NATIONAL SECURITY LAW IN A CHANGING WORLD: 
THE EIGHTH ANNUAL REVIEW OF THE FIELD

Edited by Pamela J. Parizek

On November 12-13, 1998, the Standing Committee on Law and National Security of the American Bar Association, the Center for National Security Law of the University of Virginia School of Law, and the Center on Law, Ethics and National Security of the Duke University School of Law, co-sponsored the eighth annual conference devoted to the review of developments in the field of national security law. As in prior years, lawyers from the executive, legislative and judicial branches participated in the conference, as did representatives from academia, the military and the media. The result was a thoughtful commentary on significant national security developments during the past year. — PJP

Welcoming Remarks

Elizabeth Rindskopf, Chair of the Standing Committee on Law and National Security, opened the conference with an historical overview of the Committee and its work. In 1962, Rindskopf observed, five wise and inspirational leaders — Frank Barnett, Morris I. Leibman, R. Daniel McMichael, William Mott and Justice Lewis F. Powell — created the Standing Committee on Law and National Security. Their goal was to educate and inform the public, including lawyers, on the subjects of national security and international law.

Reflecting upon the past decade, Rindskopf noted that Justice Powell’s death this past year marked the passing of four founders of the Committee. This conference, in particular, is a rededication of the goals and objectives of the Committee which Justice Powell helped create.

Justice Powell, Rindskopf recalled, was an inspiration, in his presence, demeanor and bearing. From his experience early in his career as an army intelligence officer handling ultra-coded German messages during World War II through his tenure as a Supreme Court Justice deciding cases involving delicate and important national security concerns, Justice Powell helped shape national security law and define the work of the Standing Committee.

Continued on page 3
Panel I — Survey of New Developments in National Security Law: Executive Branch Perspectives

Michael J. Matheson

In his fifth appearance on the panel, Michael J. Matheson, Principal Deputy Legal Adviser to the Department of State, observed that several old themes still command our attention today. Those themes include: Saddam Hussein and his repeated threats to international peace and security, suits against the US in the World Court involving important areas of national security, the commission of war crimes and the effort to bring their perpetrators to justice, and the development of the rules of armed conflict to deal with new problems in warfare.

In the World Court, there are two major cases involving the US in matters of national security. The first, the Lockerbie case, arose out of the destruction of Pan Am 103 over Lockerbie, Scotland in 1988. After the US and the UK indicted two Libyan agents determined to be responsible, and brought the case to the Security Council for actions against Libya, including economic sanctions, Libya moved to bring the case before the World Court. Libya claimed that under the Montreal Convention on Aircraft Sabotage, they had an exclusive right to try or extradite the individuals found to have committed the crimes. The US and UK countered that the Montreal Convention was an additional remedy to deal with terrorist crimes, and did not give an exclusive right to any state, particularly one involved in the terrorist act. The US and UK sought and obtained from the Security Council mandatory decisions under Chapter 7 of the UN Charter which required Libya to release the terrorists for trial in US and UK courts and to fulfill certain other conditions. An extensive briefing schedule has been set, and for several years, the parties have been filing briefs on the merits of the action. At stake in the Lockerbie case is the authority of the Security Council in future cases involving terrorism.

Concurrently, the US and UK have been pursuing efforts to obtain custody of the two Libyans for trial. This past year, the US and UK proposed a trial of the two individuals by a Scottish Court in the Netherlands. The proposal was made in consultation with the British and Dutch governments, and designed to offer a fair trial to the two accused. Libya itself has advocated such a trial in the past, and the US and UK are awaiting Libya’s response to the proposal.

The second major case in the World Court involving the US is the Iran Oil Platforms case. The case arose out of a series of attacks by the US Navy on platforms in the Persian Gulf used by Iran during the Iran-Iraq War to attack US and other neutral vessels. Iran sued the US in the World Court over these attacks under the 1955 Treaty of Amity and Commerce between the US and Iran, which, Iran argued, requires both parties to act peacefully in all circumstances. The US objected on jurisdictional grounds, since the bilateral commerce treaty was never intended to deal with armed conflict situations, and on the merits, based upon its right to exercise self-defense in response to Iranian attacks on its

Michael Matheson makes his fifth annual appearance on the executive branch panel as the Principal Deputy Legal Adviser to the Department of State
vessels. The US also counterclaimed against Iran for damage and injury to US vessels during the period in question. The Court dismissed two of the three grounds for Iran’s suit, rejected Iran’s efforts to dismiss the counterclaim, and set a two-year briefing schedule on the Iranian claim and US counterclaim. The resolution of the case could have a significant impact upon the interpretation of the scope of the right of self-defense, the rules of naval warfare and the rules of liability of states who unlawfully exercise the use of force.

Another recurrent theme at the State Department is the perennial problem of Saddam Hussein. This time last year, Matheson recalled, we were in the midst of a similar crisis resulting from Hussein’s refusal to provide UN inspectors access to certain facilities, including presidential palaces. The crisis was resolved, in part, due to the willingness of the US and other nations to use force to terminate the violations, and the negotiation of an agreement between the UN Secretary General and Iraq which required Iraq to carry out its obligations under previous Council resolutions to provide UN inspectors immediate, unrestricted and complete access to all facilities within Iraq. This year, however, Hussein has flouted these commitments, and has indicated he is ceasing cooperation with UN inspection agencies. The position of the US is that members of the original Gulf coalition may employ force in this situation, without further specific authorization by the Security Council, because Iraq’s material breach of the conditions of the cease-fire has resurrected the coalition’s right to use force in accordance with the Security Council’s prior authorization under Chapter 7 of the UN Charter.

Regarding war crimes, the State Department continues to monitor the two tribunals created by the Security Council in the 1990’s to deal with aggravated cases of war crimes, genocide and crimes against humanity — the tribunal for the former Yugoslavia, created in 1993, and the tribunal for Rwanda, created in 1994. In each tribunal, the number of indictments, trials and convictions has increased. The Yugoslav tribunal has indicted 80 persons, secured the custody of 30 and commenced trials of 15, several of whom have been convicted. The Rwandan tribunal has indicted 35 individuals, taken custody of more than 20 and commenced several trials. These figures reflect the acknowledgment by governments and international organizations of their responsibility to bring the perpetrators into custody and to surrender them for trial. While these actions are significant, they are not enough. In particular, the Federal Republic of Yugoslavia (FRY) has not fulfilled its obligations to surrender persons indicted, as noted in tribunal reports to the Security Council. For the efforts of the tribunals to succeed, Matheson noted, nations must be willing to invest political and military capital to bring to justice those responsible for war crimes.

Finally, Matheson discussed recent developments in the law of war to deal with modern conflict, specifically, the problem of anti-personnel and other landmines. After a period of negotiations under UN auspices to impose new restrictions on the use of landmines to protect the civilian population, the US submitted the amended mines protocol to the Senate last year. During the summer of 1998, the State Department negotiated a satisfactory resolution of ratification between the Administration and the Senate Foreign Relations Committee. There have since been further refinements to the resolution, which should be ratified next session. Matheson emphasized the importance of the protocol with respect to those mine users who reject the complete prohibition of the Ottawa Convention, so their use will conform to reasonable standards to protect the civilian population. The State Department will make every effort to get the US on board, and then try to convince other users, such as Russia, India and Pakistan, to do likewise.

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Judith A. Miller

In her fourth appearance on the executive branch panel, the Honorable Judith A. Miller, General Counsel of the Department of Defense (DoD), provided an update on national security issues within her agency. By way of background, Miller explained that the activities of DoD include: international peacekeeping operations, rules of engagement, overseas basing agreements, status of forces issues, security assistance, international training, disaster relief, information operations, humanitarian assistance, intelligence oversight, law of the sea, law of armed conflict, arms control and disarmament, foreign industrial and scientific cooperation, export controls and foreign claims. She then directed her remarks to four areas of particular concern to the DoD during the past year — NATO and Kosovo, the Anti-Ballistic Missile (ABM) Treaty, Law of the Sea and the Chemical Weapons Convention (CWC).

With respect to Kosovo, the UN Security Council determined that the situation in that nation constituted a threat to peace and stability in the region. This determination was confirmed by the UN Secretary General in his Report to the Security Council pursuant to Resolutions 1160 (1998) and 1199 (1998). That Report revealed that some 200,000 people in Kosovo had been forced to flee their homes, as a result of widespread and indiscriminate attacks against the civilian population and the destruction of homes, farms, farm machinery and livestock. These attacks generated a spill-over effect into nations adjacent to the FRY, including Albania, Macedonia, Bosnia-Herzegovina and Montenegro, and threatened to destabilize the Balkans. From the perspective of the NATO alliance, the prospect of Balkan destabilization posed a direct and immediate threat of armed conflict, which could have engulfed NATO members, such as Greece and Turkey, irreparably damaged NATO’s southern flank, and drawn the NATO alliance into a conflict. These threats, coupled with the failure of diplomatic and political efforts to resolve the crisis in Kosovo, left no reasonable alternative to the use of force in defense to FRY intransigence.

NATO’s proposed military operation was limited, focused, and directed at military and paramilitary targets. It was designed to terminate unlawful attacks on the civilian population, to defeat FRY’s threats to regional peace and stability, and to restart diplomatic and political efforts to resolve the crisis. As Miller observed, the use of force considered by NATO, particularly in the absence of an armed attack, marked an extraordinary development. NATO was established to confront the threat of invasion posed by the Soviet Union and its allies following WWII, and evolved to maintain the collective security of the North Atlantic area by defending against any attack on one of its members. NATO’s use of force in Bosnia and consideration of the use of force in Kosovo signified a departure from its defensive posture and willingness to undertake a real world military operation to preserve peace and stability.

With regard to the ABM Treaty, Miller remarked that succession continues to be a point of contention between the executive and legislative branches. The issue arose in the early 1990’s following the breakup of the Soviet Union, which raised the important question of who would succeed to its obligations under the Treaty. To resolve this question, the US initiated negotiations in the Standing Consultative Commission which resulted in a Memorandum of Understanding on the Succession (MOUS) that named four parties in place of the former Soviet Union: Russia, Belarus, Kazakhstan and Ukraine. The Senate contended that like any treaty, the MOUS required its advice and consent. The President claimed the resolution of succession question was a function of the executive branch, and indicated the Senate’s advice and consent was not required. In response, the Senate used the vehicle of the CFE Flank Agreement to require the President to certify that he will submit for the advice and consent of the Senate any agreement that would add parties to the ABM Treaty or affect its scope or coverage. In subsequent correspondence concerning the legal status of the ABM Treaty, the President has taken the view that the ABM Treaty remains in force — even though the MOUS has not been ratified or entered into force — while several Senators claim the treaty lapsed with the dissolution of the Soviet Union.

Unlike the MOUS, there is consensus that the Law of the Sea Convention requires the Senate’s advice and consent. However, the Senate’s failure to consider the issue during the 105th Congress caused the US to lose its provi-
sional membership in the International Seabed Authority on November 16, 1998. In Miller’s view, this development has compromised US national security and long-term economic interests by exposing the US to skepticism in the world community on matters related to oceans law and policy. Since there has been no substantive opposition to US accession to the Law of the Sea Convention, Miller is confident that the Convention would be approved by the Senate, if and when the Convention receives a hearing.

The Chemical Weapons Convention has been in force since April 1997. Since that time, Miller reported, there have been over 100 inspections of DoD facilities. These inspections have given the military and civilian personnel who interact with CWC inspectors greater operational expertise and provided DoD lawyers increased exposure to associated interpretive issues. As a result of these interactions, the US has initiated discussions with the Organization for the Prohibition of Chemical Weapons on a wide range of technical and legal issues related to treaty implementation and compliance. During the past year, Congress also passed the implementing legislation for the CWC. This legislation establishes the requirements for declarations by private entities and will allow the US to fulfill its obligations under the CWC.

Robert M. McNamara, Jr.

Robert M. McNamara, Jr., the first statutory General Counsel of the Central Intelligence Agency (CIA), discussed three significant issues facing the agency and the intelligence community: international issues, issues associated with the protection of classified information and issues of the electronic age.

International issues which impact the intelligence community include the Wye River Memorandum, US government support to the War Crimes Tribunal, international organized crime and international terrorism. The Wye Memorandum reflects the agency’s most recent behind-the-scenes effort to support diplomatic efforts by collecting and analyzing intelligence and providing the analysis to policymakers. Historically, the CIA has supported such agreements to end wars in the Middle East, to monitor arms control agreements in the former Soviet Union, and to lower tensions between Pakistan and India. The Wye Accords continue this trend by providing analytical support to policymakers engaged in the Israeli-Palestinian peace process.

