Okinawa Governor Ota Addresses ABA Breakfast

On April 15, 1997, the Standing Committee joined with the ABA Section of International Law and Practice in hosting a special breakfast address by the Honorable Masabide Ota, Governor of the Okinawa Prefecture of Japan since 1990.

In introducing the speaker, Standing Committee Chairman Paul Schott Stevens noted that Governor Ota was “one of Japan’s most prominent and outspoken advocates for a change in the status, levels, and basing of U.S. forces in Okinawa.” He observed with amusement that when Governor Ota earlier addressed the Economic Strategy Institute, his lecture was advertised as “Yankee Go Home.” Acknowledging that “the burden of the U.S.-Japan defense relationship does weigh particularly heavy upon the people of Okinawa, and that it was important for Americans to be exposed to this perspective, Stevens said that the U.S.-Japan defense relationship also provides important benefits for all Japanese people—including those on Okinawa—and quoted a recent remark by Defense Secretary Cohen that “any sharp reductions in overall U.S. military strength in East Asia could be destabilizing, fuel a regional arms race and create greater potential for conflict in East Asia.” Excerpts from Governor Ota's remarks follow. —Ed.

The Honorable Masabide Ota voiced strong opposition to U.S. military bases on Okinawa during a special breakfast program in April. Photo courtesy of Okinawa Prefectural Government.

Promoting the Rule of Law
November Conference to Honor Justice Powell

The Standing Committee will present the seventh in a series of annual conferences reviewing the field of national security law on Thursday and Friday, November 6-7, 1997, at the National Press Club in Washington, DC. As was the case last year, the conference will be cosponsored by both the University of Virginia Center for National Security Law and Duke Law School’s Center on Law, Ethics and National Security. This year’s conference is designed to pay special tribute to one of the Standing Committee’s distinguished founders, former U.S. Supreme Court Justice Lewis F. Powell. To that end, a common theme of several of the panels will be “Promoting the Rule of Law.”

This series of highly successful conferences began in 1990 at the suggestion of Standing Committee Counselor Morris I. Leibman, and thus they are often referred to as the “Leibman conferences.” While details of the program were still being final-
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When we talk about a reduction of the military bases in Okinawa, some people say it is "anti-American," but I never said "Yankee Go Home" myself. From my perspective, it is not about "anti-Americanism," but about living in peace, our standard of living, and quality of life.

Let me first give you some geographical traits about our prefecture. Okinawa is Japan’s southwesternmost prefecture. It is an archipelago composed of more than 160 islands, of which only eight are inhabited. Okinawa is blessed with a beautiful natural environment. However, grim reminders and scars linger on our islands from the past. More than fifty years have passed since the end of the Second World War, but the huge military bases still remain in our prefecture. During the U.S. military occupation, the U.S. military issued proclamations and decrees and forcefully confiscated private land using bayonets and bulldozers. Okinawan land was expropriated for the construction of military bases.

Okinawa has a proud history, traditionally characterized by the absence of weapons and the people’s love of peace. American scholars have observed that the cultures of Japan and Okinawa are fundamentally different. In contrast to Japan’s warrior culture, Okinawa is notable for the absence of militarism.

Despite our long tradition of peace, Okinawa became the site of the only ground battle fought on Japanese soil—one of the fiercest battles fought in the Pacific. A barrage of American bombs and artillery quickly destroyed the once beautiful land. More than 150,000 Okinawans died—nearly one-third of the entire population. In addition, irreplaceable cultural assets were lost. During the Battle of Okinawa, the U.S. forces started building many bases with the intent to invade mainland Japan. The U.S. military took and expanded airfields which Japanese forces had built, and also designated vast civilian areas in central Okinawa as military areas, removing civilian refugees to relocation camps.

After Japan surrendered, the refugees were about to return to their villages and towns, only to find that their homes and farmlands had been requisitioned by U.S. military forces. Okinawa is no longer a peaceful land.

Furthermore, the start of the Cold War—particularly the outbreak of the Korean War, in June 1950—led to the construction of U.S. bases in Okinawa at a furious pace. During this period, many Okinawans adamantly resisted the seizure of their land by the U.S. military, so the U.S. military responded by expropriating more farmlands, rice paddies, and villages—leaving in misery the Okinawans who had lost their land, who were compelled to immigrate en mass to Bolivia in search of a new way of life.

Large American and Japanese construction firms then arrived and began building boat facilities, highways, missile storages, and VOA facilities. Okinawa has turned into a huge military base complex called the "keystone of the Pacific"—an important strategic point in the American defense structure in the Far East.

Meanwhile, both the San Francisco peace treaty and the U.S.-Japan Security Treaty signed in September 1951 went into effect. For Japan, the peace treaty meant independence—but not so for Okinawa. Article III of the peace treaty stipulated the separation of Okinawa and its placement under a U.S. military administration.

Since Okinawa was under U.S. military control, the U.S.-Japan Security Treaty was not applied to the islands. As the only administrating body in Okinawa, the U.S. forces could build as many bases and requisition as much land as they so desired.

