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credentials; upon analysis, the sample was found to have a small quantity of the precursor chemical EMPTA.

Despite the widespread exposure of the hoax behind the Al-Shifa bombing, Albright is again stoking the fires of war against Sudan. On Oct. 23, 1999, she visited Kenya and met once again with terrorist leader Garang. Albright heaped praise on Garang, stating that he "is a very dynamic leader who has a goal that is difficult to fulfill because he is not recognized in the international system." During her trip, she also met once again with Britain's puppet Museveni, to mobilize him against Sudan.

Madeleine joins the FARC

In yet another area of vital concern for the national security of the United States and the Western Hemisphere, Albright has been waging a most visible war against the White House—this time, against the President's adviser on national anti-drug policy, Gen. Barry McCaffrey (ret.).

On July 16, 1999, at a Washington, D.C. press conference with Colombian military officials at his side, McCaffrey polemicized strongly that, unless the United States provided immediate aid to the Colombian Armed Forces and National Police, the narco-terrorist FARC and ELN threatened to overrun that country. The situation is a "near-emergency," he said, and "U.S. support for Colombia is inadequate. There should be no closed door to any Colombian request." He sent a private letter to Albright, proposing that the United States allocate $1 billion in emergency military equipment, training, and intelligence back-up, to avert a disaster. State Department officials responsible for combatting narcotics and terrorism weighed in with support for McCaffrey's position.

Albright personally went to war against McCaffrey. First, her office leaked McCaffrey's private communiqué to the press, to preempt him from building a "quiet consensus" inside the administration and Congress for the emergency aid to Colombia. Next, she wrote an editorial commentary, published in the Aug. 10 *New York Times,* peddling the lie that Colombia's "38 years of struggle" could not be won militarily, and could only be ended by negotiating with the narco-terrorists.

As Albright was conducting this bureaucratic war against the President's senior drug policy adviser, the FARC terrorists were escalating their dirty war against the civilian population of Colombia, and building up their narco state-within-a-state, in the so-called "demilitarized zone" given to them in the southern part of Colombia by President Andrés Pastrana.

On Nov. 10, President Clinton announced that the issue of aid to Colombia would not be taken up this year. The President promised that the emergency authorization would be a top priority for the administration—once Congress reconvened in January 2000. In the case of Colombia, Albright did not have to overtly win the policy fight—as she did in the Balkans—to produce horrific consequences for American national security interests.

It is long past time that she be fired for cause.

Int'l Criminal Court and humanitarian intervention debated

by Edward Spannaus

In July 1998, one hundred and twenty nations meeting in Rome decided to establish an International Criminal Court (ICC), with jurisdiction over genocide, crimes against humanity, war crimes, and the as-yet-undefined crime of aggression. UN Secretary General Kofi Annan hailed this as "a giant step forward in the march toward universal human rights and the rule of law."

The United States, which had initially supported the creation of such a tribunal, voted against it at Rome, fearing that U.S. officials could be dragged before the court. Thus the United States finds itself in what many consider a parodoxical, if not hypocritical position: It wants to arrogate to itself (together with Britain) the right to take unilateral military action (i.e., wage war) on other states, such as Iraq, Sudan, or Yugoslavia, yet it does not wish to be subject to any legal claims that could arise out of those actions.

There are sound reasons for opposing the establishment of an International Criminal Court—reasons which, unfortunately, are not the basis for the current U.S. position; these pertain to the fundemental issue of national sovereignty, and the impossibility of the existence of any sort of positive international criminal law short of the abolition of national sovereignty and the creation of some form of global government.

The issues around the ICC, and the dilemma in which the United States now finds itself, were the subject of a contentious panel discussion during a two-day conference of the American Bar Association's Standing Committee on Law and National Security, in Washington on Oct. 28-29.

(The Standing Committee on Law and National Security is an outgrowth of the British-inspired, anti-Communist "rule of law" frenzy of the 1950s and 1960s; since its inception, its primary funders have been foundations associated with the CIA- and British intelligence-trained billionaire Richard Mellon Scaife.)

Leading off the panel discussion, State Department representative Thomas Warwick, the Deputy to the U.S. Ambassador-at-Large for War Crimes issues, identified a number of areas which the United States finds most troubling, including the possibility of politically motivated charges (i.e., that a Milosevic could bring charges against U.S. officials), the definition of "aggression," and that the defined crime of transferring populations into already-occupied areas, could be ap-

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plied to Israel.

John Holmes, Counselor for Legal Affairs of the Permanent Mission of Canada to the United Nations, asserted that the ICC *will be* established, and he noted that 88 states have already signed the agreement to create it. Holmes criticized the United States for its recent statements about the ICC, and said that the United States seems to be applying a policy of "exceptionalism" to itself. In light of the U.S. Senate's rejection of the Comprehensive Test Ban Treaty, and the failure of the United States to pay its full UN dues, Holmes said that it would be difficult to convince the members of the UN General Assembly that there should be an exception for the United States. Holmes also said that UN members don't want to create loopholes for the United States, that could let everyone off the hook.

'Victors' justice'

The assumptions underlying the whole idea of the ICC were bluntly attacked by Prof. Alfred P. Rubin of the Fletcher School of Law and Diplomacy at Tufts University. Rubin said that the ICC rests on the assumption that there is such a thing as international criminal law. But, he asked, who exercises such law-making authority for the international community? And who has the legal authority to interpret such law?