The intelligence community also supports the US government effort to assist the War Crime Tribunals in identifying and bringing to justice the perpetrators of war crimes in Bosnia, Kosovo and Rwanda. This support includes analytic product on ethnic cleansing and mass graves, as well as open source translations, maps and selected imagery products, which is provided to the State Department for the use of US policymakers. In appropriate cases, the State Department also makes the information available to tribunal prosecutors on a confidential basis for background use, the development of leads, and in a handful of cases, for use in court following declassification or other alternatives designed to protect sources and methods.

In recent years, the threat to the US of international organized crime has increased as a result of loosening border controls, political and economic liberalization, and the sophistication of global communications and commerce. These threats include: narcotics trafficking; the smuggling of illegal aliens, firearms and other contraband; financial fraud; the theft and counterfeiting of intellectual property; telecommunications fraud; and other crimes. Some groups — such as China’s Big Circle Boys, Russia’s Solntsevo Organization, and Japan’s Yamaguchi-gumi — threaten the US
by undermining the political and economic stability of countries important to our national security interests. The President’s International Crime Control Strategy launched in May 1998 calls for the intelligence and law enforcement agencies to work together to combat these threats.

Like organized crime, terrorism is a transnational problem where the operations and activities of law enforcement and intelligence overlap. To avoid conflict between law enforcement investigations and intelligence collections, each community has taken steps to understand each other’s mission. For example, law enforcement personnel have been detailed to the DCI Centers and pursuant to EO 12333, the intelligence community provides intelligence product and leads to the law enforcement community. In providing such assistance, the CIA takes precautions to ensure it is not aligned with the prosecution by training its case officers to keep out of the evidentiary chain and to avoid becoming witnesses in criminal prosecutions.

Turning to the protection of classified information, McNamara observed there is an inherent tension between the need to protect classified national security information and the right of the public, in an open society, to know about the work of the government. This year, Congress passed whistleblower legislation which allows intelligence community employees to report illegal or improper activities to Congress. Although the legislation does not constrain the President’s authority to withhold classified information in exceptional circumstances implicating national security, law enforcement or foreign affairs interests, the DCI has committed to immediately notify the Committees of any such delays. Another proposal before Congress, the Moynihan-Helms bill regarding Government Secrecy Reform, would limit the DCI’s authority to protect sources and methods from unauthorized disclosure and change the standards for declassification review provided for in EO 12958. The Agency has serious concerns about a proposed front-end balancing test and about judicial review of classification. Generally speaking, the Agency remains concerned about leaks of classified information to the media and the transmission of such information overseas, which may irreparably damage sources and methods and future collection capabilities. While the Agency’s referrals to Justice have increased over the years, it is often difficult to detect the source of leaks, especially given the need to broadly disseminate sensitive intelligence information to policymakers.

Issues of the electronic age include cyber security and collection issues. Increasingly, US government computers are subject to electronic assaults by hackers, including hostile foreign intelligence services and military organizations, terrorists, criminals and industrial competitors. The state-sponsored terrorists and military information warfare specialists pose the greatest risk to our critical infrastructure because they have the greatest knowledge, resources, and arguably, the greatest incentive to disrupt US computer networks and infrastructure. In this arena, the most important function of the intelligence community is to provide warning of cyber threats and reduce our own vulnerabilities to attack, through analytic and collection resources, and through cooperation with the law enforcement community. To confront the challenges presented by tough intelligence targets who use cheap, easily available technology and techniques which are more sophisticated than existing detection technology, increased cooperation within and between government and industry will be critical. The FBI’s National Infrastructure Protection Center (NIPC) is an important step toward bridging the gap between government and industry.

Collection issues in the electronic age also present unique challenges. While the activities of the intelligence community are circumscribed to protect the rights of US persons, and are focused on the collection of intelligence about foreign actors and events, the anonymity of the Internet presents difficult questions involving the interpretation and application of EO 12333, AG guidelines and internal agency regulations governing collection activities. In resolving such questions, McNamara emphasized the Agency’s commitment to adhere to the principles of an intelligence organization within a democratic society and to assure that advances in information technology strengthen our national security.

FBI General Counsel Larry Parkinson addresses the role of the FBI in national security
Larry R. Parkinson

Larry R. Parkinson, General Counsel of the Federal Bureau of Investigation (FBI), addressed the FBI's role in the national security arena, focusing on the Bureau's new challenges and missions, the cyber threat issue, and the legal issues associated with the sharing of information between law enforcement and intelligence.

In recent years, Parkinson noted, the FBI's National Security Law Unit has expanded considerably. This is a reflection of the fact that the threats are changing and the Bureau's mission is changing. As national security threats have changed, the FBI has adapted on the law enforcement side. While the Bureau remains responsible for the apprehension of criminals, that task has become more challenging in the face of non-traditional adversaries and technological advances which allow criminals to act anonymously. The Bureau's focus includes terrorism, especially from loosely-defined extremists, threats posed by cyber criminals, international organized crime and economic espionage. In response to these threats, the FBI has expanded its presence overseas, and currently has legal attaches in 32 countries. The FBI also relies on foreign police cooperation to solve crime and has worked to improve its ability to respond overseas from the US. The FBI's recent success in investigating the embassy bombings in Kenya and Tanzania was attributable to the number of agents working on the ground overseas, the receipt of foreign cooperation, and the use of intelligence to identify and track down the culprits.

Cyber threats are examples of threats which may originate overseas and be investigated domestically. One important response to such threats was the creation of the NIPC. The goals of the NIPC are to gather intelligence, issue warnings, improve security on existing systems, and investigate attacks. It is a multi-agency enterprise housed in the FBI and staffed by representatives of the FBI, DoD, CIA and other members of the intelligence community. This raises interesting legal issues, ranging from how to integrate DoD personnel into law enforcement operations without violating the posse comitatus act, to whether to use traditional law enforcement measures or other measures to respond to a cyber attack on a classified information network.

With increased cooperation between the law enforcement and intelligence communities, there have been changes in the way the FBI views and shares information. Information can no longer be classified as purely law enforcement or purely intelligence, since it is frequently useful to both communities. In sharing information, the relationship between law enforcement and intelligence has developed carefully to ensure that information shared by intelligence does not expose sources and methods and to ensure that information obtained by law enforcement is admissible evidence in a court of law.

This exchange of information between law enforcement and intelligence, Parkinson suggested, raises larger questions for society. The separation between law enforcement and intelligence has given society some comfort, and there are legitimate concerns of whether the relationship between law enforcement and intelligence has become too close. Parkinson believes the answer is that information must be shared and leveraged in order to protect American society from the threats of the modern world. However, to the extent possible, it is important to educate Congress and the public about the importance of information sharing and cooperation between law enforcement and intelligence.

NSC Legal Adviser James Baker reflects on three recurrent issues at the National Security Council

James E. Baker

James E. Baker, Legal Adviser to the National Security Council, and co-author with Michael Reisman of Regulating Covert Action, reflected upon three recurrent issues at the NSC: sanctions, sovereign immunity and the use of force.

During the past 10 years, Baker observed, there has been an explosion in the number of sanctions imposed. In the first 45 years of the UN, sanctions were imposed only twice by the Security Council, against South Africa and Rhodesia. Since 1990, mandatory sanctions have been imposed on 9 occasions. On the domestic side, Congress and the Executive have resorted to unilateral sanctions on approximately 120 occasions, more than half in the past 5 years. Such sanctions, implemented correctly as part of a coherent strategy, are an important foreign policy tool. For example, Baker noted that sanctions helped end apartheid in South Africa, brought Serbia to the negotiating table in
Bosnia, helped limit the ability of Iraq to fund and acquire WMD, and helped isolate Libya for failing to surrender the Lockerbie suspects. Yet, sanctions are not a panacea for all problems. They are not cost-free and should not be a tool of first resort. In some instances, they fall just short of the use of force. Thus, some academics have argued that the law of armed conflict should apply to economic sanctions, including those imposed by the UN.

As the Administration and Congress consider the effectiveness of sanctions, Baker asserted, the debate is more about means than foreign policy ends. The goals of sanctions are the modification of behavior, the restriction of access to goods and services, and communication. To assist policymakers in accomplishing these goals, Baker outlined four general principles. First, he noted, multilateral sanctions are more effective than unilateral sanctions. Second, the President should have flexibility, in the interest of efficacy, not power. Third, sanctions should be carefully tailored to meet their objectives, without imposing costs on the US. The Administration has identified the following additional guidelines: discriminate to the extent possible so that sanctions target the intended audience, include a sunset provision, maintain contract sanctity, and ensure that sanctions do not cover food and medicine. Above all, the Administration believes it is essential to stand up for our values and foreign policy objectives around the world and adopt a rational sanctions strategy that works without undermining our interests.

Turning to immunity, Baker remarked that this subject has come alive in the past year, most recently in the British Court considering the Pinochet case. At issue is whether head of state immunity for official acts covers alleged human rights offenses, whether torture, hostage taking and murder can ever be considered “official,” and whether national courts rather than international tribunals are the correct forum for resolving these issues. The position of the US government is that the Spanish extradition request for Pinochet is an issue between the UK, Spain and Chile, and it is inappropriate for the US to comment. Without commenting about specific cases, Baker suggested that issues of immunity involving former heads of state will continue to be raised, and the resolution of those issues raises broader questions about how countries coming out of periods repression balance justice with reconciliation to advance the democratic process.

The recent Omnibus Appropriations Act also raised interesting questions of immunity. In 1996, the Foreign Sovereign Immunities Act was amended to allow suits against terrorist list countries who support extrajudicial killings and other terrorist acts against Americans abroad. There are at least three judgments under this law. In 1998, the Act was amended again to permit holders of judgments against terrorist list countries to attach assets blocked under various national security statutes, and to require the State and Treasury Departments to assist judgment holders in identifying assets to attach. The executive branch opposed the 1998 amendment because judicial attachment of blocked assets, including diplomatic properties, would have significant adverse effects on US national security. Nevertheless, there is a waiver provision which the President may use in the national security interest.

Regarding the use of force, Baker discussed the August strikes in response to terrorism. As a lawyer, Baker asserted, there is no more important consideration than the domestic and international parameters for the use of force. In Baker’s view, the August strikes represent a clear case of the exercise of force in self-defense. The circumstances included an imminent and continuous threat to American lives and the failure of diplomatic and law enforcement tools to address the threat, making necessary the use of force. In using force, Baker continued, the actions taken were proportionate to the threat, and were undertaken in a manner to minimize collateral damage. Though some have questioned the selection of targets, this too, was an exercise in self-defense. It involved a national security decision based on national security information. Several factors were critical. Bin-laden had attacked the US before and planned to do so again, he was seeking to acquire chemical weapons to use in future attacks, and he was cooperating with the government of Sudan in those efforts. In light of this information, the US government acted in a manner fully consistent with international law to protect the lives of Americans, and could not have acted differently under the circumstances.

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It is “obvious and unarguable” that no governmental interest is more compelling than the security of the Nation.

Panel II — Survey of New Developments in National Security Law: Views from the Hill

Richard E. Friedman

The panel on “Views from the Hill” was moderated by Richard E. Friedman, former Chair of the Standing Committee on Law and National Security and current Chair of the Advisory Committee. Friedman noted that the Committee’s relationship with the legislative branch of government goes back a long way. Historically, Friedman recalled, the Committee has served as an important source of information for legislative deliberations. Specifically, the Committee has identified cutting edge national security issues before they have been generally recognized and has provided important information from a legal perspective as our legislators have considered and formulated policy. For example, in the late 1970s and early 1980s, the Committee correctly identified the problem of terrorism and its associated legal and policy issues. During the 1980s, the Committee played a key role in formulating the concept and policy relating to legislative oversight of intelligence activities. A more recent example, identified by the Committee a decade ago, concerns the proliferation of weapons of mass destruction. Through its subcommittees and working groups, the Committee has made significant contributions to the debate. Finally, the Committee has acted as a sounding board for proposed legislation, by engaging in a dialogue with legislators and staff members on national security issues. Continuing that dialogue, Friedman invited the panelists to address the legislative priorities and legal issues before their respective Committees.

Richard Friedman introduces the second panel which surveyed the “Views from the Hill”

Daniel Gallington

Daniel Gallington, General Counsel to the Senate Select Committee on Intelligence, discussed the recent amendments to the 1978 Foreign Intelligence Surveillance Act (FISA). In 1994, Gallington noted, FISA was amended to authorize searches, however, the original thrust of FISA was electronic surveillance and the predicate was probable cause. Thus, to obtain a warrant for something less than full content electronic surveillance, in the early stages of an investigation, it was still necessary to demonstrate probable cause. Accordingly, many people over the years proposed giving the foreign counter-intelligence investigators the same authority as criminal investigators to use trap and trace and pen register techniques. Legislation was proposed, initially in the form of an amendment to Title 18 of the US Code, and subsequently, in the form of an amendment to FISA. The proposed legislation received strong bipartisan support, and went through the process with no adverse public comment.

