney General's Exceptional Service Award, and, in 1986, the Central Intelligence Agency Seal Medallion for

her work on behalf of the intelligence community.

Mary Lawton was one of those rare individuals whom most don't have the privilege of ever meeting. She was described well by U.S. Supreme Court Justice Antonin Scalia, who, speaking at her memorial service, said "if ever there was a public servant for all administrations—a lawyer devoted to doing her job skillfully, honestly, impartially, without fear and without favor, it was Mary Lawton." Stating he had "never known her to do a shoddy piece of work, to run from a fight, to shade the truth," he described the person that those who were privileged to know her knew best: "She was a lawyer's lawyer, a counselor's counselor, an advisor's advisor."

Justice Scalia went on to articulate just two of Mary's qualities that stood out in his memory. The first was her good humor. Citing the old adage that "the Lord loves a cheerful countenance," he said:

Well, the Lord must have loved Mary Lawton. She was never a brooder, never a mope. Even her anger—and she could rise to wonderful degrees of anger at the latest stupidity of officials in one or another branch of government—was always an exuberant, healthy, cheerful anger. It was more fun being in the company of an angry Mary than to be in the company of a satisfied and contented someone else.

He described Mary's other predominant characteristic in these words:

IClosely related to Mary's cheerfulness: More than most people, Mary Lawton knew who she was. She had a confidence, an assurance, an inner balance that comes from self-knowledge, from a grasp of her proper place in the whole scheme of things. Mary Lawton never gave the impression of being accidentally where she was; she was there because she was supposed to be there, and she seemed to know it.

Justice Scalia's words clearly describe the Mary Lawton that so many who knew her came to know and, if not love, at the very least, to respect. Her passing is deeply felt by those who knew and worked with her over the years. She left her indelible mark upon the law in the national security arena, and for that, all Americans can be grateful.

Mary is survived by a sister, Kathleen L. Kenna, who resides in Sparta, New Jersey.

Mr. Garrett, a former Pentagon General Counsel and Secretary of the Navy, is in private law practice in Washington, DC.

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continuing to sort out U.S. security needs in the wake of the Cold War; others fall into the category of "fixin" things that are "broke" or are likely to become "broke" in the near future. Without attempting to analyze the often complex issues involved, let me try to identify what I see as the key ones.

Intelligence and Security

In the area of intelligence and security, the old issue of whether the intelligence budget total should be disclosed to the public is certain to be revived in the second session of Congress. At the end of the first session, the Democratic leadership in both Houses wrote to the President saying that the time had come to reconsider the long-standing policy of secrecy, and the chairmen of both intelligence committees have pledged early hearings on the subject. As has always been the case, however, the ultimate resolution of this issue will be greatly influenced by the position taken by the Administration.

With regard to secrecy generally, 1994 will see two important initiatives of the Clinton Administration come to fruition. The first of these is the effort to revise Executive Order 12356, which establishes the security classification system, to provide for greater openness in the wake of the Cold War. The second, related effort is the report of the Joint Security Commission chartered by the Secretary of Defense and Director of Central Intelligence (DCI), expected in February. This commission was charged with reviewing Cold War security practices across the board and coming up with recommendations that would simplify and reduce the costs of security.

Congressional sentiment is clearly in line with the objectives of these efforts. Indeed, legislators have largely refrained from entering the fray in hopes that the new Administration would deal effectively with the issue of secrecy in the post-Cold War era. There will likely be congressional hearings on the results of both efforts, and, should a consensus emerge that they have not gone far enough, legislative proposals are not unthinkable.

The congressional intelligence committees are also expected to receive a public report early in the year concerning the efforts of the joint DCI-Attorney General task force which over the last year has examined the relationship between intelligence and law enforcement. While it remains to be seen whether the task force will recommend changes in the law—in particular, the law enforcement proviso in

section 103(d) of the National Security Act of 1947—it is clear that the intelligence committees at least expect to see progress made on the issues involved. If such progress is not apparent, the possibility of legislation again looms on the horizon.

