Max M. Kampelman Papers

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Speakers: Hugo Caminos
Organization of American States

Richard N. Gardner
Henry L. Moses Professor
Columbia Law School and
Former U.S. Ambassador to Italy

Allan Gerson
Professor of International Law and Transactions
George Mason University International Institute
Of the District of Columbia Bar

The Honorable Elliott L. Richardson
Milbank, Tweed, Hadley & McCloy and
Former Secretary of Defense

12:15 p.m. **Break**

12:30 p.m. **Luncheon**

Address: The Honorable Steny H. Hoyer (D-MD)
Co-Chairman, The Helsinki Commission

1:45 p.m. **Break**

2:00 p.m. ***VII. Modalities of Intervention and Their Parameters: Negotiation and Mediation, Humanitarian Relief, Military Actions, and Sanctions on Regime Elites***

Moderator: William Zartman
Jacob Blanstein Professor of Conflict Resolution & International Organization and
Director of African Studies
Johns Hopkins University School of Advanced International Studies

Speakers: Humanitarian Relief:
David Stewart
Assistant Legal Advisor for the Bureau of Human Rights and Humanitarian Affairs
Department of State

Sanctions on Regime Elites:
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Center for National Security Law
University of Virginia School of Law

Overview of Options:
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Eileen F. Babbitt
Program on Negotiation
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The Role of Military Action:
W. Hays Parks
Chief, International Law Branch
International & Operational Law Division
Department of the Army

3:30 p.m. ***VIII. Humanitarian Intervention: The Legal Limits and Parameters***

Moderator: Sean D. Murphy
Office of the Legal Adviser
Department of State
(On leave at the University of Virginia)

Speakers: Professor Malvina Halberstam
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Senior Advisor and Counsel to the United States Permanent Representative to the United Nations

Colonel James P. Terry USMC
Legal Counsel to the Chairman of the Joint Chiefs of Staff

A NATIONAL SECURITY CONFERENCE

Sponsored by the American Bar Association Standing Committee on Law and National Security

Anarchy in the Third World

June 3-4, 1993
International Club
Level B-1
1800 K Street, N.W.
Washington, D.C.

PROGRAM

THURSDAY, JUNE 3

8:00 a.m. **Registration and Continental Breakfast**

8:30 a.m. **Welcoming Remarks**
John H. Shenefield
Chairman, ABA Standing Committee on Law and National Security

8:45 a.m. **Framing the Issues**
John Norton Moore
Walter L. Brown Professor of Law
University of Virginia School of Law

9:00 a.m. ***I. Anarchy and Government Breakdown: An Overview***

Moderator: The Honorable Samuel W. Lewis
Director of Policy and Planning Staff
Department of State

Speakers: Alberto R. Coll
Principal Deputy
Assistant Secretary of Defense for Special Operations & Low-Intensity Conflict

Chester A. Crocker
Chairman
Board of Directors
United States Institute of Peace

Murray Feshbach
Research Professor of Demography
Georgetown University

Edward Gordon
President
International Law Association
American Branch

W. Scott Thompson
Board of Directors
United States Institute of Peace

10:30 a.m. **Break**

10:45 a.m. ***II. Case Study: Somalia***

Moderator: Nicholas Rostow
Former Legal Advisor
National Security Council

Speakers: The Honorable Richard A. Clarke
Special Assistant to the President for National Security Affairs

The Honorable Robert Oakley
Senior Middle East Coordinator
The United States Institute of Peace and
Former U.S. Ambassador to Somalia

Ambassador Mohamed Sahnoun
Former United Nations Envoy to Somalia

Major Walter G. Sharp, Sr. USMC
International Law Division
Office of the Navy Judge Advocate General

James L. Woods
Deputy Assistant Secretary of Defense for African Affairs

12:15 p.m. **Break**

12:30 p.m. **Luncheon**

Address: The Honorable Max M. Kampelman
U.S. Ambassador to the Conference on Security and Cooperation in Europe

1:45 p.m. **Break**

2:00 p.m. ***III. Case Study: Bosnia/Herzegovina***

Moderator: Richard E. Friedman
Partner
Rosenthal & Schanfield and
Committee Member, ABA Standing Committee on Law and National Security

Speakers: Alex N. Dragnich
Former Professor of Political Science
Vanderbilt University

Kenneth M. Jensen
Director
Research and Studies Program
United States Institute of Peace

Max Primorac
President
Croatian Democracy Project

The Honorable Muhamed Sacirbey
Permanent Representative of Bosnia & Herzegovina to the United Nations