Gallington considered the process a reasonable success, and credited Pat Murray for his efforts in promoting the amendments to FISA and for adding a roving wiretap amendment to Title 18 as part of the package. In Gallington’s view, the roving wiretap provisions served as a lightening rod which allowed the FISA amendments to succeed.

There were additional amendments which allowed the FBI to obtain important documents during the preliminary stages of a foreign counterintelligence investigation. These amendments included compulsory provisions for the production of documents, the entry of orders by FISA judges, and safeguard and oversight provisions, including provisions for annual reporting to Congress concerning implementation of the new provisions.

Patrick H. Murray

Patrick H. Murray, Chief Counsel to the House Permanent Select Committee on Intelligence, discussed his Committee’s accomplishments in the law and national security area during the 105th Congress, and his goals for the 106th Congress and beyond. Among the significant accomplishments of the 105th Congress were the fiscal 1998 and fiscal 1999 Intelligence Authorization Acts, since the intelligence community cannot undertake intelligence activities without Congressional authorization.
As the House Intelligence Committee proceeds into the 106th Congress, Murray presented four guiding principles which Chairman Goss thinks should lead the intelligence community in the 21st century. First, there should be one architect, one central individual within the executive branch, to determine how the intelligence community will address the challenges of the future. Statutorily, that architect should be the DCI. Within the intelligence community, Murray noted, there are many competing parochial interests. The DoD holds approximately 80% of intelligence funding. The DCI should be able to manage and have more control over some of those funds, in close consultation with the Secretary of Defense. Currently, the US Congress plays the central management role in the intelligence community budget. In the last Conference Report alone, there were well over 200 specific programmatic changes to the intelligence budget. The DCI could play an important role in this process, but there is concern about whether statutory authority is lacking for such an overall management structure. This is one issue the Committee will look into in the future.

Chairman Goss’ second guiding principle, which was incorporated into the fiscal 1998 and fiscal 1999 Intelligence Authorization Acts, is the need to increase funding and support for downstream processing and analysis. These resources are necessary to help policymakers understand information collected. Third, a number of the members of the House Committee believe that the intelligence community’s chief strength, strategic intelligence, should be shared with Congress on a prospective basis, to enable policymakers to consider what is going to happen in setting the agenda for national security, and in devising ways to avoid national security threats. Fourth, Murray suggested that technical collection and human collection capabilities should be combined to give policymakers a complete understanding of the sources of information provided. These issues, Murray noted, will be addressed in future Intelligence Authorization Acts.

Turning to encryption, Murray stated that the House Intelligence Committee played a vital role this past Congress in renewing the discussion and informing the debate on encryption policy by reporting its own version of encryption legislation which emphasized that national security interests and law enforcement equities should be critical discussion points in any export policy. It also imposed an access to plain text capability on encryption products in the US after a date in the future. As a result of these efforts, law enforcement and intelligence equities have been addressed and are better understood by members of Congress. Chairman Goss and the House Intelligence Committee welcomed the Administration’s recent encryption export policy, and while concerns regarding domestic policy have yet to be resolved, Murray considers the encryption debate one of the successes of the 105th Congress.

Looking forward, Murray opined that encryption will continue to be debated. In addition to the Intelligence Authorization Acts, the Helms-Moyihan secrecy legislation will be another important issue before the Committee. The House Intelligence Committee has concerns over the financial costs and intelligence sources and methods costs triggered by the legislation. There will be significant pressure, particularly in the Senate, to enact the legislation in some form by the end of 106th Congress. Finally, the whistleblower legislation is significant legislation which allows the intelligence committees to conduct their oversight function in a manner that protects classified information, enhances the independence of the Inspectors General within the intelligence community to bring specific issues before Congress, and provides a mechanism for employees to go directly to the oversight committees. In closing, Murray emphasized his Committee’s commitment to advancing the cause of national security and public safety within the intelligence community and throughout the general public.

Stephen G. Rademaker

Stephen G. Rademaker, Chief Counsel to the House International Relations Committee, indicated that the enactment of the Foreign Relations Authorization Act for fiscal 1998 and 1999, as part of the Omnibus Appropriations Bill, was one of the most significant accomplishments for his Committee and its counterpart, the Senate Foreign Relations Committee, in the 105th Congress — particularly since the legislation was not enacted in the 104th Congress. The Bill
was vetoed during the 104th Congress a result of a disagreement between Congress and the President over reorganizing the foreign affairs agencies and abolishing the Arms Control and Disarmament Agency (ACDA), the US Information Agency (USIA), and the Agency for International Development (USAID), and merging them into the State Department. Next, Secretary Christopher opposed the proposal originally put forth by Senator Helms, and that disagreement resulted in the veto of the Authorization Bill in the 104th Congress.

In the 105th Congress, Rademaker explained, Secretary Albright made peace with Senator Helms, but the executive branch then objected to the committees desiring to authorize the payment of approximately $1 billion in UN arrearages, a figure substantially lower than the UN figure which had been rejected by both the executive and the legislative branches. The committees then worked for a long period of time to develop reform conditions expected by the UN in exchange for the authorization of the arrearage money. Once agreement with the executive branch was reached there, the abortion issue intervened. The question was whether US funded organizations should be prohibited from using their own money to perform abortions overseas. Consistent with the policy of the Bush Administration, the House Committee insisted there should be a prohibition, but President Clinton opposed such a prohibition. Ultimately, a watered down version of the restriction was inserted into the legislation and approved by the House and the Senate. Included in the Omnibus Appropriation Bill was authorization of appropriations for the State Department, and a reorganization provision which abolishes ACDA as of January 1, 1999 and abolishes USIA as of October 1, 1999. With regard to UN arrearages, the Omnibus Appropriations Bill contained the appropriation of the full amount requested by the Administration, but the President vetoed it. Therefore, the issues of UN arrearages and international family planning will carry over into the next Congress.

Another major and unrelated issue in the Omnibus Appropriations bill involved approximately $18 billion in IMF funding. The package included certain reforms in exchange for appropriation of funds for the IMF.

Aside from the Omnibus bill, the Senate voted in favor of NATO enlargement, which was part of the Contract with America. In a second wave of NATO enlargement, the European Security Act was enacted as part of the Omnibus Appropriations Bill. The European Security Act endorses the concept of an open door policy for NATO enlargement, as later adopted at the Madrid Summit, and designated the Baltic States Romania and Bulgaria for strong consideration in the second round of NATO enlargement. The European Security Act further called for stepped up cooperation with Russia in the area of early warning and called for a prohibition on any demarcation agreement under the ABM Treaty which demarcates between theater and strategic defensive missile systems. Rademaker indicated the legislation clarifies the President’s obligation to seek the advice and consent of the Senate with respect to any demarcation agreement.

In other legislation, the Iraq Liberation Act, passed within 8 days of its introduction, authorized $97 million in defense drawdown for Iraqi opposition groups. The Iranian Missile Proliferation Sanctions Act would have imposed sanctions against entities anywhere in the world that proliferate missile technology to Iran, but the President vetoed it. Still, the proposed legislation got the Administration’s attention and it became a high level issue in diplomacy with Russia to deal with missile proliferation. Finally, the International Religious Freedom Act, also known as the Wolfe-Spector legislation, established an independent Commission within the US government to conduct assessments of religious persecution, issue reports and impose sanctions.

Regarding sanctions, there has been a growing debate about the question of sanctions and whether they represent good policy. Rademaker’s opinion is that the debate has not been very informative or very informed. The debate was triggered by two laws enacted in the 104th Congress, the Iran-Libya Sanctions Act and the Helms-Burton legislation with regard to Cuba. There was highly negative reaction in Europe and by several of our other allies to the two laws, which created a backlash with respect to sanctions. The ILSA legislation was waived by the President last year, and Title 3 of the Helms-Burton legislation, which provides a right to sue, has also been repeatedly waived by the President. Title 4 of the Helms-Burton legislation, which is a visa denial provision, has been invoked, but it has become the subject of a diplomatic agreement signed by the US and European Union. Thus the sanctions legislation has not been as problematic as many expected, and sanctions statistics are misleading. In closing, Rademaker remarked that the record of a number of the participants in the sanctions debate will not withstand scrutiny.
Scott W. Stucky

Scott W. Stucky, General Counsel to the Senate Committee on Armed Services, concurred that the number one accomplishment in the 105th Congress was the passage of the Annual Defense Authorization Bill. This accomplishment was particularly significant, Stucky remarked, in view of the obstacles to passing annual authorization legislation, including the looseness of Senate floor rules which permits the introduction of extraneous issues. This year, the Senate Armed Services Committee dodged a veto on issues including the transfer of satellite technology to the PRC, tritium, airland procurement, and gender-integrated training. In the end, the proposed legislation passed, and the Senate Armed Services Committee and its coordinate committee, the House National Security Committee, authorized about one half of the discretionary federal budget, which translates to roughly $270 billion in budget authority this year. In addition to hearings on status quo issues, the Senate Armed Services Committee is paying significant attention to longer term objectives, such as the direction of national security strategy and questions concerning a national missile defense.

In the 106th Congress, the Senate Armed Services Committee will have a new Chairman, Senator Warner of Virginia. Although Senator Thurmond will leave his post as Chairman, he will remain a member of the Committee he has served for nearly 40 years. There will also be at least three new members. Near-term issues for the Committee in the 106th Congress include: readiness; national missile defense; base closure; retention; retirement and pay comparability; tritium; and outlay problems.

Longer term issues include the impact of the budget squeeze on defense, and the related problem that our national security strategy is out of sync with resources. In Stucky's view, the new strategy document that just came out is so diffuse and amorphous it makes everything, and therefore nothing, important. There is more attention paid to free trade and terrorism than to serious war flash points like North Korea. Moreover, the armed forces are being run ragged by being deployed all over the world, often with no attention to core national security interests of the US. The armed forces, Stucky asserted, exist to protect the freedom and security of the people of the US and this mission is compromised by overextending them all over the world, resulting in personnel problems, equipment failures, training deficiencies, and perhaps most significantly, the danger of cuts where additional resources are needed. Stucky indicated that if we as a nation want an ambitious national security foreign policy, we must pay for it.

The ultimate problem, Stucky concluded, is both political and metapolitical. It is the cultural divide between the armed forces and the elite classes of the country, coupled with a widespread elite opinion and general public opinion that lacks interest in foreign policy and defense matters. If these trends continue, Stucky cautioned, one of three things will happen. One possibility is war or a serious national security emergency which will lead to an increase in defense spending and rekindle interest in defense and foreign policy matters. A second possibility is a major retrenchment in national security strategy which will allow substantial savings, with concomitant decreases in military power. The third possibility is that we may slide into a less effective military force, get bloodied in some theater, and then realize the need to rebuild. In Stucky's opinion, what Congress can do is limited because it is up to the Executive branch to formulate foreign policy, make national security strategy and command the armed forces. In the interim, Stucky expressed hope for a national security strategy that will protect our core national security interests with existing resources.
Luncheon Address — The Honorable Richard A. Clarke

Edited by Bill Conner

The Honorable Richard A. Clarke, the National Coordinator for Security, Infrastructure Protection, and Counter-Terrorism at the National Security Council addressed the Standing Committee on November 12, 1998 on terrorism, cyber security and the Bill of Rights. — BC

The Honorable Richard Clarke expressed concern that fictional movies and books are responsible for spreading misleading notions about the ways in which the United States would, or should respond to a terrorist attack. Clarke disagreed with what he views as a growing and unfounded notion that a response to terrorism and other threats to civil order and national security must result in the erosion of rights. He acknowledged that the United States, as well as other democracies, has in the past responded badly to perceived internal threats. He pointed to President Lincoln’s suspension of habeas corpus during the Civil War, the internment of Japanese Americans during World War II, and Senator McCarthy’s “red scare” during the Cold War of the 1950s as examples.

However, Clarke believes that the United States has learned the lessons of history. When the Murrah Federal Building in Oklahoma City was attacked and its occupants murdered by terrorists, the Clinton warned against unproven assumptions about who may have done it, or what their ethnicity may have been. When TWA Flight 800 exploded over the waters off Long Island, New York and there was a desire to assume a Middle Eastern terrorist group was responsible, the President and the FBI cautioned against a rush to judgment. After the most exhaustive investigation in history, it was determined that the aircraft exploded because of a system malfunction, Clarke said.