Problems Caused by Technological Advances

Last year, the Clinton Administration raised two related issues with the Congress which will linger into 1994.

The first of these was the problem caused by the commercial sale of encryption devices which would make it difficult if not impossible for the FBI to conduct court-ordered wiretaps for law enforcement or intelligence purposes. The proposed solution to this problem was for the government to give its approval to (and purchase) encryption devices which used a special computer chip (called a "clipper chip") which would provide quality encryption but would permit the FBI (with appropriate authority and safeguards) to decrypt conversations encrypted by the chip. While considerable progress was made last year in assuaging the concerns of congressional committees with respect to the possible misuse of this system, these concerns have not been entirely laid to rest. Nor is it clear, despite the views of the Administration to the contrary, that legislation will not be needed to apply the safeguards and controls to state and local law enforcement agencies. Congress can be expected to "take the temperature" of this effort again this year, perhaps in public hearings.

A similar problem is posed for the FBI in terms of its ability to understand telephone communications which are increasingly being transmitted in digital format. Without appropriate software to transform the electronic stream of 1's and 0's into comprehensible speech forms, the FBI is unable as a practical matter to carry out court-ordered wiretaps. But the software required would vary with each of the 1400-1500 telephone companies in the United States, and would be costly in many cases to develop. For its part, the Administration has only highlighted the problem to the Congress. No solutions are proposed as yet, either regulatory or statutory.

War Powers

Last but not least, it appears that in 1994 Congress is again likely to tackle the revision of the War

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perts. In congressional testimony, Benjamin H. Flowe, Jr., a Washington attorney, reflected the views of the Center for Strategic and International Studies (CSIS) project on "Export Controls in a Changing World." According to Flowe's "effectiveness" standard, rather than focusing on "choke-point" technologies, the "catch-all" restriction "prevents the export of anything from potato chips to signal processing chips, to destinations of proliferation concern." He added:

This "knowledge" based control is wholly unilateral, covers many things totally incapable of being controlled and that can make no material contribution to the end-uses and end-users of concern, and is almost impossible for U.S. industry and the government to administer or enforce effectively. The costs of compliance to law abiding companies that are unlikely to make any material contribution to the targets are enormous by comparison with the benefits, which themselves lack focus.⁹

Other critics attacked the bureaucratic gridlock, unclear jurisdictions, and *ad hoc* nature of these controls. EPCI controls overlap other statutory restrictions, such as the 1991 National Defense Authorization Act provisions to control missile technology.¹⁰ Because the regulations involve a foreign and military affairs function of the United States, the notice, hearing, and judicial review provisions of the Administrative Procedures Act are inapplicable.

A constant point of contention regarding U.S. export controls is their extensive requirements for assurances regarding ultimate end-use of controlled commodities. It is argued that these requirements compel exporters to develop their own private intelligence networks to determine final destinations of products. For instance, in its nuclear weapons program, Iraq set up "front companies" to undertake purchases and compartmentalized its supply and advice system, so that no one foreign company (or individual) had a complete picture of the nuclear program.¹¹ Controls also require the exercise of U.S. jurisdiction over re-exports from third countries, some of which may not agree with the U.S. restrictions. Thus they may become the focal point for disputes with U.S. allies and major trading partners, or may even deter potential customers in such countries from buying U.S.-origin goods or services.

A final criticism of "catch-all" provisions is that their unilateral nature denies U.S. exporters a "level playing field." Both the Bush and Clinton Admin-

istrations have engaged in multilateral consultations to persuade other industrial countries to adopt comparable measures. However, except in the case of Iraq after the Kuwait invasion, such efforts have been less than successful. Most recently, U.S. pressure on NATO allies to ban the export of militarily useful equipment and technology to Iran has been rebuffed.¹²

Conclusion

Both the Clinton Administration and Congress recognize that the U.S. export control system requires extensive reform. The first priority is to recast (i.e., reduce and clarify) the control lists, so that U.S. dual-use exports are not unduly handicapped *vis-à-vis* foreign competition. "Choke-point" technologies should continue to be restricted, but where foreign availability vitiates such controls' effectiveness, their continuation should be periodically revisited.