Discontented with the U.S. military occupation, the people of Okinawa struggled for many years for de-occupation to Japan. In May, 1972, this struggle ostensibly ended, when the administrative right was returned to Japan. Many Okinawans hoped that due to the de-occupation, the Japanese peace constitution, which guaranteed the fundamental human rights of all Japanese people, would be applied to Okinawa. Neither the Japanese nor the American Constitution had been implemented in Okinawa during the U.S. military administration.

Okinawans also wished that de-occupation would relieve the islands of the nuclear weapons, as well as the Japanese government had promised. Okinawans

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Adultery and the Military: A Reply to Gen. Creighton

by Scott L. Silliman

In a recent piece for the National Security Law Report June '97 at 3 entitled “Should the Military Be Dealing With Adulterers,” retired Army Major General Neal Creighton suggests that, to its detriment, the military has paid too much attention to prosecuting the offense of adultery. He cites the Air Force’s Kelly Flinn case as an example of where that service erred in even including adultery among the list of charges, arguing that the offense should have been disposed of administratively and not judicially. General Creighton also agrees “with the logic of Secretary of Defense William Cohen when he announced that the adultery of Air Force Gen. Joseph Ralston was not a violation of the military’s Uniform Code of Military Justice, whereas the recent cases of Major General John Longhouser and Lt. Kelly Flinn were.” I disagree with his perspective.

I do not fault the Air Force in its initial handling of the Kelly Flinn case. Had the young lieutenant heeded advice rendered on two occasions to break off the affair with Marc Zigo, the civilian husband of a young female airman at Minot Air Force Base, the matter surely would have been handled through counseling, nonjudicial punishment or other administrative tools of the commander, as has historically been the case. What prompted the Air Force to refer the charges against Flinn to trial was not the adultery offense, a crime seldom prosecuted solely by itself, but rather the more serious allegations of making a false official statement to investigators, violating an order of a superior officer not to have further contact with Zigo after their affair had become a matter of official knowledge, and fraternization with another male (not Zigo) who was a senior airman also stationed at Minot. These three offenses are more serious not only in terms of the punishment authorized but also in terms of the standards expected of officers under law and service policy. Thus, the adultery charge became a “trailor offense,” to be disposed of at the same time as all other known charges against her.

It is a mischaracterization to suggest that the Flinn case was an “adultery case”; it was far more than that when the full breadth of the charges are considered.

Why did the majority of the American people, including Senator Harkin, believe that Flinn’s only sin was adultery? Her civilian defense attorney, Frank Spinner, skillfully used the media to portray the case as dealing primarily with adultery and nothing else, while at the same time the Air Force failed miserably in its attempt to counter that perception. As to the ultimate disposition of the case, I believe Secretary of the Air Force Widnall erred in approving a request for resignation in lieu of trial and awarding Flinn a general discharge under honorable conditions. Statistically, those few resignations that have been approved by the Air Force in the last few years were virtually always under other than honorable conditions, the worst of the three types of administrative discharge authorized to be given in such circumstances. Secretary Widnall’s decision, clearly influenced by political pressure from Senators Trent Lott, Slade Gorton and others, left a muddled precedent for the Air Force, confusion in the ranks as to what standards of behavior are to be enforced, and the specter of a separate standard for female officers.

General Creighton writes that adultery is not an offense punishable under military law unless the conduct, under the circumstances, is to the prejudice of good order and discipline in the armed forces or of a nature to bring discredit upon the armed forces. That is true. It is also true of every other offense under Article 134 of the UCMJ delineated in paragraphs 81 through 113 of the Manual for Courts-Martial, including, to name but a few, negligent homicide, kidnapping, indecent assault, and fleeing the scene of an accident. To therefore suggest that adultery is singular in that respect is simply wrong.

To argue that General Ralston did not violate the Uniform Code of Military Justice whereas Major General Longhouser did is to try to draw a distinction without a difference. The circumstances are

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parallel under the law, but each is clearly distinguishable from the allegations against Lieutenant Flinn and there was never any intention to seek prosecution of either general officer. The more pertinent issue posed by the events of last summer was simply whether General Ralston, in the eyes of the White House, the Senate, and the American people at the time of his nomination, epitomized those qualities believed desirable in the officer who would lead and represent our armed forces. Secretary of Defense Cohen’s dilemma in trying to successfully move the nomination forward was not just in distinguishing Ralston’s admitted affair from Flinn’s alleged misconduct, as some have suggested. That was never the problem. It was, rather, the attempt to distinguish DoD’s imprimatur given Ralston from the Department’s support, only two days before, of the early retirement of General Longhouser at Aberdeen for his acknowledged affair with a civilian five years ago. It was that which Cohen could not do and which doomed Ralston’s nomination in the Senate. Having served with General Ralston and having the greatest admiration for his professional abilities, I regret what transpired; but I believe his decision to remove himself from consideration was proper and correct under the circumstances.