Clarke noted that the history of fighting terrorism shows that societies that respond by infringing on civil liberties only enlarge the pool of support for terrorists, instead of isolating and defeating them. Draconian measures are a temporary palliative and a long-term corrosive, Clarke explained. The United States government does not legally and can not morally have the authority to remove the Bill of Rights to respond to terrorism, he asserted.

In light of the potential destruction and dislocation that can be caused by cyber terrorism and information warfare, the United States may chose to institute systems that are financially costly to protect its vital computer controlled systems. Most of what we do as a nation — our banking and finance, our electrical power, our telecommunications, our defense, our transportation systems—depend upon computers and computer controlled systems, Clarke reminded his audience. By definition such systems are potentially vulnerable to destruction through new hacker tools and techniques. Whether the terrorists’ weapon is a truck bomb or a logic bomb, however, the United States must not react by throwing out the Bill of Rights, Clarke declared.

Companies have responded to the threat posed by terrorists to the nation’s vital information systems by spending ever-increasing amounts of time and money seeking to achieve “information assurance” or “cyber security.” While the costs of such efforts are passed along to the consumer and taxpayer, Clarke explained, the costs of not having security upgrades on computers are also passed along: in the considerable dollars it takes to restore crashed systems, or the costs of fraud when someone assumes your identify using information stored on computers. These costs of inaction can be far greater, Clarke observed, if a city is thrown into darkness, or a train derails, or America looses a war.

As a result, Clarke predicted, there will continue to be an increasing focus on systems and procedures to safeguard our nation’s computers, the information that is on them, and the functions they control. Clarke explained that in addition to being expensive, these measures may also result in some inconvenience to the network computer user. For example, a person may have to change his or her password more frequently, a smart card may be required to
access some systems, and access to some parts of certain computer networks may be restricted.

Clarke assured his audience that his office has received clear direction from the President to design systems to safeguard government computers while doing nothing that erodes civil liberties or privacy rights. By seeking to secure government computers and urging private sector companies to do likewise, Clarke said his office seeks to increase privacy, and to protect us all from both Big Brother and unauthorized Little Brothers who may crack into what we assume are privileged and protected files that may contain information about us. Clarke unequivocally stated that the Administration is not proposing to expand the role of the military to defend non-military computer systems; the Administration is not proposing to have the military or intelligence agencies monitoring privately owned computer systems; the Administration does not support Government licensing of computer personnel in the private sector; nor is the Administration proposing any expansion in the use of polygraphing as a condition of employment.

If the United States fails to act quickly enough, or choose security measures that do not work, explained Clarke, the result could be an electronic Pearl Harbor. If this happens, there will be enormous pressure for protective measures on computer networks at any cost. We must avoid such an outcome, Clarke said. Clarke explained that the Administration is working with critical sectors of the nation’s economy to ensure that these sectors have all of the information available to understand the threat to them posed by information warfare, but without imposing new regulations. The Administration may share new software and hardware from its research and development efforts to prevent unauthorized cyber-trespass and intrusions onto computer systems.

Clarke said the Administration is committed to ensuring that no group of terrorists can seek to coerce us to change our policies by denying telephone service in a region; no criminal cartel can extort us to free prisoners or give in to some other demand by destroying a city’s 911 system or throwing financial markets into confusion; and no nation can prevent us from using our defense capabilities by a cyber attack on our rails, our electrical power grids, our airports. All of this will be done with the Congress, with industry groups, with interest groups from the ABA, ACLU, and others. It is Clarke’s firm belief that we can safeguard this country and its computer controlled systems without creating either Big Brother or his cybernetic evil twin.

Panel III — Organizing to Combat Transnational Threats

Ann C. Petersen

Standing Committee member Ann C. Petersen introduced a new format for the panel on transnational threats. The format was designed to demonstrate the extent to which perspectives on transnational threats vary with the observer, resulting in divergent interagency views and bureaucratic infighting, alternatively described as a “catfight” or a “ping-pong” match. To replicate the debate, Petersen posed four distinct questions and provided each panelist an opportunity to respond. The panelists included Zachary Selden, Policy Associate with Business Executives for National Security, Kenneth A. Meyers, a Professional Staff Member of the Senate Select Committee on Intelligence, M.E. “Spike” Bowman, Associate General Counsel for National Security Affairs at the Federal Bureau of Investigation, and Philip C. Bobbitt, Senior Director for Critical Infrastructure at the National Security Council, and author of Constitutional Fate, Constitutional Interpretation, Democracy and Deterrence.
A. What defines transnational threats?

In Selden’s view, one must first ask, “What are the motives?” Selden observed that certain types of threats, such as drug smuggling and terrorism, have been around for a long time. However, there has been a shift away from political terrorism, motivated by discrete, political goals, to a more apocalyptic variant with broader, more sweeping goals. There are serious ramifications to this development. Traditional terrorist groups, such as the IRA and the PLO, have a desire to be recognized as major players on the world stage. They are restrained in their violence by the desire to be recognized as a legitimate voice in their respective communities and to minimize retaliation in order to achieve their long term goals. Thus, violence is used as a subtle, carefully controlled tool to obtain a seat at the table. The new terrorists, by contrast, such as those responsible for the World Trade Center bombing, are motivated by a desire to kill, to strike a blow against the US and its culture. These new terrorists are unimpeded by traditional restraints, and to satisfy their desire to kill, may resort to chemical and biological weapons. This distinction, Selden suggested, drives our policy, in terms of what we are going to defend against and how we are going to confront these threats.

Bowman indicated that, from the law enforcement perspective, current transnational threats include both traditional and enhanced threats. Traditional threats include state-sponsors of terrorism, including Iran, Iraq, Sudan, Libya, Cuba and North Korea. Over the years, he noted, there have been some changes to terrorist organizations, such as the IRA, the Egyptian AGAI and the Hizbollah, as well as more pointed threats by loosely affiliated groups, including Bin-laden, the group responsible for the World Trade Center bombing, and an affiliated group which attempted to blow up 16 American airlines and kill the Pope at the same time. Other threats include the traditional intelligence threats of the Cold War, increasing numbers of non-official intelligence personnel engaged in the intelligence business, and changes in the intelligence environment as a result of the electronic age which allow non-traditional adversaries to become involved in the intelligence arena and target the economic interests of the US. In addition, WMDs continue to pose a threat on both the international and, increasingly, on the domestic front. Critical infrastructure is another growing concern, as is international organized crime. Each of these threats is enhanced by advances in technology and challenge US national security.

Bobbitt directed his remarks to changes in the technology used by terrorist groups and changes in our society. Most historians, Bobbitt observed, date the rise of the state to the end of the fifteenth century in Europe. States first emerged in order to organize more efficiently in matters of taxation and to defend against annihilation by other states rich enough and mobile enough to deploy artillery against their walled cities. The past five centuries have given us international law, diplomacy, and air, naval and land warfare — all that is state-centric. In the past fifteen years, however, much has changed. It is now possible for a small number of persons to attack a state and damage its infrastructure in a way previously done through artillery and armed attack. As a result, we must change our strategies. Strategies like retaliation and deterrence must be weighed against the ambiguity of the threat. As telecommunications, banking and finance, transportation, energy and government services have become interconnected in the past two decades, our infrastructure has become more vulnerable to attack. Yet, as a state, we have become more powerful in every decade since World War II. This places us in the paradoxical position of being the most powerful and the most vulnerable state in the world.

Meyers stated that, on the Hill, motive is less relevant than the recognition that the US is no longer immune from terrorist attacks, as evidenced by the World Trade Center and Oklahoma City bombings. The reaction in Congress was to do something about it. Congress, Meyers asserted, moved more quickly than the Executive branch in formulating and implementing policy to address transnational threats. There are several reasons for this. First, it did not take politicians long to understand the importance of the transnational threat, internationally and domestically. Second, it did not take the Hill long to come up with resources to throw at the problem. Third, it did not take the Hill long to look for a domestic and international component. Meyers noted that the Hill also got a head start on the Executive Branch in responding to the transnational threats. While the effort to reorganize the intelligence community was defeated in Committee, the proposal has received the support of Senators Nunn and Lugar. Finally, Meyers remarked that there is a growing constituency in the Congress and in the country to address transnational threats, and a complementarity in our efforts at home and abroad to contain transnational threats.
B. How have we succeeded in responding to these threats?

Bobbitt replied that the organizations established to combat transnational threats are new, and while there have been no “success stories” to date, the structures have been put in place. PDD 63 and PDD 62, which deal with critical infrastructure and counter-terrorism in the same architecture, depend upon interagency working groups and are driven by contemporary events. Aside from the Critical Infrastructure Coordination Group (CICG) and the CSG, which have been around for some time, the National Infrastructure Protection Center (NIPC) is a bold, visionary idea by the Attorney General to put into one agency, the FBI, the resources to identify new threats. Since these threats are not neatly packaged, they pose challenging jurisdictional questions. By bringing different actors into one agency, the NIPC enables the government to draw upon the expertise of the law enforcement, defense and intelligence communities. This requires not only a change in personnel, but also a change in thinking.

Meyers noted that there was an alternative to PDD 62 and 63. Legislation within the DoD authorization bill for fiscal 1997, which was passed into law but ignored by the executive branch, provided for the creation of a national coordinator to chair a new Committee on Proliferation, Crime and Terrorism. The Committee was to be established within the National Security Council and was to include the Secretaries of State, Defense, Energy, the Attorney General, the DCI and other departmental agency heads as the President deemed necessary. The White House opposed the initiative, which the Legal Adviser deemed micromanagement by Congress and a constraint on the President’s flexibility to utilize the NSC as he saw fit. The White House also opposed proposed budgetary authority for the Committee, which Meyers believes ultimately killed the proposal.

Bobbitt added that the idea of national coordinator is an excellent one, as is the concept of a high level principals committee comprised of the Secretary of State, Secretary of Defense, the DCI, the AG and other agency heads. However, he believes we already have such an organizational entity within the CICG, and that entity is capable of getting action. While Congress has proposed additional initiatives, Bobbitt asserted that, at the end of the day, it is the President’s responsibility.

Bowman observed that one of our most important accomplishments has been to get different agencies to work together to combat transnational threats. For example, both the FBI and the CIA have established counter-terrorism centers. The FBI has a substantial organization devoted to international organized crime, and the CIA has a crime and narcotics center. In addition, throughout the country, there are FBI-sponsored joint task forces on terrorism staffed by various government agencies and local police authorities. These arrangements enhance our law enforcement capabilities and are well within the bounds of the law. On the international front, there are now approximately 180 states with specific overseas jurisdiction for investigative purposes, and we have been working with other countries to ensure that justice is served. In recent years, perhaps a dozen people have been brought back to the US and jailed for terrorist acts against US interests. In addition, the US has been working with other countries to find common ground for investigatory and evidentiary procedures. Incident to that effort, the FBI has trained foreign police officials at its National Academy in Quantico, established a police training academy in Budapest, Hungary, and engaged in joint sessions on law enforcement with the Russian police. The FBI and the NIPC have also begun to work more with local authorities to respond to local threats against US infrastructure. Perhaps the most significant change, Bowman concluded, is the determination by the US and foreign governments to work with the problems of international border and jurisdictional sovereignty to serve the ends of justice.

Selden suggested that Senators Nunn and Lugar have sparked the largest civil defense program in this country since the 1950’s. This effort has brought together several different US government agencies and trained people at the local level to address the problems of weapons of mass destruction and terrorism. By and large, Selden opined, the end product of this effort is good. Fire, police and emergency workers have reported that the training has been useful, and overall, it provides an approach to contain catastrophic terrorism. Thus, the domestic preparedness program is a success story. In keeping transnational...
terrorism at arms length, Selden suggested, intelligence plays a critical role. As various agencies have coordinated their efforts, there have also been a number of success stories in this area. One example is the CIA’s involvement in Azerbaijan to stop the flow of specialized steel from Russia to Iran.

C. Where do we need to focus our attention?

Bowman responded that while there is a lot of interagency cooperation, these projects are still fledgling, and there is still a long way to go. While the historical rivalry between the FBI and CIA has subsided, certain other agencies have yet to resolve their differences. Perhaps the most significant problem, Bowman observed, is that technology is passing us quickly, and we are slower to respond to technology than our criminal and terrorist adversaries are to exploit it. We are also hamstrung by encryption, and have a way to go before we will be adequately equipped to conduct warrant wiretaps successfully. The high speed encryption available today frustrates the ability of law enforcement to obtain information. The Internet is also a problem because it is very difficult to monitor. Finally, Bowman believes we need to develop common standards with other countries on money laundering and other transnational problems.