The second priority is to rationalize the unduly complex (and often overlapping) licensing, implementation, and enforcement procedures which constitute the control system. This is one key objective of congressional leaders in efforts to reauthorize the Export Administration Act. The 1991 National Academy of Sciences (NAS) report makes a number of valuable recommendations in this area, in particular the proposal for a "one-stop shopping" mechanism that would provide a single administrative window (and a single licensing agency) for exporters seeking to obtain licenses.¹³ In terms of enforcement, the NAS panel recommended a rationalization of the criminal and civil sanctions in the statutes and adoption of uniformity in administrative procedures among agencies involved.¹⁴

Finally, the U.S. Government must strive to achieve maximum multilateral cooperation in standardizing international control lists and implementation and enforcement procedures. It must be recognized that our major trading competitors remain much more dependent than we on export markets. Among possible incentives could be the creation of a license-free zone among those states abiding by a common code of export conduct. These reforms could be undertaken as part of the imminent transformation of the Coordinating Committee for Multilateral Export Controls (CoCom).

It is in this broader policy context that "catch-all" provisions have to be evaluated. This legal "safety net" (to borrow Secretary Clarke's apt terminology) can be truly effective only if the U.S. control lists and administrative and enforcement procedures are

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Powers Resolution. Raised last session in the context of committing U.S. troops to Somalia, Senator Mitchell announced last fall a renewed effort in the Senate to revise the War Powers Resolution to provide a mechanism agreeable to both the Executive and Legislative branches to govern congressional involvement in the deployment of U.S. armed forces into potentially hostile situations abroad. While previous efforts to deal with this issue have never come to fruition, it does appear that, at least on the Senate side, there is recognition that a new structure and process is needed and that it is best worked out in the absence of an international crisis rather than in the middle of one.

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extensively reformed and multilateral cooperation is assured. The system must focus on a narrow universe of controllable "choke point" technologies and truly dangerous proliferant destinations. Over-extension will be as damaging to effectiveness as will under-inclusiveness because it will erode supplier-country participation. Without such real reform, U.S. exporters simply face in "catch-all" controls another layer of restrictions and impediments to trade, forcing them to operate at a competitive disadvantage. Finally, if the United States is to succeed in convincing other industrial nations to shift to a destination-based control regime, then some effective multilateral system of end-use determination must be adopted.

Dr. Rudney is a nonproliferation policy specialist at the National Institute for Public Policy and a consultant to the Standing Committee's Task Force on Nonproliferation of Weapons of Mass Destruction.

Notes

¹ White House, Office of the Press Secretary, "Fact Sheet: Nonproliferation and Export Control Policy," September 27, 1993, p. 1.

² 15 C.F.R. 778, as revised in *Federal Register*, August 15, 1991, p. 40494. Proposed rules were published in *Federal Register*, March 13, 1991, pp. 10757-84.

³ *Ibid.*, §§ 778.1-3, p. 40497.

⁴ *Federal Register*, August 15, 1991, p. 40495. In its proposed rules (*ibid.*, March 13, 1991, p. 10785), Commerce presented

the following proposed definition for comment: "Except as the term is used in part 769, a person shall be considered to know a circumstance or result when that person:

(a) Is aware that such circumstance exists, or that such result is substantially certain to occur; or

(b) Has a firm belief that such circumstance exists, or that such result is substantially certain to occur.

A person knows of the existence of a peculiar circumstance if that person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist."

Ten of twelve commenters on the proposed rules found this definition too vague and preferred leaving the term undefined.

⁵ *Ibid.*, § 778.7(c)(2)(d), p. 40498; Also § 778.9(g), p. 40500.

⁶ One may ask, however, if such control authority should be of unlimited duration if the U.S. Government proves unable to persuade other potential suppliers of the need to impose controls (i.e., if foreign availability cannot be ended).