The ultimate issue is far greater than whether prosecutorial guidelines for adultery or other crimes should be "tweaked" to accommodate changing societal mores. It is rather what qualities and expected behavior, both on and off the job, we demand of those who lead and serve in our armed forces. Because we call upon our military personnel to leave home and families and walk in harm’s way—to defend our country and national interests under the most difficult of circumstances—they cannot and should not be held to anything but the highest standards. And since the call to arms seldom comes conveniently during "normal working hours," there is the need to be vigilant both on and off duty. The commander or supervisor who becomes drunk and incapable of acting in time of emergency should properly be removed from his or her position of responsibility. That’s not the same standard to which most of us are held, but it is nevertheless absolutely necessary. Further, I suggest that the traditional high credibility rating afforded members of the military is given in no small part because we do hold them to a higher standard; we trust them because they do things we do not ask of ourselves. In the final analysis, it is proper to expect higher standards of behavior from members of our armed forces than from our civilian populace, for their responsibility is immense, their risk great, and they voluntarily choose this more stringent lifestyle for a term of years or a career. Interestingly, the bulk of the calls for change—for lessening of standards—come not from those currently on active duty but rather from pundits and others who seek to "civilianize" the military. In contrast, the vast majority of those in uniform with whom I have spoken opined that Kelly Flinn should have been prosecuted for her failings rather than allowed the less severe administrative sanction. We should attune our ears to those who serve.

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hoped to have military bases in the prefecture critically down-sized to what it was in the main island; however, this was not to be. Because the U.S. forces were assured the continued freedom to use those bases after reversion, with little reduction.

Also, the Okinawan people were annoyed that the application of the U.S.-Japan security treaty and SOFA to Okinawa in effect meant that the militarily occupied land on Okinawa could not be returned unless alternative sites were provided. In a small prefecture like Okinawa, it is almost impossible to find a relocation site. Therefore, the land promised to be returned soon after reversion is still occupied by U.S. bases. . . .

Since the 1972 reversion, the U.S. controlled land in mainland Japan has been reduced by approximately 60 percent. But during the same period, U.S.-controlled land in Okinawa has been reduced by only about 16 percent. Today, almost 52 years after the end of World War II, there is still a heavy concentration of U.S. bases on Okinawa. Thirty-nine installations, or 75 percent of all installations used exclusively by the U.S. military in Japan, are located in this small prefecture, which comprises a mere 0.6 percent of Japan’s total land area.

More precisely, these military facilities occupy about 11 percent of the prefecture land, and take up 20 percent of the main Okinawa island where most of the population and industries are located. In fact, in the central and southern part of the island, where many of the U.S. bases are concentrated, the population density is 5,689 people per square mile—which is the highest in Japan. In other words, out of the entire prefecture population of 1.28 million, 1.04
million Okinawans live crowded around the U.S. bases.

Furthermore, there are twenty-nine sea lanes and fifteen areas of airspace around Okinawa which are controlled by U.S. military forces. As a result, we live under unheard of conditions, where we no only do not have the freedom to use our own air-space and sea lanes—but we also cannot use our own land.

Okinawans often wonder if Japan is really the sovereign country in the true sense of the word. At present, approximately 87 percent of military bases are on land that is owned by private individuals or groups, which is leased by the central government for U.S. military use. In mainland Japan, around 80 percent of land used by the U.S. military is government-owned land.

We have about 32,000 land owners, of which 3,000 refused to sign the lease agreements—arguing that they will not permit their land to be used in connection with warfare. They prefer to use their land in ways that will contribute to the betterment of humanity. As a result, the U.S. military is forcefully occupying their land through the application of the special measure law.

This special measure law, which was enacted in 1952, allows for expropriation of land owned by Japanese citizens for U.S. military use. Although it has never been applied in any land on mainland Japan since 1962, it has been applied in Okinawa on three occasions since the 1972 reversion. The enforcement of this law in Okinawa, but not in mainland Japan, has provoked Okinawan students to cry out against a discriminatory policy.

The history of discriminatory treatment of Okinawa with regard to expropriation of land for U.S. military use is now coming to a crisis with the central governments introduction to the Diet of a controversial bill that would revise the special measures law.

The central government is likely to use its legal basis for continuing to provide the lands for U.S. military facilities, as these contracts, involving about 3,000 anti-U.S. land owners, are due to expire on May 14. The amendment which is expected to pass the Diet would enable the central government to continue the forced lease of the land beyond this date, so the Okinawan people fear that passage of the bill amounts to a direct contradiction of Article 29 of the Japanese Constitution, which states the right to own or to hold property is inviolable.

As an aside, I would like to explain what land means to us. For the Okinawan people, land is not a mere plot of soil in which to grow crops. It is not a commodity for buying and selling. For us, land is an irreplaceable treasure bequeathed to us by our ancestors. My people have a strong attachment to their land, and their resistance against the forceful taking of their land is just as strong.

As you may know, one of the national traits of the United States is mobility, so U.S. people can easily sell their land and move on. But in Okinawa, we can not do that.

Let me now point out some of the serious problems that arise from the huge and dense concentration of military bases on our islands. Military accidents and incidents continue to occur. Since the reversion in 1972 until 1996, U.S. military personnel and their dependents have committed a total of 4,823 crimes, including twelve brutal murders of Okinawan citizens. There have been 129 aircraft accidents, and 137 brush fires caused by live firing exercises.