Meyers suggested that domestic defense preparedness in the face of these threats is really an exercise in federalism. It marks the first time the DoD has been required to work with local authorities to combat transnational threats, and has required policymakers to find ways to successfully integrate national, federal and local officials. Internationally, Meyers asserted, we need to think harder about integrated defense in depth, which deals with these problems at the source, at the borders, and at home. Meyers attributed the success in Congress in authorizing and appropriating funds for the domestic preparedness program to the view that the program is a DoD mission. As other federal agencies have become involved in the program, Meyers suggested, domestic preparedness against transnational threats is a winner from the standpoint of resources. The remaining challenge, in his view, will be coordination among the various agencies.

Bobbitt concurred with Bowman’s view that international cooperation is important, and identified a number of additional concerns. Those concerns included the need to identify and train additional computer security specialists, the need to develop artificial intelligence to read codes, and most importantly, the need to recognize the private sector component in national security. Just as our national security has become globalized, to a kind of international security against transnational threats, the division between the public sector and the private sector has become blurred in the face of these threats. By way of example, 95% of all DoD communications travel though the Public Switch Network, which is largely owned by the private sector. Likewise, the banking and finance, energy and transportation sectors are almost entirely in private hands, and in some cases, in the hands of multi-national public corporations. Bobbitt concluded that, unless the public sector can convince the private sector to enhance its security, through a mixture of incentives, rules, inducements, enticements and cooperation, then the national security of this state, which depends so crucially on the private sector, cannot itself be secure.

D. Suggestions for the future to improve our ability to meet transnational threats.

Selden suggested that, organizationally, there are a number of things that could be done to improve our ability to respond to transnational threats. Biological weapons, for example, pose a serious threat which must be addressed in a particular way because they could cause a public health crisis. One organizational and technological change to respond to this problem would be to improve our public health reporting infrastructure. Currently, public health incidents treated at local hospitals are reported to the county health office, recorded on index cards, forwarded to the state authorities, and ultimately sent to the Center for Disease Control (CDC), which reviews the data, conducts analyses and determines whether to send out field investigators. Selden believes this system could be significantly improved by implementing a capability for real-time electronic reports, which would enable us to better analyze that particular type of threat. More generally speaking, Selden suggested there is also a need to better coordinate federal, state and local efforts, and to resolve cultural differences between different entities, such as the FBI and CDC. Finally, Selden
suggested there is a need for attitudinal changes concerning catastrophic terrorism. While the possibility of catastrophic terrorism has increased over the years, it is not inevitable. Therefore, Selden concluded, it is more important to focus on the scope of the problem and proposed solutions.

Meyers reiterated that it is important to start thinking about an integrated defense in depth to respond to transnational threats. For example, Meyers indicated there may be an opportunity for a cooperative effort with the Russians to discuss the threats posed by biological weapons, to visit Anthrax production facilities, and to test antidotes for the deadly disease. Meyers expressed some concern that in implementing an integrated defense in depth, there may be too much of a burden on the coordinator. Specifically, he noted the danger of overload in vesting the national coordinator with responsibility for both transnational threats and critical infrastructure. This concern, he concluded, must be carefully balanced against the benefits of an integrated defense.

Bowman identified a number of needs, from the law enforcement perspective, to improve our ability to combat transnational threats. First, he noted, there is a need for common criminal standards around the world. In addition to international conventions on air piracy and hostage taking, we need to keep pursuing conventions on money laundering and overseas investigations, by emphasizing the need for international cooperation and convincing our international counterparts that transnational threats will cross international boundaries. Bowman called upon the State Department for greater involvement in the effort to negotiate appropriate agreements. Second, Bowman asserted, we need cooperation with American businesses for investigative purposes, to assist us in understanding the threats to industry and to help us solve encryption problems. The FBI has undertaken efforts to achieve this goal. To succeed, Bowman concluded, it is necessary to find a way to protect business interests, from both the business perspective and the law enforcement perspective, because they need our help as much as we need theirs.

In looking to the future, Bobbitt proposed the Royal Dutch Shell scenario planning process, which considers a series of alternate futures to enable management to guide the Company when the unpredictable occurs. In organizing to combat transnational threats, such an approach would be sensible because while much of the future is upon us, catastrophic terrorism is not inevitable, and this scenario presents an opportunity to develop solutions to problems before they materialize. Thus, Bobbitt suggested, the paths we chose now may minimize the threats we face down the road. Bobbitt also endorsed the approach of bringing the market to bear on what we have traditionally thought of as political security decisions, such as the outright purchase of Russian launchers to prevent the leakage of fissile material. The FBI’s handling of renditions is another example of how a traditional political matter may be handled instead as a legal matter. In closing, Bobbitt cautioned that with changes in technology, the defensive approach to assured destruction is no longer palatable. What we need to think about is assured capability, to protect our systems and to prevent a failure of our infrastructure.

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Dinner Remarks — Justice Sandra Day O’Connor

The Standing Committee was pleased to present Supreme Court Justice Sandra Day O’Connor as its keynote speaker for the Eighth Annual Review conference. Her insightful remarks were preceded by a warm introduction by former Committee Chair John Shenefield, and followed by a postlude by Committee liaison and former ABA President Jerome Shestack. The full text of Justice O’Connor’s remarks is reprinted below. — PJP

When the Standing Committee was formed in 1962 with the support of my former colleague, Justice Lewis F. Powell, we were in the midst of the Cold War. Our security concern was primarily focused on containing the Soviet threat. Today, our national security concerns have changed.

Justice Powell volunteered for military service in World War II and spent part of that time in North Africa, and part in England when he worked in ULTRA, a key intelligence group that helped the Allies formulate their targets and plans. He knew and understood well the need for accurate intelligence in maintaining our security in a world at war.

Today the Communist threat is vastly diminished and the world is not formally at war. When the Berlin Wall fell and the Soviet Union broke up, we were euphoric in the West, and no longer worried constantly about a nuclear threat and the need for bomb shelters. But the “euphoria phase” subsided as we witnessed a startling increase in the
number of nation states around the world. Areas which had
been forcibly integrated into large nation states in the past
separated and formed small nation states centralized around
a single ethnic group. It seemed that every ethnic group
wanted its own country, and in Africa, tribal and ethnic
groups sought separation while South Africa miraculously
eliminated apartheid without a civil war.

In the West, expectations were high. We tended to
assume the newly formed nations in Central and Eastern
Europe would quickly become part of the free world and its
positive market economy. Recognizing that no democracy
can function well without the basic institutions of open
elections, a free press, and a qualified, independent judici-
ary, American lawyers volunteered to offer assistance in
structuring legal systems and institutions to serve these new
democratically elected governments.

But we failed
to appreciate that the
establishment of a rule
of law takes a long time.
It comprises far more
than the basic institu-
tions of government
and a criminal and civil
code. After all, the
United States has had
over 200 years to de-
velop a network of
rules, regulations, and
administrative machin-
ery to establish and en-
force limits and guides
for business and the
marketplace. There is
an innate capacity in
human kind for both
good and evil. The sin-
ful side must be curbed.
We have witnessed a
serious amount of or-
organized crime in Cen-
tral and Eastern Europe
and in the Russian Fed-
eration, where no gen-
eral regulatory scheme
was in place. The Rule
of Law espoused by the
ABA, by Lewis
Powell, and by all of us who are trying to help form the basic
institutions and rules turns out to be a vast network of
interrelated rules and guidelines. There is no instantaneous
set of rules that we can put in place in every country that
wants to be part of the free world. In the Middle East, there
is another set of problems which is producing a serious
terrorist threat with a global dimension. These concerns
have replaced our Cold War concerns of the 1960’s.

When our Constitution was formed, as Thomas
Jefferson said, America was ‘kindly separated’ from much
of the world ‘by nature and a wide ocean.’ Those barriers
have been breached. The earth seems to grow smaller as our
national economies are increasingly linked together, and as
more and more people can communicate instantaneously at
the stroke of a computer key. Globalization, many of our
leaders and scholars have commented in the last decade of
this century, ‘is an inescapable truth of our time.’

We are rapidly forming new institutions that will
enable close working relationships between
nations: trade agree-
ments and treaties such
as the World Trade Or-
ganization; economic
partnerships including
the European Union and
MERCOSUR; ex-
panded forms of our tra-
ditional strategic alli-
ances such as NATO;
and international orga-
nizations like the UN
and the World Bank.
When the General
Agreement of Tariffs
and Trade was first
drafted in 1947, there
were approximately 31
signatories. Now there
are nearly 150 members
of what has become the
World Trade Organiza-
tion. It is a critical de-
velopment in world history
to have so many nations
agree on binding rules
regulating trade, stan-
dards for the protection
of intellectual property,
and provisions for the
resolution of interna-
tional disputes. The
United States is also a
party to the North American Free Trade Agreement, which
removed the tariff barriers that formerly separated a trading
population of 365 million people.
The law is racing to catch up with the reconception of international markets and alliances and with the international courts and alternative dispute resolution bodies which have multiplied. Each of the treaties and new international bodies incorporates a panel or tribunal to resolve disputes that will inevitably arise among the signatory states and their citizens. Differences might be resolved, or crimes prosecuted, in the European Court of International Justice, the European Court of Human Rights, the Inter-American Court of Human Rights, the Court of Justice of the Andean Communities, the Tribunal of the Law of the Sea, the International Labor Organization, the dispute panel systems of the World Trade Organization or the NAFTA, Administrative Tribunals of the UN, or more specialized bodies like the Iran-Unites States Claims Tribunal and international criminal tribunals for Rwanda and the former Yugoslavia. Recently, a diplomatic conference convened in Rome to produce a new permanent International Criminal Court to try war criminals, which the United States currently does not wish to join.

We have fully developed the legal regimes appropriate to recent advances in cyberspace, telecommunications and transportation, and we are still formulating the necessary rules and procedures to maintain financial stability, enforce international contractual obligations, set industrial and product standards, protect the environment, and enhance national and international security. It will take time to resolve how flexible borders will affect the domestic legal problems that our courts confront, including questions of jurisdiction, immigration restrictions, antitrust and copyright violations, and the applicability of criminal laws to Internet transactions. As experts in the field of law and national security, the Committee and its associates will be needed to advise on these and related issues.

The greatest challenge for the next century will be to learn to live together in a world with porous borders. This challenge must be met with an international legal system that balances our respective needs to maintain internal authority against the obvious ‘gains from closer union’ with the global community. How can our tradition of law, freedom and justice be adapted to the new and different tribunals that will resolve some of the issues affecting our nations and citizens without sacrificing these principles and the internal sovereignty that served us well in the past? How can our experience be brought to bear in constructing the dispute resolution fora that will serve for some of our global activities in the future? These are questions worth asking. The answers will be one significant mark of our success in the next century, and somewhere, Lewis F. Powell will be watching how we respond.

Panel IV — The Divergence Between Military and Civilian Cultures: A Risk to National Security?

Scott L. Silliman

Scott L. Silliman, Executive Director of the Center of Law, Ethics and National Security at Duke University School of Law, observed that recently, much has been said about the anomaly that the President, though commander-in-chief of the armed forces, is not subject to the same proscriptions, rules and regulations as those who wear a military uniform. Indeed, neither the President nor other civilians in positions of leadership in our armed forces are subject to military law. This is part of the concept of civilian control of the military, part of the fabric of American society. Yet, Silliman noted, there appears to be an increasing strain between civilian and military leaders and a perceived rift between civilian and military cultural values.

This rift was evident in General Colin Powell’s challenge to the President’s efforts to remove the ban against homosexuals in the military. While many were aghast at the military’s departure from its traditional compliant role, others within the military itself gave a sympathetic nod to the challenge, and suggested the real problem was that the President, most members of Congress, and a large percentage of the American public are naive to the real needs at true dynamic of the military community, since they never served in uniform due to the end of draft in 1973. Furthermore, many who volunteered to serve their country tend view the more conservative value system embodied in the Uniform Code of Military Justice and military regulations being the moral high ground, and take pride in being held to a higher standard.

The issue of different cultural values between civilian and military communities is best illustrated by the Air Force’s handling of the Lieutenant Kelly Flinn case 1997. There were four charges against Lt. Flinn involving with the civilian spouse of a military off-duty including adultery, an act seldom if ever prosecuted within civilian society, and seldom subject to a civil lawsuit. Most in this country shared Senator Trent Lott’s view that the Force needed to “get in touch with reality.” More recently, two of the services have reminded their service ment
that Article 88 of the Military Code of Justice prescribes contemptuous words against the President and other leaders. Many outside the military do not understand such a rule which is seemingly inconsistent with our First Amendment values.