Ambassador John D. Scanlan
Former Ambassador to Yugoslavia

Roger Winter
Director of the U.S. Committee for Refugees

3:30 p.m. ***IV. Case Study: Haiti***

Moderator: The Honorable Allen Weinstein
President
The Center for Democracy and
Board of Directors
United States Institute of Peace

Speakers: Peter R. Huessy
President
PRH & Co. and
Senior Defense Consultant
Institute for Foreign Policy Analysis

William G. O'Neill
Deputy Director
Lawyer's Committee for Human Rights

Kenneth Roth
Acting Executive Director and
Deputy Director
Human Rights Watch

Diane Wood
Associate Dean
University of Chicago Law School
Committee Member,
ABA Standing Committee on Law and National Security

FRIDAY, JUNE 4

8:30 a.m. **Continental Breakfast**

9:00 a.m. ***V. Case Study: Cambodia***

Moderator: Thomas K. Plofchan, Jr.
Bureau of Human Rights & Humanitarian Affairs
Department of State

Speakers: Anthony C. Arend
Department of Government
Georgetown University

Reed Brody
Director
International Human Rights Law Group

Larry Diamond
Senior Research Fellow
Hoover Institution and
Co-Editor
Journal of Democracy

Craig C. Etcheson
Executive Director
Campaign to Oppose the Return of the Khmer Rouge

Gregory H. Stanton
Director
The Cambodian Genocide Project

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10:45 a.m. ***VI. Strengthening the United Nations and Regional Organizations to Deal with Anarchy and Government Breakdown***

Moderator: Ambassador J. Kenneth Blackwell
Recent U.S. Representative to the United Nations Human Rights Commission

PROGRAM*

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Chairman of the Joint Chiefs
Office of the Joint Chiefs Staff

*Indicates invited speakers/acceptance pending.

FINAL

REMARKS BY

MAX M. KAMPELMAN

ANARCHY IN THE THIRD WORLD

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON LAW AND NATIONAL SECURITY

Washington, D.C. **June 3, 1993**

There was a time when one could use the term "anarchy" in describing the Third World, thereby contrasting the abysmal conditions found principally in Africa and Asia with the stability and order found in Europe. In relative terms, that contrast stills holds true, but all of us are increasingly conscious of the growing anarchy and lawlessness that have reared their head in Europe as well.

The Swedish social scientist, Gunnar Myrdal, many years ago emphasized the importance of the "ought" and the "is" of political institutions and societies. It was vital for the health of a society, he argued, for there to be agreement on what "ought" to be if the objectives of that society were to be realized. It would then be possible to measure the "ought" with the "is," the reality. If the reality did not measure up to the ought to be, then we had the option of altering that reality, by changing the "is," if we still wanted to abide by our values and objectives.

To apply that insight to the current nature of international politics one can see that Europe has in our time taken major steps toward arriving at a consensus of what ought to be. That was reflected in the Helsinki Final Act of 1975; and then further refined and elaborated upon in the concluding CSCE documents of Madrid and Vienna in the mid-1980's, followed by the Copenhagen Concluding Document in early 1990 and the Declaration of Paris in November 1990 as well as the CSCE Conference on The Human Dimension in 1991.

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

This reality is discouraging, depressing, and disappointing, as Europe has so far demonstrated a failure to come to grips with the rampant challenges to its "ought." American refusal to exercise leadership has contributed to this lack of direction and rootlessness. But the existence of the "ought," the existence of standards, goals, and rational objectives should give us some encouragement that a motivation

exists for Europe belatedly to come to grips with the need to defend, uphold, and insist upon reaching for the "ought." This, at the very minimum, requires us and Europe to assert a fundamental principle that there can be no profit or gain resulting from violence and aggression.

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

Let me approach this question from a personal historic perspective.

During my early childhood, one lifetime, there were no vitamin tablets; no anti-biotics; no television; no dial telephones; no refrigerators; no FM radios; no synthetic fibers; no dishwashers; no electric blankets; no airmail; no

transatlantic airlines; no instant coffee; no Xerox; no air-conditioning; no frozen foods; no contact lenses; no birth control pills; no ballpoint pens; no transistors.

During the lifetime of most in this room, medical knowledge available to physicians has increased perhaps more than ten-fold. More than 80% of all scientists who ever lived, it is said, are alive today. The average life span steadily increases. Advanced computers, new materials, new bio-technological processes are altering every phase of our lives, deaths, even reproduction. We are living in a period of information power, with the telefax, electronic mail, the super computer, high definition television, the laser printer, the cellular telephone, the optical disk, imaging, video-conferences, the satellite dish. Combining these instruments produces near miracles. No generation since the beginning of the human race has experienced and absorbed so much change so rapidly -- and it is only the beginning. As an indication of that, more than 100,000 scientific journals annually publish the flood of new knowledge that pours out of the world's laboratories.