In addition, last December, a U.S. fighter jetisoned a 1,000-pound bomb into waters outside the area designated for U.S. military use, which is only 16 miles away from the capital city of Naha. The drop point of this unexploded bomb is right on the ship route between Okinawan islands. We fear this accident could have turned into a major tragedy. Furthermore, an incident involving accidental firing of depleted uranium bullets was uncovered, instilling fear in our residents. This depleted uranium is used at only six ranges in the United States. The firing was accidental, but this incident was not reported to the people of Okinawa until a year later, because the U.S. Government felt depleted uranium bullets were a part of conventional weaponry.

So, under such circumstances, Okinawans request the gradual reduction of Marine Corps. Marine Corps Air Station Futenma is located in the heart of a densely-populated area where there are sixteen schools, whose classes are conducted amid all the noise emanating from the base. Since the reversion of Okinawa, the aircraft station at Futenma air station have also been involved in many accidents, such as emergency landings and aircraft crashes endangering the lives of nearby residents. If the life of an Okinawan is taken in an accident connected with this base, it may not be possible to control the fury of the residents living near the base. Were such an incident to occur, it will not only undermine the U.S.-Japan security treaty, but also hurt relations between the U.S. military and the bulk of Okinawan people and do damage to the relationship between Japan and the United States, I am afraid. Therefore, the prefecture is requesting the turning over of the base.

At Camp Hansen, located in the northern section

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of Okinawa, continued live-firing exercises have destroyed an enormous amount of the natural environment in the impact area. One reason why environmental destruction continues in Camp Hansen is due to the Status-of-Forces Agreement, which essentially prevents Japanese environmental laws from being applied to the live-firing exercises conducted in Okinawa.

Countless shells have been fired at the range over many decades, and many unexploded shells remain buried underground. Even if the training there is ended tomorrow, it will take many years before the natural environment is restored due to the excessive bombardment. In comparison, live-firing exercises in Hawaii are conducted in accordance with U.S. environmental preservation regulations, which call for the immediate removal of unexploded shells after exercises.

Beside the live-firing exercises being conducted today, during the Battle of Okinawa, Okinawa was bombarded with an unprecedented rain of explosives for approximately three months. Although the unexploded shells have been gradually removed during the half-a-century following the end of the Battle of Okinawa, we continue to spend 2.4 million dollars a year for the disposal of unexploded shells. Some experts say it will take another forty to fifty years to remove all of the unexploded shells that still remain scattered throughout our islands.

Today, the high density of military bases obstructs the overall industrial and economic development of the prefecture. The bases hamper the improvement in expansion of transportation networks, block systematic development, and impede the procurement of land for investor use. Major cities, such as Naha and Okinawa, have developed in sprawls, with no zoning plan around U.S. military bases. The areas surrounding the bases are densely populated, and are underdeveloped to boot, creating serious problems for fire trucks and ambulances in an emergency. Residents will be unable to flee for safety.

Unless the military bases are returned or realigned, systematic island government and the building of a free community cannot take place.

The September 1995 rape of an Okinawan schoolgirl by three U.S. servicemen triggered the Okinawan people's pent-up anger, precipitating the October 21st Okinawan people’s rally. Okinawans from all walks of life participated in this rally, including representatives from the Okinawa Prefecture Assembly. Every political party, woman’s organization, labor union, and civic organization—in addition to teachers, students, and ordinary people—took part.

This rally, in which approximately 85,000 people participated, called attention to Okinawa's U.S. military base-related problems at home and abroad. At the rally, the Okinawan people denounced the rape and adopted a protest resolution containing the following demands:

1. Imposing strict discipline on military personnel and eradication of crimes by military personnel and civilian employees of the U.S. military;

2. Swift and complete compensation, including an apology to the victim;

3. The quick revision of the Status-of-Forces agreement; and

4. Promotion of the reduction and the realignment of the military bases.

On November 15, 1995, a 100-person delegation, led by the president of the Prefecture Assembly, went to Tokyo to press our aforementioned demands. The delegation handed over the Okinawan People’s Rally protest resolution to the Prime Minister and Minister of Foreign Affairs, demanding answers to the problems Okinawa faces. In 1996, in order to try to reach an agreement concerning the military base problems in Okinawa, the Japanese and American Governments held many meetings. On September 8, 1996, when both governments were about to enter the final stage of their talks, the first prefecture referendum in Japan was held in Okinawa at the initiative of the prefecture residents. The referendum asked residents for yea or nay on the revision of the Status-of-Forces Agreement and the reduction and realignment of U.S. military bases. Of the 541,638 who voted, 90 percent voted yea for base reduction and realignment and revision of SOFA.

To protect their citizens' lives and property, and Okinawan prefecture government has repeatedly petitioned the U.S. and Japanese Governments to reduce and realign the bases, to revise SOFA, and to prevent base-related problems. The Okinawan people are not asking for an abrogation of the U.S.-Japan security treaty.