These issues raise the following questions: Is the military truly out of step with reality these days? If there is a divergence between the civilian and the military societies, does it pose a problem for national defense? Can it affect our readiness? Or, is the divergence a consequence of a voluntary military force which must of necessity be held to a different standard because we ask our military to do that which we chose not to do ourselves, to go into harms way to defend our national interests? Stilliman directed these questions to the panelists.  

**Thomas E. Ricks**

Thomas E. Ricks, Pentagon Correspondent to The Wall Street Journal, provided an overview of the conclusions reached in his article, “The widening gap between the military and society,” published in the August 1997 edition of the Atlantic Monthly. Essentially, Ricks explained, the growing gap between the military and society has implications for the way we raise the military, the way we train it and the way we use it. The gap is the product of three major changes: within the military, within society and within the security environment. The biggest change in the military is the advent of the all volunteer force and the politicization of the officer core. The changes in society include increased individualism and decreased discipline among new recruits in the services, the divorce of the elites from broader social concerns, Congressional lack of interest in military affairs, and declining numbers of people in the media with military experience. Changes in the security environment include the end of the Cold War, the existence of a relatively large military for a peacetime nation, and the blurring of the line between foreign and domestic enemies, particularly in the areas of terrorism and information warfare.

While there has always been some cultural separation between society and the military, particularly the marine corps and elements of the combat army, Ricks does not believe the gap has always been as extreme as it is today. To help bridge the gap, Ricks proposed in his Atlantic Monthly article to reinstitute the draft and to resume ROTC at leading institutions, including elite colleges. These proposals, Ricks suggested, are not exclusive. Other thoughtful solutions appear in an essay by Admiral Stan Arthur recently published by the Army War College.  

**John Hillen**

John Hillen, Olin Fellow for National Security Studies at the Council on Foreign Relations, distinguished between the larger debate concerning the divergence between military and civilian cultures, and the more narrow debate to which Richard Kohn contributed, on the relationship between political and military elites. Hillen suggested there are three a priori assumptions underlying the larger debate. The first is that there exists an unbridgeable cultural divide between the military and society characterized by diametrically opposed views and resentment concerning values. The second assumption is that the existence of the gap is inherently unhealthy in a democracy. The third assumption is that the gap must be closed, by making the military more like the civilian culture. These assumptions, Hillen noted, underlie the policy aspects of the debate, due to a misidentification of the nature of the gap, a misunderstanding of the role of the gap between the military and society, and a misconception that the military should be more like civilian society. These erroneous conclusions, Hillen cautioned, may erode the ability of the military to do the only job that justifies its existence.

Considering each assumption in further detail, Hillen contended that the nature of the gap is not a gap in values. Admittedly, the civilian and military societies have different cultures. While one has been focused on the creation of wealth since the end of the Civil War, the other has been operating principally overseas to preserve that condition in America. In determining whether the military is out of touch with reality, one must first ask, whose reality — the consumers or the combat forces? Sociologists confirm that different entities will naturally have different cultures. Military values, however, are a blue collar affair, rooted in the occupational needs for success in combat. They include: duty, honor, country, courage and commitment. While these values may not be shared by all echelons of American society, they are firmly supported by America’s middle class. Hillen considers the other side of the coin, military resentment towards American society, a leadership issue — one that might benefit from emphasizing the military’s service oriented role in society. Hillen believes the real gap between the military and society is a gap in shared experience, understanding and appreciation. It is not a gap of diametrically opposed values. However, the gap that exists may pose a problem down the road because there are policy dangers when Americans do not understand or appreciate their military, especially among political elites.

Turning to the second assumption, Hillen disagreed that the gap between the civilian and military cultures is inherently unhealthy. However, he emphasized that policymakers must define the markers to determine when the gap is
healthy and when it becomes unhealthy by damaging civilian-military relations. This is particularly important in the post-Cold War world. Hillen asserted that the notion the military should change its value system to conform with society reflects the absence of policy. We have a long history of healthy civil-military relations, which Hillen believes should be studied and updated in light of changing circumstances.

The third assumption concerning the need to close the gap, Hillen cautioned, may impair the ability of the military when it is called upon to exercise its mission. Examples include the effect of military acquiescence to civilian values in Korea and in the post-Vietnam era. In analyzing this issue, Hillen emphasized it is important to consider the end state. If the end state of the military is to provide for the common defense, and to prepare the military for the arduous task of going to war, then we must understand that good civil-military relations is only a means to an end, not the end in itself. More important is the hard policy work of determining how to empower the military to respond to the demands of its functional requirements, and at the same time, the demands of a military in a democracy that must reflect and answer to the society it serves. Thus, Hillen concluded, policymakers should stop calling upon the military to close the gap, and should instead focus on developing markers that delineate the proper balance between the pressures that shape military culture, including the constant tension of functional, legal and social imperatives.

Richard H. Kohn

Richard H. Kohn, Professor of History at the University of North Carolina at Chapel Hill, agreed that we have not clearly identified or defined the gap between the military and society. He also suggested that the cultural gap may not be inherently dangerous. It permits the military to serve its two masters, the society it protects and the battlefield on which it must perform. The balance between the two is necessary to the military’s mission.

Concerning the nature of the problem, Kohn concurred that the gap between military and society is not the cultural gap, as there must be a cultural gap between structured, hierarchical, authoritarian military institutions and an individualistic democratic civilian society. The fundamental problem is whether the disparity in values, opinions and perspectives has developed beyond what is normal and functional historically. Another question is whether the gap that exists poses dangers to military effectiveness or to civilian-military cooperation. As of the present time, we do not have empirical evidence to answer this question. However, it raises a further question of whether the combat forces are under the relentless onslaught of social pressures from political advocacy groups, or asked differently, whether there is a movement to drastically "re-engineer" the military. Kohn suggested the evidence for this is largely anecdotal, among traditionalist defenders of "warrior values" who interpret pressure for different policies, mostly in the gender and sexual orientation area, within the context of a culture war infecting American society in the last generation. It is a mistake, Kohn asserted, to equate the gender war with a general assault on the "warrior ethos." Women have been integrated in the military since the 1970's, and were integrated to the most effective military in American history—the forces that overwhelmed their adversaries in Just Cause and Desert Storm. While the Flinn case highlights public misunderstandings of military culture, the case was mishandled by the Air Force commanders. Thus, Kohn believes it is inappropriate to equate the warrior ethos to maleness, particularly when the warrior ethos is an important part of our military training program.

Historically, Kohn observed, there has been distrust between the civilian and military population. Until recently, a large peacetime military establishment was considered dangerous to American government and society due to the historical opposition to standing armies. Moreover, the two sides have frequently viewed each other through a fog of suspicion and stereotype. Civilians view the military as rigid, authoritarian, bureaucratic, unimaginative, elite arrogant and often incompetent. The military views civil society as soft, naive, cowardly, unethical, undisciplined, unfocused, hedonistic and materialistic. In the old days, the US relied on citizen-soldiers for defense, maintaining a small a peacetime force structure as feasible. These soldier:
were not equipped for a general war and were not imbued with the warrior ethos or the high moral and ethical standards we praise today. Historically, Kohn noted, the armies we have praised so highly in our society have not been the archetypal warrior ethos armies. They have been citizen warriors, yet, we have little historical data on the difference in values between the military and society.

Kohn concurred with Hillen’s approach on how to think about and study these issues. Specifically, he agreed with the need to distinguish between the elite military, the elite civilian, the general military and the general public.

Kohn suggested that there are some dangers with a divergence, if there is one, particularly if the military comes to view itself as the depository of moral virtue, or becomes so contemptuous of civilian elites that it does not feel comfortable as the neutral servant of the state. While we are not close to that, it is a real possibility. In the interim, the problem will be reviewed systematically and survey data will be integrated with other research to determine whether the gap exists, and if so, why the gap exists, what its character is, and what its implications are for military effectiveness and civil-military cooperation. ABA

Panel V — The Rome Treaty: Is the International Criminal Court Viable?

Standing Committee member and immediate past Chair Paul Schott Stevens moderated the panel on the viability of the International Criminal Court (ICC), and invited the panelists to discuss the status of the Rome Treaty and the issues which have arisen in the treaty negotiation process. — PJP

David Scheffer

David Scheffer, Ambassador-at-large for War Crimes Issues at the Department of State, became involved with the ICC in February 1993, together with then Ambassador Madeleine Albright. At that time, the Clinton Administration took a fresh look at the proposal which was evolving in the UN’s International Law Commission to produce a draft statute for an ICC. Subsequently, the US and other nations convened at the Rome Conference to draft a treaty that would lead to the enforcement of international humanitarian law by credible judicial institutions. For years, the parties negotiated to establish the complex structure of a court that would fairly reflect sound principles and procedures of criminal law and endure the uncertainty of an unpredictable world. The objective was to hold accountable and bring to justice the perpetrators of the most egregious crimes against humankind, such as genocide, crimes against humanity, and serious war crimes.

The creation of an ICC, Scheffer remarked, was a bold experiment. Deliberations at preparatory meetings in New York and for five weeks in Rome centered on how to accomplish the objective in a world comprised of sovereign governments, each with its own penal system but bound together by the cords of customary international law, as reflected in international treaties and in common practice. The Treaty negotiated in Rome this past year, and signed by many governments, contains many provisions which the US supports. However, in its present form, the Treaty also contains a number of flaws which render it unacceptable to the US. While the Treaty promotes values important to the

Immediate Past ABA President Jerome Shestack, Ambassador-at-large for War Crimes David Scheffer, Immediate Past Standing Committee Chair Paul Schott Stevens, and New England Professor of Law Michael Scharf debate the viability of an International Criminal Court
US, including justice, due process and respect for the rule of law, the US declined to sign the Rome Treaty, despite its concern that the absence of US support may impair the ability of the permanent court to achieve its full potential.

One common goal of those convened in Rome was to ensure that the ICC would be able to prosecute tyrants who commit mass murder, mass rape or mass torture against their own citizens, while at the same time, not inhibit states from contributing to efforts to help protect international peace and security. In view of this goal, Scheffer considers the Rome outcome on Article 12 of the Treaty ironic. Article 12, Scheffer explained, establishes the jurisdiction of the ICC with respect to any particular crime, if “either the state or territory where the crime was committed, or the state of nationality of the perpetrator of the crime, consents either ad hoc or by participation as a state party to the Treaty.” In certain circumstances, Scheffer asserted, this provision might be used, absent a UN Council Resolution, to bring before the ICC a nation engaged in military efforts to terminate humanitarian crimes in a state or territory party to the Treaty. While the complementarity regime has been offered as a solution to this dilemma, Scheffer does not believe it is the complete answer, because party states are unlikely to prosecute humanitarian offenses which they regard as valid, official actions to enforce international law. Although the ICC could determine, by a 2 to 1 vote, that there was no genuine investigation, the US has other concerns about the relationship between Article 12 and international law.

One fundamental US concern is that, in the absence of a Security Council referral, the ICC could assert jurisdiction over non-party nationals. Another concern is that the provisions for the adoption and application of amendments to crimes, to add new crimes or to change definitions for existing crimes, would allow any state party to the Treaty to immunize its officials from the new or amended crime. Officials of non-parties, however, would be subject to immediate prosecution. For a criminal court, Scheffer argued, this is an indefensible overreach of jurisdiction, and an unintended and unacceptable consequence of Article 121 of the Rome Treaty. Likewise, Scheffer criticized the notion that Article 124, which permits state parties to opt-out of prosecution for war crimes for 7 years, would provide an incentive for non-parties to join the Court, stating that individual criminal jurisdiction should not be toyed with in such a fashion. Yet another US concern is the inclusion of an as of yet undefined crime of “aggression.”

Given these concerns, Scheffer explained, the US will not sign the Rome Treaty in its current form. Next year, a Preparatory Commission will convene to address the mechanics of launching the ICC. It will include negotiations concerning elements of crimes and the rules of evidence and procedure. As a signatory of the Final Act in Rome, the US is entitled to participate in the Preparatory Commission. The US believes this process should afford an opportunity for governments to address their fundamental concerns, since a solid foundation will be essential to the success of the ICC. For these reasons, the Administration opposes suggestions to wait until the review conference 7 years after the Treaty is entered into force or to oppose the treaty. Our long term interests, Ambassador Scheffer concluded, will be better served by a policy of positive and forward-looking engagement, in the hope of promoting a Treaty that will stand for values and goals common to all.