These developments are stretching our minds and our grasp of reality to the outermost dimensions of our capacity to understand them. Moreover, as we look ahead, we must agree

that we have only the minutest glimpse of what our universe really is. We barely understand the human brain and its energy; and the endless horizons of space and the mysteries found in the great depths of our seas are still virtually unknown to us. Our science is indeed a drop, our ignorance remains an ocean.

We are brought up to believe that necessity is the mother of invention. I suggest the corollary is also true: invention is the mother of necessity. Technology and communication are necessitating basic changes in our lives. Information has become more accessible in all parts of our globe putting totalitarian governments at a serious disadvantage. The world is very much smaller. Asia and Africa are now next-door neighbors. There is no escaping the fact that the sound of a whisper or a whimper in one part of the world can immediately be heard in all parts of the world -- and consequences follow.

But the world body politic has not kept pace with those scientific and technological achievements. Just as the individual human body makes a natural effort to keep the growth of its components balanced, and we consider the body disfigured if one arm or leg grows significantly larger than the other, so is the world body politic disfigured if its knowledge component opens up broad new vistas for development while its political

and social components remain in the Dark Ages. I suggest to you that what we have been observing and experiencing in the dramatic political changes that have been absorbing our attention is a necessary effort by the body politic to catch up with the worlds of science and technology.

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

Keeping up with scientific and technological opportunities requires openness to information, new ideas, and the freedom which enables ingenuity to germinate and flourish. A closed, tightly-controlled society cannot compete in a world experiencing an information explosion that knows no national boundaries. Peoples now trapped in the quagmire of ancient ethnic and national grievances and enmities will soon come to recognize that they are thereby dooming themselves, their children and grandchildren to become orphans of history, lost

in the caves of the past. There is room for ethnic, national, religious, racial and tribal pride, but if that drive for self-identification is to produce respect and self-realization for the individual and the group, that drive must be peaceful and in harmony with the aspirations of others in our evolving inter-related world community.

As national boundaries are buffeted by change, the nations of the world become ever more interdependent. We are clearly in a time when no society can isolate itself or its people from new ideas and new information anymore than one can escape the winds whose currents affect us all. National boundaries can keep out vaccines, but those boundaries cannot keep out germs, or thoughts, or broadcasts.

This suggests, among many other implications, the need to reappraise our traditional definitions of sovereignty. The requirements of our evolving technology are increasingly turning national boundaries into patterns of lace through which flow ideas, money, people, crime, terrorism, nuclear missiles -- all of which know no national boundaries.

One essential geo-political consequence of this new reality is that there can be no true security for any one country in isolation. We must learn to accept in each of our countries a mutual responsibility for the peoples in other countries.

Our task, furthermore, is to help influence the constructive energies of the emerging democratic societies so that they are channeled into the full peaceful realization of their aspirations. It is in our interest to fulfill that task with determination. If we fail to fulfill our historic responsibility, we will be condemned by our children and grandchildren who will pay the price for our failure to assure the peace and human dignity that is at hand.

The argument is made that we cannot be the policeman of the world. I respectfully suggest that no community-- and our nation is an integral part of an economic, technological, scientific and political world community -- can survive, let alone flourish, without a police force. We have an obligation to be part of such a force, with diplomacy our first responsibility backed by the readiness to use force as a last resort. Without that readiness, diplomacy is significantly weakened.

Thank you.

INTERNATIONAL? LAW AND THE TRANSFORMATION OF GLOBAL POLITICS

Remarks prepared for delivery at a conference on
"Anarchy in the Third World"
sponsored by the American Bar Association
Standing Committee on Law and National Security

Washington, D.C.
June 3, 1993

Edward Gordon
President, International Law Association (American Branch)

Each of the situations that are being discussed here today and tomorrow has its own root causes, carries its own agenda and calls for tailored responses. It is appropriate, nonetheless, to look for a common explanation for what seems to be a generalized decay in governmental authority throughout much of the world. In this respect, looking to the term ***anarchy*** for insight may be misleading. If the loss of governmental capacity to maintain even minimum control of people and events within one's own territory is widespread, then surely something is afoot that has an order of its own we have not yet properly identified.

The easy explanation is that the end of the Cold War and of bipolar domination of global politics has taken the lid off some long-pent up hostile energies. If that were all there were to it, we could anticipate a return to more normal politics once these hostilities have been brought under control or run their course. My hunch, though, is that, while it may have hastened the outbreak of trouble that we are discussing here, the end of the Cold War and its pattern of hegemony merely coincided with a global phenomenon that was well underway in any case, and that, indeed, may explain the speed with which the Cold War ended and the Soviet empire and the world communist revolution collapsed.