In order to recognize and actively seek solutions to the reduction and realignment of the U.S. military bases in Okinawa, the U.S. and Japanese Governments, in November of 1995, established the Special Action Committee on Okinawa. In Decem-

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Point of View

Why US Troops Must Arrest War Criminals

by John F. Hector

The Clinton Administration has erred in its interpretation of U.S. obligations under international law regarding the location, arrest and detention of suspected war criminals in Bosnia and Herzegovina. Their interpretation is directly contrary to the language of both the Geneva Conventions and Security Council Resolution 827, and without support in legal reasoning.

The Administration has argued (see, e.g., "An Interview with Defense Department General Counsel Judith A. Miller," Report, Summer 1996 at 2 — Ed.) that U.S. forces attached to the multinational Implementation Force (IFOR) (now the Stabilization Force (SFOR) with the same mandate) are under no obligation to seek out and apprehend those indicted by the International Criminal Tribunal for the former Yugoslavia (Tribunal) because:

1. the applicable provisions of the Geneva Convention do not constitute a "universal obligation," but rather these provisions apply only "to the territory of the United States";

2. the arrest warrants issued by the Tribunal do not specifically state that U.S. forces are to seek out or search for the indicted criminals; and

3. the North Atlantic Council, the policy-making body for NATO, has determined that the mission of SFOR forces "does not include seeking out or searching for accused war criminals."

These contentions are nothing short of a calculated policy of evasion of legal obligations imposed by international law. Each state contributing troops to SFOR is a party or successor state party to the Geneva Conventions, and each is therefore obligated "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts," the courts of another state concerned which is able to make out a prima facie case, or an "international penal tribunal." (Geneva Convention No. I, Art. 49; Geneva Convention No. II, Art 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146; International Committee of the Red Cross, I Commentary on the Geneva Conventions of 12 August 1949, 366 (1952)). The plain meaning of the phrases "search for," "shall bring," and "an international penal tribunal" is self evident.

The administration contends that "... it is to the appropriate officials of that country [Bosnia and Herzegovina] the world community must look for action." Logically extrapolated, the administration would support the notion that, in post-war Germany, officials of that country were solely responsible for the location, arrest and detention of Nazi war criminals in Germany. Such a notion cannot be sustained in view of Security Council Resolution 827, which established the Tribunal. Resolution 827 requires all states "to cooperate fully with the International Tribunal" and to "take any measures necessary" to implement that resolution. The resolution specifies no exceptions to that mandate. Moreover, nothing in the Geneva Conventions, apart from those provisions in the Fourth Geneva Convention specifically intended to apply only within an occupied territory, imposes a geographic limitation on the legal obligation under the Geneva Conventions. The administration's new and wholly unsupported interpretation would eviscerate the obligations of states parties. It would lead to the absurd result that naval forces would be under no obligation to search for sailors who fired on hospital ships or lifeboats except in territorial waters.

This is not to say that U.S. armed forces or other personnel have a duty to invade another country to search for, arrest and bring to justice persons suspected of grave breaches. First, SFOR forces have plenary power to operate at will throughout Bosnia and Herzegovina with "the authority to detain indicted war criminals and transfer them to the custody of the tribunal if the opportunity arises or if any such individual threatens the SFOR mission. NATO approved this authority on December 16, 1995." David J. Scheffer, "International Judicial Intervention," Foreign Policy, Spring 1996, at 43. This statement of the powers of SFOR has been repeated on numerous occasions by SFOR spokespersons and commanding officers. Indeed, the national authorities have authorized SFOR personnel to arrest suspects and repeatedly requested SFOR to do so. Thus, the situation is quite different from the situation where the persons suspected of grave breaches are located in a state outside Bosnia and Herzegovina and which is not contributing personnel to SFOR. Nevertheless, even in that situation, State parties would have a duty to search for the location of such persons through other means, such as monitoring the press, and as part of any intelligence activity.

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like the routine and extensive monitoring of radio and television broadcasts.

Further, in reading Resolution 827 in conjunction with the General Framework Agreement on Peace in Bosnia and Herzegovina (the Dayton peace agreement), the first two propositions are directly contrary to the spirit and intent of the bodies which drafted and adopted the Resolution and the peace agreement. SFOR is obliged under the peace agreement to “take such action as required” to ensure that all parties “cooperate fully with any international personnel”. Under Security Council Resolution 827, “all States shall cooperate fully with the International Tribunal and its organs” and consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber.” Therefore, all states, including the U.S., must consistently assist the Tribunal to implement the international arrest warrants and other arrest warrants they have received. There are no exceptions for SFOR.

Thus, it is beyond question that the Security Council understood, and intended, that SFOR would possess the authority to detain and transfer those indicted by the Tribunal. SFOR itself has repeatedly proclaimed that it operates “at will” throughout Bosnia and Herzegovina. Therefore, taking such action as required to ensure full cooperation with the Tribunal should impose no difficulty for that force and the 30,000 troops under its command. The contention that the North Atlantic Council has made a political determination that the mission of SFOR forces does not include searching for indicted war criminals, is equally without merit.