Jerome J. Shestack

Jerome J. Shestack, the Immediate Past President of the American Bar Association (ABA) and liaison to the Standing Committee, noted that the ABA endorsed the ICC and acknowledged Ambassadors Scheffer’s difficult position working with intra-government clients who had different interests and views on the subject. In Rome, Shestack remarked, 113 states chose to take no action on two Amendments proposed by the US, and the Rome Treaty was adopted by a vote of 120 in favor of the Treaty and 7 against, with 21 abstentions. In opposing the Treaty, the US and Israel found themselves in the company of China, Iraq, Qatar and Yemen. Despite US opposition, the Treaty will be ratified and entered into force.

In Shestack’s considered opinion, there are three reasons to have an international criminal court. First, the moral imperative of justice requires punishment for serious and grave crimes such as genocide, war crimes, and crimes against humanity. Punishment for such crimes gives credibility to the rule of law. Second, punishment is believed to have a deterrent effect. Third, it provides vindication for the victims, which in turn, promotes reconciliation. In addition, an ICC makes up for limitations on the powers of ad hoc tribunals and serves as a model for due process and fair trial.

Genocide, crimes against humanity and war crimes are offenses under the jurisdiction of the ICC, as is “aggression” which has yet to be defined in a way it can be enforced by the ICC. Although the Rome Treaty is imperfect, Shestack believes it advances the rule of law. Crimes against humanity, for example, must be widespread or systematic, directed against civilians, not random or isolated acts but rather murder, extermination, enslavement, apartheid and disappearances over a prolonged period of time. Torture and deportation are not included if they are lawful sanctions in a particular country or protected under international law. War crimes must be part of a policy or widespread, and include breaches of the Geneva Convention of 1949 such as rape, prostitution, trafficking in women or children, forced pregnancy, torture, lack of fair trial for prisoners of war,
physical mutilation, and improper use of a flag of truce, or tax, religious and cultural institutions.

These crimes reflect a number of compromises, and leave the prosecutor a great deal of authority. The US wanted the decision to go through the Security Council, which Shestak believes would politicize the process. In any event, Shestak noted, the Security Council may defer prosecutions for a period of 12 months, and extend the deferment an additional 12 months. Moreover, the prosecutor must submit information supporting an indictment to a judicial chamber and obtain authorization to prosecute. Shestak argued that these safeguards, coupled with provisions for complementary jurisdiction, would enable the US to consider alleged war crimes by its own citizens.

Shestak outlined the achievements of the US in the convention, including improved complementary jurisdiction, a role for the Security Council to intervene, the protection of national security information, a recognition of national judicial procedures, important due process protections, coverage of internal conflicts, viable definitions of war crimes, recognition of gender issues, limited provisions relating to command responsibilities and superior orders of defense, rigorous qualifications for judges, basic principles of state party funding and reasonable amendment procedures. Despite these accomplishments, Shestak stated, the US did not sign because of a remote possibility that a US soldier could be tried in ICC despite the provisions for complementary jurisdiction. Shestak expressed concern that by declining to sign the Rome Treaty, we might be making the same mistake we made with the Law of the Sea Treaty. To advance the rule of law, Shestak opined that the US needs to re-examine its position on the ICC and approve the Rome Treaty.

Under the nightmare scenario suggested by Ambassador Scheffer, a rogue regime committing war crimes and other atrocities could be immunized if US troops bombed their facilities and inadvertently killed human shields, but the US could not obtain immunity. Scharf contended that this nightmare would not become a reality because the rogue state using human shields would not be immune — even if they were a party to the Rome Treaty and even if they had opted out of the ICC’s jurisdiction over war crimes for seven years — under two situations. First, if the crimes could be assimilated to crimes against humanity, immunity would only extend to war crimes, not crimes against humanity or genocide. Second, if the Security Council decided to trigger the Court’s jurisdiction, the seven year immunity would not apply.

Concerning the US troops, Scharf contended that, in all likelihood, they would not be subject to ICC jurisdiction. First, he noted, the ICC prosecutor could not launch an independent investigation. Two of the three judges on a pretrial panel would have to concur with the prosecutor’s recommendation. Second, under Article 8, only “serious” war crimes as part of a plan or policy are within the ICC’s jurisdiction. The inadvertent killing of human shields does not fall within this definition, and even if two out of three judges concluded it did, the decision could be appealed to the full en banc court. Third, under Article 18, if the US itself determined to investigate the matter in good faith, the ICC must automatically defer its investigation. Fourth, if the US were acting under the authorization of the Security Council, Article 16 would allow the US to opt out following an affirmative vote by the Security Council to postpone or terminate the ICC’s jurisdiction.

Once the US lost its bid to immunize US officials from the ICC’s jurisdiction, based on the theory that the state of nationality must always consent absent a Security Council Resolution, the Administration began to articulate its view that an international criminal court cannot exercise jurisdiction over the nationals of a non-party state because it would be inconsistent with the principles of international law. While this policy makes sense at first glance, Scharf argued that it may undermine US interests in the big picture. By way of example, Scharf noted that in 1988, when Lebanese national Fawas Yunis hijacked a Lebanese aircraft with two US citizens on board, he was brought to the US and prosecuted. Yunis argued he could not be prosecuted under a hijacking terrorist treaty because Lebanon had not signed the treaty. The US response was that hijacking is a crime of universal jurisdiction, and any country who obtains custody over a hijacker may prosecute, regardless of whether the country of nationality consents. The lesson, Scharf suggested, is that we should choose our rhetorical arguments carefully to avoid diminishing hard fought law enforcement tools.
Regarding Scheffer’s suggestion to amend the ICC statute following the model of the Law of the Sea, Scharf indicated that during the Preparatory Commission, there may well be sufficient modifications to enable the US to sign the Rome Treaty. During the Rome Convention, he noted, the US proposed a compromise at the eleventh hour pursuant to which the state of nationality could either consent or take on state responsibility and acknowledge official acts of the state. This, in Scharf’s view, may have been adopted in the conference but for the timing of the proposal. Scharf took issue with Jesse Helms’ threats to pull US troops out of any country that does not accept our proposed modifications to the Rome Treaty, and to veto any effort of the Security Council to send any case to the ICC unless the ICC statute is amended. Those threats, Scharf concluded, may lead to naked isolationism and cause us to lose the battle of international relations. 

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Luncheon Address — General Charles A. Horner, USAF (ret.)

General Horner observed that in many ways, Desert Storm was a vivid introduction to the Post Cold War world. One signal of change was the former Soviet Union’s failure to deter Iraq’s attack on Kuwait, which in other times might have brought the US and the Soviet Union into dangerous nuclear confrontation. Another signal was the lack of strong support Russia gave its former client, Saddam Hussein, following the attack. Perhaps the greatest harbinger of the new world was the discovery that the Iraqis had significant programs to develop nuclear, biological, and chemical weapons and the means to deliver them.

While our intelligence agencies had information about the Iraqi proliferation of WMD and the willingness of Iraq to use chemical agents on Iranian military forces and its Kurdish minority, the American public did not appreciate the magnitude of the threat until American troops were endangered by NBC weapons during Desert Storm. After the liberation of Kuwait, UN inspection teams confirmed the breadth and depth of Iraqi WMD programs and provided an unequivocal warning that the world had changed dramatically.

In the wake of Desert Storm, it is apparent that nuclear, biological and chemical weapons can proliferate to anywhere in the world, may be possessed by national entities and non-state sponsored groups, and will be used. Examples include the recent chemical attack in Japan, the firing of a ballistic missile over the Japanese islands by North Korea, and nuclear weapons detonations in India and Pakistan. Nuclear war in the Indian sub-continent, Horner cautioned, could spread radioactive fallout around the world, contaminating fresh milk for the next 50 years, deforming millions of children, and causing irreversible environmental damage. Although the US is beginning to realize the specter of WMD delivery by ballistic missile or parcel post, we are slow to act on our awareness. In Desert Storm, Horner maintained, the US was fortunate. Hussein erred by attacking Kuwait before his nuclear technology had been developed. Other nations may not make the same mistake.

To properly address the threats posed by the proliferation of WMD, Horner asserted, the Pentagon must change the nature of its military forces and their underlying strategy. Specifically, it must strengthen its capability to project conventional force from beyond the range of a regional adversary to eliminate WMD prior to the deployment of US forces. By utilizing the air power of the Air Force and the Navy’s capability to launch long range cruise missiles from bomber aircraft or submarines, the US military can attack the enemy’s WMD without placing large numbers of Americans in harms way. This capability would be enhanced by the development of small, rapidly deployable units that can mass and disperse quickly in response to a crisis throughout the world. These units would have to rely on fire support from aircraft and missiles. Once the situation were stabilized and the WMD threat
reduced then current forces that require time and access could be introduced as the US coalition force would hold the initiative.

In addition to changes in the military, Horner maintained, our foreign policy must reflect strategies to address the dangers of proliferation of WMD. Russia and the US must continue the reduction of nuclear weapons and develop and maintain strong and credible conventional military forces for offensive and defensive purposes. As we phase down the superpower arsenals, other known nuclear powers, including Great Britain, France and China, must engage in the process and reduce their weapons as well. Non-declared nuclear nations such as Israel, India, Pakistan, and others will also have to participate. Moreover, the materials and technologies needed to produce WMD, particularly nuclear weapons, must be monitored and tracked. Furthermore, the intelligence needed to have knowledge of emerging or previously undisclosed WMD programs must be coupled with international legitimacy and will to take military action if need be to force compliance with the actions of those ridding themselves of WMD.

In addition, Horner asserted, we must have in place defenses and counter measures that deter the use of WMD. America needs ballistic missile defense for her own citizens and should be willing to share this same defense with allies, neutral nations and even potential adversaries who shun WMD. The technology needed to create ballistic missile defenses on a worldwide basis is available; it is the will to do so that is lacking. Using WMD to deter the use of WMD is counter productive and will not work. Deterrence must be based on demonstrated conventional arms and the will to use them. To reduce the threat to the world posed by the proliferation of WMD, the US must provide the leadership to create a world where the benefits of not owning WMD outweigh those of ownership, and the risks of ownership are prohibitively expensive, given the certainty of immediate and massive conventional retaliation. To succeed in this endeavor, Horner concluded, we must rethink our Cold War strategies.

Panel VI — The Growing Ballistic Missile Threat and the ABM Treaty

John Norton Moore

John Norton Moore, Director of the Center for National Security Law at the University of Virginia School of Law and Counselor to the Standing Committee, noted that since the ABM Treaty was entered into force as part of the first SALT agreement in May 1972, it has served as the centerpiece of strategic arms control between the US and the former Soviet Union. However, there is a growing debate over the ABM Treaty, resulting from a series of fundamental changes in the world. One change is the "double-revolution" in the former Soviet Union — the movement away from centralized Moscow control, reflected in the breakup of the former Soviet Union, and the transition away from communism and, hopefully, toward a stable democratic regime. While this change led to the end of the Cold War, it also presented a number of additional challenges, such as the difficulty in identifying a range of nuclear weapons and the amount of fissile material that has been produced, as well as heightened concern about the accidental use or proliferation of so-called "loose nukes." A second change involves concerns presented by third-party actors in the proliferation of WMD and in the proliferation of missile technology. A
third change relates to advances in technology. A fourth concerns past known Soviet violations, and the fifth relates to increased understanding of the need to develop and deploy theater nuclear defense systems. These changes and circumstances have led to a variety of legal issues, including the need for a memorandum of understanding concerning the ABM Treaty, succession from a bilateral to a multilateral treaty, and constitutional issues. These issues were addressed in further detail by the panel.

Barry M. Blechman

Barry M. Blechman, Chairman of the Henry L. Stimson Center, remarked that the ABM Treaty and the question of missile defense are among the most politicized issues today. This, Blechman suggested, is unfortunate because it has kept us from adopting a sensible course to protect future generations from a very grave threat. That said, Blechman is grateful for having had the opportunity to serve on the Rumsfeld Commission, which has made the first step toward a non-partisan policy on these important issues.

By the way of background, Blechman noted, the Rumsfeld Commission consisted of nine members appointed by DCI George Tenet and nominated by the majority and minority leadership of the House and Senate. Its findings differed widely from the view of the Administration. One finding was that Russia’s current forces are declining in size, but there remains a grave threat of what might happen to these forces in the event of political turmoil or internal conflict involving the military. Another finding was that China has been content with a relatively small number of ICBMs kept in an unready status for many decades and is now poised to acquire more sophisticated and capable weapons in increasing numbers. The most interesting part of the report, Blechman stated, concerns emerging missile threats. While most of the emerging countries are focused on regional capabilities, acquiring ICBMs could be in their interest and in their plans.