I am persuaded that we are living through a time of transformation in the world's political order: a restructuring of authority whose essential characteristic may be that inter***nation***al relations is no longer as dominant a dimension of global political life as it has been since the 17th, or perhaps even the end of the 15th, century. If so, what is afoot is an upheaval in global politics, but not necessarily a chaos. For policy planners, the challenge is to identify the dynamics of this new world order and to invent a calculus for measuring effectiveness in dealing with it.

The theme of my remarks today, accordingly, is that in seeking ways to deal with the present outbreak of what are, after all, more or less familiar types of crises, we should not lose sight of the larger transformation their presence, if anything, disguises. Coping with crises is something for which traditional international relations affords considerable experience. Coping with a fundamental transformation in global politics, on the other hand, requires a patience with **uncertainty** of a sort for which the experience of the international system may afford relatively little useful guidance.

Is Inter*nation*al Law the Right Model?

Transition to a post-international world order finds traditional international law unprepared. The constitutive core of international law these days lie in the UN Charter - not exclusively, by any means, but in substantial measure. The Charter does speak in general terms of issues of global dimensions: human rights, for instance, and peace and

security. But these concepts, and the central place of the UN and other international agencies in promoting them, assume that the nation-state system will continue to be the predominant structure of global politics. Construe the Charter any way you like, its lynch-pins remain the territorial integrity and political independence of states.

In saying this, I hardly deny that national sovereignty no longer confers so absolute a legal authority as it once did, or that public international arrangements like the UN and the GATT confer upon collective decision-making prerogatives once enjoyed solely by states acting in their own right, or that the end of colonialism and the exponential sprouting of new growths of human rights and environmental law have given international law a world order dimension it previously lacked.

But the heart and soul of international law still lies in the common interests of nation-states as such and the nation-state system. This conceptual framework may no longer provide an adequate basis for coping with the political consequences of the fact that, to quote James Rosenau, "more and more of the interactions that mark world politics unfold without the direct involvement of nations or states."

Interdependence and Technology

It is no longer remarkable that technology is transforming how we perceive and respond to information. We regularly employ the word *interdependence* to connote the consequences of the fact that information and images are transmitted instantly, globally. What is not yet fully

grasped, however, at least within the legal community, is how this interdependence undercuts the advantage of territorial control - which is the basis of national sovereignty, as well as the fundamental ordering criterion of international relations. By conveying images instantly, globally, technology has not only shortened political distances, it has also made routine the creation of transterritorial identities: that is, by intensifying and rendering more imminent and usable such traditional identities as race, ethnicity, religion and language, and by investing equally potent ones, such as gender, age, social status, occupation, etc., with an imminence and potential for affecting events they never before have had. Workers of the world may well unite one day, but if they do it will be because technology has made their communion more personal and more imminently powerful, not because of any forces Marx or Lenin knew about.

The force is that technology has transformed global politics into an interactive game in which, in many cases, anyone can inject himself self-consciously and instantly into the matrix of events happening anywhere in the world, regardless of where he happens to be at the moment and without the necessity of relying upon his own or any government to act in his behalf. To the extent that governments are unable to effectively counter or block this interactivity, their authority is weakened. To the extent that their performance as governments is now subject immediately to global democratic approval, or even to comparison shopping, their authority is weakened. The mere *knowledge* that political power can quickly be obtained is itself a source of power in opposition to the authority of governments. At very least, what events in the past five years have demonstrated is that compliance with authority is nowhere still

unquestioning and automatic. It is increasingly self-conscious, which is not to say it is invariably wise.

The challenge for international lawyers is to self-consciously transform international law by focussing more on the outcomes it should promote and protect, and correspondingly less upon precedent for the sake of continuity or stability. The Cold War may inadvertently have given this transformation some impetus, by forcing international lawyers in the West to identify the features of international law that were incompatible with the assumptions upon which communism rested. Inevitably, however, this exercise sometimes deteriorated into little more than rationalization of one or another thrust in foreign policy. That is not enough. Nor is it enough to focus exclusively upon human rights norms or environmental ones. As desirable as these norms are, they do not, by themselves, constitute a fully functional conceptual design for a legal system appropriate to a world order whose transformation is virtually upon us.

Conclusion

I have attempted briefly to sketch some features of a global polity in which the number of participants capable of generating or affecting significant political events or movements is practically without limit. My point is not that its arrival, sooner than expected, renders more conventional solutions to world crises obsolete. It is simply that, sooner than expected, inter*nation*al management of crises requires new kinds of teamwork, indeed new teams, and a new legal order to go with it.