The Clinton Administration has admitted that “There are obviously political considerations involved . . . .” This statement echoes the sentiments of the Legal Advisor to the Supreme Allied Command in Europe, Max Johnson, Jr., who has contended that the role of SFOR in the detention of war criminals was worked out “after very careful consideration of the political realities in the region.”

Further, these attempts to hide “political necessities” behind legal reasoning are flawed both in logic and in legal rationale. If the U.S. can take the position that its troops need not obey international law, including the Geneva Conventions, because its troops at the relevant time are members of a unilateral force, then it follows that any government, at any time, could place its own troops under the name of any multilateral force conceivable, and claim that it was no longer subject to international law. This position is nothing less than an invitation to debase basic international obligations which states undertook to fulfill in good faith nearly half a century ago.

The contention that U.S. troops are not bound by the Geneva Conventions, Resolution 827 and the Dayton peace agreement because SFOR is not a party to those accords is equally incorrect as a matter of law. The Geneva Conventions have been generally accepted as reflecting customary international law, the standard by which international accords are viewed. As such, they are binding on all states, and, therefore, binding upon intergovernmental organizations, which are established by and represent the states.

The U.S. must not make the tragic error of bending its solemn commitments under international law to meet “political necessities.” The potential consequences to all nations, and to all persons to whom the U.S. has made a solemn pledge to afford the protection of these conventions, cannot be underestimated nor ignored. There cannot be a lasting peace in Bosnia and Herzegovina, nor assurance of future justice in all corners of the world, until nations fulfill their solemn commitments under international law. Amnesty International calls upon the U.S. to ensure that political considerations of the moment do not undermine its historic commitment to the rule of law.

*The writer is a member of the International Criminal Court Steering Committee of Amnesty International’s Legal Support Network.*

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ber of 1996, SACO issued its final report in which the Japanese and the U.S. Governments agreed to return 21 percent of the land area used by the U.S. military facilities, including the return of much requested Futema Air Station. The SACO final report showed sympathy to the Okinawan people, who for a long time have carried the burden of military bases in Japan.

However, the SACO final report states that most of the facilities must meet the precondition of relocating to other facilities or areas within Okinawa. Consequently, there is a strong resistance from the municipalities where the facilities would be relocated, who say that the situation will lead to the enforcement of military base functions and the
permanent placement of U.S. military bases in Okinawa.

To solve this predicament, the Okinawan Prefecture Government has drafted a plan called "The Base Return Action Program" which ultimately calls for the return for all of the U.S. military bases in Okinawa in three phases by 2015. In order to realize this plan, we must at the same time ask for the gradual reduction of the U.S. Marine Corps currently stationed on the island.

Okinawa would particularly like to see the U.S. Marine Corps gradually reduced. The Marine Corps counts for 75 percent of the land area used by military bases in Okinawa. Of the 28,000 military personnel assigned to Okinawa, approximately 50 percent, or exactly 17,000, are Marines. Therefore, a reduction of Marine Corps would promote the reduction and realignment of U.S. military bases, minimize the number of crimes and accidents, prevent the destruction of the environment, and lessen the burden put upon the citizens of Okinawa.

Let me emphasize here that there is no provision in either the U.S.-Japan security treaty or the Status-of-Forces Agreement which states that the U.S. military bases must be on Okinawa. The people of Okinawa feel that, if the U.S. and Japanese Governments believe that the U.S.-Japan security treaty is so important to both nations, the burden of the U.S. military bases must be equally shared by all Japanese.

The Okinawa Prefecture Government is not demanding, as I said, that the U.S.-Japan security treaty be abrogated. We are only asking for the resolution of base-related problems to safeguard Okinawan citizens' lives and property.

Now let me turn to the question of U.S. base revenue in Okinawa. Okinawa's annual revenue from the military bases in 1995 included $500 million from land leased to U.S. military bases, $400 million from local civilian employment on bases, and another $400 million from direct consumption by military personnel and their dependents. In total, the annual revenue was $1.3 billion. However, the point is this: While the revenues generated from military bases in 1972 comprised more than 16 percent of the gross prefecture product, presently that figure has dropped to 5 percent. 

Also, as many as 40,000 Okinawans were once employed on the bases. Today, that figure has dropped to 8,200, showing that Okinawans are no longer highly dependent on the bases for employment.

On the other hand, revenues generated from tourism has increased as more and more tourists visit Okinawa each year. The revenue from tourism totaled $250 million in 1972, but in 1995 the revenue reached $2.8 billion—ten times as much as it was in 1972. So you can see that revenue generated from tourism is twice as high as revenue generated from the U.S. bases, making the tourism industry a primary item in Okinawa's economy.

Other aspects of the economy of Okinawa must also be discussed. Okinawa's per capita income is $16,952, is the lowest in the country, being only 71.2 percent of the per-capita income in mainland Japan, which is $23,800. Also, the 8.6 percent unemployment rate in Okinawa is twice as high as on the mainland.

The most serious statistic is the 13.6 percent unemployment rate among the younger generation in Okinawa, and the suicide rate among the younger generation is three times as high as that of mainland Japan. Promoting Okinawa's industries and economy, and reducing the unemployment are issues that must be taken up immediately. So I often discuss them with Prime Minister Hashimoto, and I feel very concerned about the matters.