⁷ Clarke testimony, April 23, 1991, reprinted in Joint Economic Committee, Subcommittee on Technology and National Security, *Arms Trade and Nonproliferation*, Part 1 (Washington, D.C.: GPO, 1992) p. 77. Mr. Clarke is presently Special Assistant for Global Issues and Multilateral Affairs at the National Security Council.

⁸ See William Boyer, "California Firm Protests Equipment Seizure," *Space News*, June 21-27, 1993, p. 3.

⁹ Flowe testimony before the Subcommittee on Economic Policy, Trade and Environment, House Foreign Affairs Committee, June 9, 1993, p. 7.

¹⁰ See Boyd J. McKelvain, "Export Controls and Nonproliferation," CSIS Press Briefing, January 5, 1993, pp. 4-5.

¹¹ For a description by the UN inspection team, see UN Security Council Document S/23122 (October 8, 1991) p. 5; see also Kenneth R. Timmerman, *The Death Lobby: How the West Armed Iraq* (New York: Houghton Mifflin, 1991).

¹² Elaine Sciolino, "U.S. Asks Europe to Ban Arms-Linked Sales to Iran," *New York Times*, June 10, 1993, p. A3; Elaine Sciolino, "U.S. and Germany at Odds on Isolating Iran," *New York Times*, December 2, 1993, p. A13.

¹³ National Academy of Sciences, Panel on the Future Design and implementation of U.S. National Security Export Controls, *Finding Common Ground: U.S. Export Controls in a Changed Global Environment* (Washington, D.C.: National Academy Press, 1991) p. 144. Such a proposal is largely embodied in the Roth-Oberstar bill, H.R. 3412, introduced on October 28, 1993.

¹⁴ *Ibid.*, p. 150.

Calendar of Events

March 31—Breakfast Meeting. Capital Hilton (Speaker: Secretary of Defense William J. Perry)

BOOK REVIEW

by Walter G. Sharp, Sr.

TOWARD MANAGED PEACE

by Eugene V. Rostow,
Binghamton, New York: Vail-Ballou Press (1993).
Pages: 401. Price: \$35.00.

Toward Managed Peace is the first book of what promises to be an extraordinary trilogy intended to serve as a systematic reexamination of the field of foreign affairs. This book, however, does more. It sets forth a brilliantly simple definition of national interest which should have a profound impact on shaping the national security strategy of the United States. Professor Eugene V. Rostow concludes that the supreme national security interest of the United States is an organized and effectively enforced state system which is maintained in an equilibrium of peace by a balance of power between a decisive number of the world's major powers.

Part I of the book is so rich in foreign policy acumen, the first three chapters should be read several times to ensure that no facets of Professor Rostow's wisdom are overlooked. By examining the importance and the decline of the balance of power which existed during the Eurocentered state system of the 1800's, chapter one outlines several significant, interrelated principles of a coherent United States foreign policy.

Recognizing that war is a more pervasive component of society today than at any other time in the last two centuries, the overarching foreign policy principle is that the United States cannot exist in a state of neutrality or isolationism. States have become so economically and politically interdependent that any war creates a destabilizing effect that threatens the state system which now exists under the Charter of the United Nations. We must remain an active partner in the international community.

In this international partnership, Professor Rostow asserts that the United States must take a strong leadership role to maintain a world order of independent states living peacefully under the rule of law. Alliances and coalitions are essential to this peaceful coexistence, because no country, even the United States as the world's only remaining superpower, has the power to defend itself. Law and military power are indispensable integers in this state system equation of peace. Rules of law are necessary to create the structure for independent states to peacefully coexist. Military power is nec-

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Ambassador Miller Guest at February 17 Breakfast

Former U.S. Ambassador to Tanzania and Zimbabwe David C. Miller, Jr., will address the Standing Committee's February 17 breakfast at the International Club.

A former White House Fellow, Ambassador Miller is an honor graduate of Harvard with a juris doctorate from Michigan Law School. Prior to assuming his current position as Senior Vice President of The Investigative Group, Inc., which investigates complex factual situations for major law firms, he served as Special Assistant to President Bush on the National Security Council staff. His portfolio included Africa, the United Nations, public diplomacy, counter-terrorism, and counter-narcotics.