The Commission concluded that a number of countries are poised to achieve long-range missile capabilities in a relatively near timeframe. Specifically, the Commission found that North Korea and Iran could develop the capability to strike the US with ballistic missiles carrying weapons of mass destruction within five years of a decision to do so, and the US will not know when such a decision has occurred. Indeed, after the Commission’s report was issued, North Korea fired a ballistic missile over Japan demonstrating a capability not previously appreciated. While Iran is further behind in terms of actual physical capability, its missile infrastructure is richer than that of North Korea, largely due to the Russian involvement in the Iranian missile program. Before the Persian Gulf War, Iraq had a more advanced missile program than either North Korea or Iran, but as a result of the war, the Commission concluded that it would take Iraq ten years to develop an ICBM capability. With an end to the sanctions regime, however, the Commission determined that Iraq might also develop long-range missiles within five years. Pakistan is further behind than the others, but India has a very advanced missile infrastructure, the only one not based on Scud technology, like the other four. It is based on US technology, particularly the Scout missile, a clear demonstration of the affinity between ballistic missiles and space launch capabilities. India is developing a variety of ballistic missiles with different ranges—missiles that could be launched from submarines and surface ships and could have an ICBM capability.

These capabilities, the Commission concluded, pose an imminent danger to the US. Yet, the intelligence community has a different view. The reason, Blechman suggested, is historical. First, the government had not recognized the high level of information available in graduate classrooms or the Internet. A second factor is the great amount of assistance available to these countries from third powers, such as Russia, China, and, in some cases, the Ukraine. A third factor is the commerce in emerging missile technology among these countries themselves, including North Korea, Pakistan and Iran. A fourth factor explaining the different views of the Commission and the intelligence community, Blechman suggested, relates to the intelligence community’s dismissive attitude toward potential threats beyond what its own data suggests.

In terms of policy implications, Blechman opined there is a need to review policies based on the expectation there will be considerable warning of ICBM development. He further suggested there is a need to respond now to the threats posed by emerging missile technology. While deter-
rence may be generally effective, it may not be sufficient to discourage irrational actors. In addition, Blechman emphasized, we must focus on existing, as well as, emerging threats. In formulating policy, we must deploy defenses capable of protecting us from small emerging threats while exercising caution in our dealings with Russia and China, and engage in a dialogue that promotes both our offensive and defensive objectives.

Henry F. Cooper

Ambassador Henry F. Cooper, Former Chief US Negotiator at the Geneva Defense and Space Talks and Former SDI Director, argued that the ABM Treaty is a relic of the Cold War and a threat to US security. In Cooper’s view, the US would be better served by cooperating with the Russians in building defenses. In 1992, he noted, Boris Yeltsin expressed interest in a joint initiative, but no agreement was reached during the Bush Administration, and the Clinton Administration let the high level talks lapse while arguing that the ABM Treaty is the “cornerstone of strategic stability.” As a result, the US is building less effective defenses than our current technology permits.

To illustrate the nature of the problem, Cooper noted that during the 1972 SALT I negotiations, the Pentagon was conducting a very secret program to develop lasers. For security reasons, the US could not talk about lasers while discussing other SALT I issues with the Soviets. This led to a euphemism in Agreed Statement D of the ABM Treaty, which dealt with “future” system concepts based on “other physical principles” left undefined by the treaty and subject to further agreement before such systems were deployed.

Under a broad interpretation of Agreed Statement D, future systems could be developed and tested, but not deployed without agreement on appropriate limitations. However, under the “narrow” interpretation endorsed by the current Administration, we have been restrained in an engineering sense to conduct R&D consistent with the literal language of Article V of the ABM Treaty, which prohibits the development, testing and deployment of space-based, sea-based, air-based or mobile land-based ABM systems and their components. This constraint, Cooper asserted, means we cannot even develop or test such systems, let alone deploy them, even though Agreed Statement D blocked “deployment” but permitted “development.”

Another example concerns space-based interceptors. Under the narrow interpretation of the Treaty, space-based interceptors may not be placed in orbit because R&D is limited to development. As a result, engineers must design complicated experiments which comply with the limitations of the ABM Treaty at unacceptably high costs. Moreover, even though space-based technology is more advanced and more accurate in shooting down missiles than ground-based technology, we are not employing that technology because it is not politically correct to do so.

Concerning space defenses, Cooper emphasized that Article V of the ABM Treaty also stops the development of sea-based, air-based and mobile ground-based systems, including Theater Missile Defenses (TMD) Systems. Nevertheless, there were some improvements to the Patriot system, which originally was built as an air defense system with no capability to defend against ballistic missiles. During the Gulf War, the Patriot was a politically important part of our force mix, even though it was untested and its software had to be modified on the battlefield.

Unlike the US, Cooper contended, the Soviets were not constrained in building their air defense and theater missile defense systems because those systems were invented before the ABM Treaty came into existence. It was interdicted into a territorial defense, which included both air defense and missile defense. Even when the US learned in 1991 that former Soviet large phased array radar sites were integrated with the Moscow ABM system and were able to transfer target track information to the Moscow system, the US government determined that the Soviet, now Russian, early warning/ABM system architecture was permitted under the Treaty. Yet, the US will not adopt this architecture for its own theater defenses, which would enable our sea-based, air-based, and mobile land-based Theater Missile Defense to defend the US, because under the Administration’s narrow interpretation of the ABM Treaty, Article V bans the development of such ABM defenses. Cooper suggested it would be difficult to explain the wisdom of this position to the American people.
Cooper also criticized the Pentagon’s development of National Missile Defense (NMD) ground-based interceptors as the most expensive, least effective NMD concept that takes longest to build. Cooper opined that the concept is high risk and could not be developed in the same time frame as the Navy Theater Wide system. Moreover, the effectiveness of ground-based systems is undermined by “bomblets” or clustered submunitions released early in the missile’s flight which would overwhelm ground-based defenses. This potential near-term threat poses dangers to our troops, our allies, and Americans at home. The only effective way to defeat this countermeasure would be to intercept the attacking missile in its boost phase, a feat best accomplished from space, or in the near-term, from the air. The only program attempting to deal with the bomblet problem in the near future is an Israeli boost-phase intercept program. While effective concepts were being developed by the Bush Administration, they were canceled by the Clinton Administration due to the ABM Treaty. Cooper warned that this near-term threat possibility could render ineffective all of the missile defense systems being pursued by the Clinton Administration at a cost of about $4 billion a year.

In conclusion, Cooper asserted that the US should abandon the ABM Treaty and build effective defenses as soon as possible, based first at sea and then in space. While Cooper supports cooperation with the Russians, he predicted that cooperation will be more likely if the US determines to unilaterally build defenses to protect its citizens and interests, rather than giving the Russians veto power over its defensive programs.

Mary Elizabeth Hoinkes

Mary Elizabeth Hoinkes, General Counsel of the US Arms Control and Disarmament Agency, confirmed that the formal statement of the current Administration is that the ABM Treaty is the cornerstone of strategic stability. In her view, the role of legal counsel is very limited because the legal issues are clear cut. Specifically, she contended that our policy of three plus three, three years development plus three years analysis, without deployment, has done two important and beneficial things. First, it has signaled our respect for the Treaty today. Second, it has signaled that the Treaty may require modification in the future.

It is important, Hoinkes contended, that all of our activities have been ABM Treaty compliant. But, most importantly to her as a lawyer, it is now clear that any defensive ballistic system that meets the defined requirements cannot be deployed without modifications to the ABM Treaty. Thus, she concluded, “practical technical considerations” have mooted a legal debate that could have been extremely difficult. The plain meaning of the words of the ABM Treaty, plus the record of ratification and the negotiating history, Hoinkes stated, make clear that a true nationwide ballistic missile defense is not permitted under the Treaty, and that the limited regional defense the Treaty allows cannot be expanded to an entire territory. As lawyers, Hoinkes asserted, we must respect those limits.

According to Hoinkes, whatever latitude there may have been to breathe new life into the ABM Treaty, through inventive interpretation, has been overtaken by events, in particular, the desire to pursue a defense of the entire territory. Moreover, given the divergent views of members of Congress regarding the continued viability of the Treaty, Hoinke concluded, if a decision to deploy is made, the challenge will be to ensure that the Treaty is modified in a fashion that maintains some constraints and does not alter the fundamental strategic deterrence relationship between the US and Russia.
Robert C. Joseph

Ambassador Robert C. Joseph, Director of the Center for Counter Proliferation and Research at the National Defense University, described his experience, as a non-lawyer Commissioner, with legal issues associated with Treaty compliance, within the interagency and with the Soviet/Russian delegation. During this period, he noted, even as the former Soviet Union imploded, they were able to conduct intense and productive discussions with the Soviets on both strategic offensive arms reductions and the future of ballistic missile defenses. His conclusion, from those discussions and recent legal studies, is that while legal arguments are of central importance, resolution of the issues will require policy decisions. Moreover, Joseph maintained, it is essential to separate legal issues from policy issues, and avoid concealing policy preferences as faulty legal arguments. Two prominent examples include state succession and multilateralization.

Joseph declined to provide a technical or programmatic assessment of the feasibility of ballistic missile defense options. However, he indicated that when he worked in the office of the Secretary of Defense, he worked closely with the Strategic Defense Initiative office. Personally, he was very impressed with the progress made in every area of ballistic missile defense technology, from sensors to interceptors, and distressed to learn how the ABM Treaty made the job of the FBI more expensive and difficult. He was also amused by those who argued their policy preferences through assertions about technological limitations.

Without commenting on theological or religious views, Joseph opined that the dogma of effective deterrence through mutual assured destruction is palpable. Last month, he noted, the fifth ABM Treaty review produced a joint statement which read, in relevant part, that the objective was to "reaffirm the fundamental importance of the Treaty as the cornerstone for strategic stability, for strengthening international security, and for promoting the process of further reductions on strategic arms." Nothing in the statement discussed changing the ABM Treaty in the context of the growing threat, or needing to move forward with the three plus three policy, which Joseph suggested raises fundamental questions about the integrity of that policy.

The ABM Treaty, Joseph noted, was based on the proposition that only when the Soviet Union could be assured of its capability to kill tens of millions of American citizens could we have a secure deterrent. Joseph stated it is unclear why the former Soviet Union still requires such a guarantee, but their position is encouraged by the Administration's current policy. A second proposition, implicit in the joint statement, is the belief that the pursuit of defenses will derail the prospect for offensive arms control. This proposition compels us to choose between negotiated cuts in offensive forces or limited defensive capability — a situation Joseph described as a "fallacy of false alternatives" which the record does not support. Indeed, during the START II negotiations, we formally told the Russians we were moving to deploy strategic defenses to protect against limited attack and that we had to fundamentally amend the ABM Treaty or abandon it altogether. The Russian response was to sign the START II Treaty. At that time, President Yeltsin put forth a proposal in the UN for a global protection system which envisioned joint ballistic missile defenses outside of the ABM Treaty. Thus, Joseph maintained, the notion that the Russians will not accept offensive reductions and defenses against limited attack does not withstand scrutiny.

Moreover, the changing nature of threat, made concrete by the long-range ballistic missile programs of North Korea and Iran, has been imprudently downplayed. The threats posed by long-range ballistic missiles and the proliferation of WMD represent a major security challenge for the US. Yet, there are significant differences of opinion concerning when the threat of attack will materialize, and whether we will have sufficient warning of such an attack. While the NIE concluded there would be warning, the Rumsfeld Commission unanimously concluded that NIE was wrong, and the recent launch of long-range ballistic missiles by North Korea settles the debate. While further issues may arise concerning the accuracy of those missiles, their ability to reach the US, or their ability to transport nuclear weapons, prudent defense planning requires us to consider other strategic threats, including China and North Korea, as well as the consequences of political instability in Russia.

Joseph concluded that the defensive policies of the Cold War, including the concept of mutual assured destruction, are not appropriate today. To meet out national security...
requirements while managing the transition with Russia, Joseph asserted that we must deploy strategic defenses sufficient to meet our growing ballistic missile vulnerability, and modify the Treaty to permit more sites and interceptors and to remove the restrictions on sensors, development and testing. In Joseph’s view, these objectives can be accomplished consistent with our national security goals, and recent events compel US action to end its vulnerability and move beyond the ABM Treaty.

The Standing Committee on Law and National Security gratefully acknowledges the financial support of the Scaife Foundation and extends a special note of gratitude to Dan McMichael, who has long recognized that the dialogue fostered by these conferences is vital to our national security.

Call for Articles

*Freedom is hammered out on the anvil of discussion, dissent, and debate.*

Vice President Hubert H. Humphrey
6 June 1965

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Elizabeth Rindskopf

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