To address the problems we face today, the Okinawa Prefecture has formulated a cosmopolitan city formation concept—Okinawa's grand design for the twenty-first century. Based on the ideas of peace, coexistence, and self-reliance, the concept is designed to promote the economy, to establish a solid foundation of livelihood, and to establish Okinawa as a peaceful, dynamic, and rich prefecture.

More concretely, Okinawa is aiming towards worldwide recognition by becoming a core information and communications center through such things as international industrial centers and renovation of Naha Airport into a major international airport. Okinawa is working in cooperation with the central government to implement the cosmopolitan city formation concept.

We in Okinawa also wish to utilize our traditional peace commitment, to transform Okinawa from a military system of the Pacific to an island of peace and abundant natural beauty, to give peace to our younger generation as we move towards the twenty-first century. To show our faith in peace, in 1995, to mark the fiftieth anniversary of the end of World War II, we erected the cornerstone of peace. Engraved on the monument are the names of the 230,000 who died in the Battle of Okinawa, including the names of 14,005 American soldiers killed.

We hope that memorial will contribute to the establishment of global eternal peace and help pass the lessons we have learned about the horrors of war to all peoples throughout the world. Let me conclude with these words: The Okinawan people
Gov. Ota Breakfast . . .
Continued from page 1

argue that Washington and Tokyo look at Okinawa in terms of security, and the lose sight of 1.2 million people who actually live there. That is exactly the point I am trying to make. Those who live on these islands contend that they are bearing more than their fair share of the bargain of the U.S.-Japan security treaty. So action must be taken soon to resolve this unfair situation.

After fifty-two years of coexistence with the gigantic military bases, the Okinawan people feel that they are now entitled to a dividend of peace. Thank you very much. 

November Conference . . .
Continued from page 1

ized as we went to press, the basic program has been agreed upon and several prominent speakers have already confirmed their participation.

As has always been the practice in this series, the opening panel, which will begin on Thursday at 9 AM following registration and welcoming remarks, will feature a round-table discussion by senior national security lawyers from the Executive Branch. Historically, we have been very successful in bringing together the senior legal officers from all of the major departments and agencies involved in this field, such as the Legal Advisers to the Department of State and National Security Council and the General Counsels to the Defense Department and Central Intelligence Agency. In recent years the Legal Adviser to the Chairman of the Joint Chiefs of Staff has also taken part in this fascinating discussing of contemporary issues of national security law.

Thursday morning’s second panel will follow a similar format, bringing together senior congressional committee staff lawyers to discuss contemporary issues being addressed on the Hill. If last year’s experience is any guide, this, too, will be a fascinating program.

The sponsoring organizations have invited Secretary of State Madeleine K. Albright to address Thursday’s luncheon.

Following lunch, Thursday afternoon’s panel will address “Democracy Enlargement: Building the Rule of Law,” and will feature experts from inside government and the private sector addressing ways in which the United States can further the growth of democratic principles and the rule of law abroad. Later that evening, a dinner honoring Justice Powell will include remarks by John C. Jeffries, Jr., a distinguished member of the University of Virginia Law School faculty and former law clerk to Justice Powell, and by former Standing Committee Chairman John H. Shenefield.

Friday morning’s first panel will begin at 8:30, addressing “Adultery, Fraternization and the Rule of Military Law.” This timely panel will be chaired by retired Air Force Colonel Scott L. Silliman, Executive Director of the Center on Law, Ethics and National Security at Duke Law School, some of whose thoughts on this topic are summarized in an article beginning on page 3 of this issue of the Report.

Friday’s second panel will address Encryption, National Security and the Internet—another especially timely issue—which will be followed by a luncheon address by The Honorable Walter B. Jones, U.S. Representative from the third district of North Carolina. Congressman Jones will discuss the enactment last year of a statute criminalizing under U.S. law the violation of certain international war crimes conventions. Congressman Jones played a prominent role in the drafting and passage of this statute.

Friday’s final panel will begin at 1:45 PM and will address “Training in the Rule of Law: The Expanded International Military Education and Training (EIMET) Program.” This panel will, as the title suggests, review the record of an important initiative to promote human rights and the rule of law within the armed forces of foreign countries.

Invitations to the Leibman VII Conference will be mailed out in the coming weeks. In the meantime, if you would like additional information, contact Holly McMahon at the Standing Committee’s office (see box on the bottom of page 11).

Calendar of Events

Sept. 18—Breakfast Meeting, University Club (Speaker: Caspar Weinberger)


Nov. 6-7—Conference on “National Security Law in a Changing World: The Seventh Annual Review of the Field—Promoting the Rule of Law, and Tribute to Lewis F. Powell,” National Press Club (see article on page 1).
Classification Appeals Panel Rules Against Agencies in 33 of First 34 Cases

In April 1995 President Clinton issued Executive Order 12958 on "Classified National Security Information," which among other things established the Interagency Security Classification Appeals Panel (ISCAP)—only the second interagency appeals panel in U.S. history. Chaired by Deputy Assistant Attorney General Roslyn A. Mazer and staffed by the Information Security Oversight Office (ISOO), the six-member panel includes senior appointees by the Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, the Archivist of the United States, and the Assistant to the President for National Security Affairs.