Ambassador Miller is expected to draw his theme from a book chapter he recently authored, in which he argued that many of the apparently "new" problems in the post-Cold War era have been around for years, and we must learn from past experience to deal with them effectively—especially in situations where American lives may be at risk.

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essary as that aspect of diplomacy that encourages peace and polite interaction between States. The fundamental principle of deterrence is the willingness of States to use military power, when necessary, to protect the international state system of peace.

Professor Rostow convincingly argues that achieving the goal of an effective state system of peace should be the divining rod of a proactive United States foreign policy. The failure to develop and work toward a national security goal leads to a foreign policy by crisis management instead of preventive diplomacy.

Chapter two defines the concepts of balance of power and peace within the context of the state system as it was conceived under the Charter of the United Nations. Balance of power is that relative strength of adversaries which serves as a deterrent to aggressive action. In our existing state system, this balance is maintained by the collective strength of the United Nations, regional alliances, and coalitions, as well as the strength of individual nations. Peace is not merely the absence of hostilities. Peace is the absence of hostilities *because* states voluntarily respect and observe the law, for it is only then that states do not have to live in fear of aggression.

The protection and enhancement of the role of the international state system is the centerpiece of Professor Rostow's development of an overarching national interest. This state system is the structure within which the United States should seek to maintain peace by maintaining a balance of power. Chapter three provides an excellent history of the state system as it has evolved from a time when war was the customary law prerogative of sovereignty to the development of a United Nations centered system of positive law which outlaws the aggressive use of force.

Part II of *Toward Managed Peace* is a fascinating chronicle of our diplomatic history from 1776 to 1941. These ten chapters, which review United States foreign policy from the inception of our country to World War I, dispel the myth that the United States has historically adopted an attitude of isolation and neutrality. This part is not merely a factual recitation of United States history, but rather an insightful analysis of our foreign policy that describes how the United States has evolved into the great power that it now is.

In Part III, Professor Rostow supports his proposition from chapter one that the United States must take the leadership role in maintaining the state system as a system of peace. The United States has

become the only State with the diplomatic credibility, economic strength, and military power to exert a meaningful influence within the United Nations state system and the world balance of power. During the Cold War period, the United States leadership role was prompted by its desire for peace. Professor Rostow contends that the United States must resist the inclination in the post-Cold War period to retreat toward isolationism or neutrality. He notes that it is still unresolved whether or not Russia may pose an expansionist threat in the future, and that the Iraq invasion of Kuwait in the post-Cold War era demonstrates that the end of the Cold War has not resulted in world peace.

Professor Rostow has captured in this book fundamental concepts vital to United States national security. The inescapable conclusion Professor Rostow meticulously documents is that the United States must take a proactive leadership role as a partner in an international community of alliances that relies upon the rule of law, enforced if necessary by military power, to reinforce a state system of peace.

The insight required to write *Toward Managed Peace* is indicative of a man of vast governmental experience and expertise. The dust jacket gives only a brief glimpse of Professor Rostow's background. He is Sterling Professor of Law and Public Affairs Emeritus at Yale University and presently Distinguished Visiting Research Professor of Law and Diplomacy at the National Defense University. Previously, Professor Rostow was the Dean of the Yale Law School for ten years, and a Visiting Professor at Oxford, Cambridge, and the University of Chicago. His public service has included three years as the Under Secretary of State for Political Affairs, and two years as the Director, U.S. Arms Control and Disarmament Agency.

The author reveals in his Preface that the second volume of his series will concern aggression, described by Professor Rostow as the "most fundamental and most important problem of the state system." This discussion of aggression will examine the international legal dichotomy between aggression and self-defense. The final book will focus on constitutional aspects of the relationship between the President and the Congress of the United States in making foreign policy decisions. These last two books of the trilogy will complete a set of what are sure to become standard references for national security and foreign policy practitioners. Taken together, they set forth a strategy for how the United States can work "toward managed peace."

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