The panel's mission is threefold:

(1) to consider and decide appeals by individuals whose requests for document declassification have been denied by federal agencies;

(2) to approve or reject requests by agencies seeking exemptions from the automatic declassification provisions of the Executive Order; and

(3) to decide appeals brought by individuals who challenge the classification status of information they already possess.

The panel began its work in May of last year, and on June 2 of this year issued a report on its activities during its initial year of operation. To date the panel has decided appeals seeking the declassification of 34 documents totaling approximately 5,000 pages—most dating from the 1950s and 1960s and most located in presidential libraries. Of these, the ISCAP has voted to declassify 27 documents in full, to declassify significant portions of another six, and to affirm an agency's classification action with respect to only a single document.

The panel's report provides brief summaries of several of the documents that were the subject of appeals during the initial year. One document, for example, provided highlights of a 1960 meeting between President Eisenhower and British Prime Minister Harold Macmillan. Apparently the Department of State (or perhaps another agency) had sought to keep classified information described in the report as "an exchange of views about other national leaders," but this effort was rejected.

Of the six documents which ISCAP further declassified only in part, most of the protected language pertained to the identities of human intelligence (HUMINT) sources or otherwise jeopardized sources and methods. A small portion of the minutes of the White House Committee on Nuclear Proliferation was also protected on the basis that its release "would assist in the development or use of weapons of mass destruction."

According to the report, "the only document to date in which the ISCAP has not voted to declassify additional information reveals the actual identities of individuals who provided the allies with intelligence information during World War II. A database of ISCAP decisions is available from ISOO either on Microsoft Access 2.0 or in hard copy. For further information, contact Steven Garfinkel, Director of ISOO and Executive Secretary to ISCAP, at (202) 219-5250 or by fax at (202) 219-5385.

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The National Security Agenda

Former State Department Legal Adviser Proposes Treaty on Property Rights—Arguing that "the international recognition of property rights lags behind the recognition of other human rights," former State Department Legal Adviser (and Standing Committee member) Edwin D. Williamson proposed in an op-ed article published in the Washington Times on June 11 that the United States take the lead in promoting a new international treaty that would prohibit "expropriation of property unless done for a public purpose, without discrimination and with 'prompt, adequate and effective' compensation." He proposed that an agreement reached in April between the United States and the European Union—in an effort to settle differences over the Helms-Burton Act—should serve as a model for such a convention.

New Study Examines Sharing Secrets With Congress—Standing Committee Advisory Committee member L. Britt Snider, whose impressive career has included service as Chief Counsel to the Senate Select Committee on Intelligence and Staff Director of the (Aspin-Brown) Commission on the Roles and Capabilities of the U.S. Intelligence Community, has recently published a monograph entitled "Sharing Secrets With Lawmakers: Congress as a User of Intelligence." Written while Snider was a Visiting Senior Fellow at the CIA's Center for the Study of Intelligence, the study notes that prior to the end of the Vietnam conflict Congress had historically been given very little intelligence information. The backlash to allegations of Executive abuses of power during that conflict, and the allegations produced by the Church and Pike Committee investigations in 1975-76, led to congressional demands both to know what the Intelligence Community was doing and for access to its work product. Snider notes that "Since 1992 the volume and scope of intelligence support provided to Congress have grown steadily," and that "members and staff are able to obtain briefings from intelligence agencies at the drop of a hat on virtually any subject they choose," which Snider says "has the potential for overwhelming the capabilities of the Intelligence Community to the detriment of its customers in the executive branch...." He notes that the U.S. practice of making intelligence information available to the legislative branch is a departure not only from traditional U.S. practice but also from the practice of most other countries.


Maldon Institute Highlights Drug Money Laundering Issues—A new report by the Washington-based Maldon Institute notes that about 5 percent of Americans at least occasionally use marijuana or other illegal drugs. About 82 percent of the estimated 780 metric tons of cocaine smuggled out of South America each year comes to the United States, and the sale of illicit drugs around the world nets between $800 billion and $1 trillion annually—a sum greater than that of the petrochemical industry. To gross $1 million, a criminal organization need only bring into the United States about 10 kilograms (22 pounds) of pure heroin, crack, or rock cocaine. But after the sales are made, the criminals face the problem of what to do with the roughly 250,000 pounds of cash it receives in return for those 10 kilos of drugs. At the national level, the illegal drug industry sells at least $50 billion annually (about the same gross income as the Chrysler Corporation), and these sales produce roughly 13 million pounds of cash. The Maldon study summarizes some of the legal instruments currently being used to attack the drug industry by monitoring its cash transactions—such as the 1986 Money Laundering Control Act and the 1990 Bank Secrecy Act—and quotes Price Waterhouse expert Michael F. Zeldin as warning that the use of "cybercash" or "E-money" via the Internet is likely to complicate the law enforcement mission. For further information call (410) 366-2531.