Rubin noted that "crimes" under international law, have either been defined by the "municipal law" (i.e., the national law) of states, or by international tribunals set up by victor states. Rubin said that he has "grave problems" with this, and he cited a number of examples: that Soviet participation in the Molotov-Ribbentrop Pact casts a cloud on the "crimes against peace" of which some Nazis were convicted at Nuremberg; the ignoring of the American mass-displacement of Americans of Japanese heritage during World War II from three Western states, but not from Hawaii; or the nuclear bombing of Nagasaki.

"In sum, the victors did not apply to themselves the rules they purported to find in the international legal order," Rubin said. "The deeper question is whether the rules asserted by victors and applied only to losers represent 'law' at all."

Another theory for the assertion of an international criminal law, is that if all, or nearly all "civilized" states define something as violating their own criminal laws, then those acts therefore violate "international law." Sometimes, he noted, it is urged that some acts violate "general principles of law recognized by civilized states." But the problem with this, Rubin noted, is that to define states that agree with us as "civilized," and those that don't, as not being worthy of considering, eliminates the majority of the human race from the rubric "civilized"—which hardly constitutes a basis for determining what is universal "law." (Who determines who is civilized?)

Discussing the leap made from "municipal" or national law, to the assertion of "universal law," Rubin gave as one example, how the United States had rejected a British proposal in the 1830s and 1840s to establish an international criminal court to hear cases involving the international slave trade. The British proposal allowed British warships to arrest vessels of any nationality, but it did not allow American or other warships to seize British vessels near the British Isles.

Rubin also quite effectively exposed many of the other assumptions on which the notions of universal jurisdiction and an international criminal law rest, and he said that the various Geneva Conventions and other agreements treat war and revolution as a sort of game, with an "umpire" blowing the whistle when his conception of the rules is violated. But is the victor ever put on trial if he has violated the rules? Rubin commented that, in the former Yugoslavia and Rwanda, the "international community" set up what were essentially "victors tribunals" to try the losers.

Under the UN Charter, all members are defined as sovereign equals. But then, Rubin asked, how can one say that the same rules do not apply to U.S. officials, as apply to Saddam Hussein? In fact, what happens is that this international criminal law is applied *selectively,* to those we don't like.

Rubin concluded his presentation by citing what he describes as "a naively arrogant book" by a British Navy captain writing about his 1830s service for the British in the Malay Peninsula, exclaiming how British rule would be a "blessing" to such a region compared to the corruption and cruelties of its native rulers. "Those who agree with the moral rationales for 19th-century European imperialism and ignore the other things that went with it, like the exercise of force that fancied moral and political superiority, might support the ICC," Rubin concluded in his prepared remarks, adding, "I cannot."

'Sometimes the consensus is wrong'

Following Rubin's presentation, a proponent of the ICC, Prof. Michael Sharf of the New England School of Law, and a former UN official, spoke. Sharf's comments revolved around the various objections posed by the United States, in which the example was given of Sudan calling for prosecution of U.S. officials after the bombing of the Al Shifa pharmaceutical plant in Khartoum on Aug. 20, 1998. What Sharf's arguments boiled down to, is that there are plenty of escape hatches in the Rome agreement to prevent prosecution of U.S. officials, and that the United States can protect itself better from prosecutions by joining the treaty, than by remaining outside it.

Professor Rubin then commented sardonically on "the extraordinary success" of the 1928 Kellogg-Briand Pact outlawing war—which was followed by 15 years of war. There may be a consensus on the basis for the ICC, "but sometimes the consensus is wrong," Rubin declared.

After this, Prof. John Norton Moore of the University of Virginia's Center for National Security Law, and one of the leading lights of the Standing Committee, argued for the creation of an international criminal tribunal, and the importance of the United States being part of it; comparing it to his own experience in the Law-of-the-Sea negotiations, Moore said that then, as now, the "international community" realized that it would not work without U.S. participation.

At the conclusion of the panel, Rubin said that there are

other means of dealing with these issues, such as the "moral law" or "natural law" methods—by which he referred to the moral exposure of grave offenses—but he concluded that the "positive-law" solution is the least likely to be successful.

'Humanitarian intervention'

Similar issues were posed in a panel on "Humanitarian Intervention and the Kosovo Crisis," on the second day of the Standing Committee's conference.

Prof. John Norton Moore opened the panel with what can only be described as a professorial diatribe against dictators and tyrants who have slaughtered their populations, citing the cases in this decade of Sudan, Somalia, Bosnia, Rwanda, Kosovo, and East Timor. Moore pronounced the solution to all this to be "democracy enlargement and the rule of law," and he posed the issue before the panel as being, "Can anything be done to deter these ruthless tyrants?" (Naturally, no reference was made by Moore to the legacy of imperialism, or to the destabilizations and divide-and-rule tactics so expertly carried out by the British in these parts of the world.)

Morton Halperin, the State Department's Director of Policy Planning, acknowledged that there was no agreement on the legal basis for the Kosovo intervention, and in fact he admitted that the United States has yet to define its legal basis, except for saying that, "taken as a whole, NATO had the legal basis to act." Halperin said that we must improve the capacity of the UN Security Council to deal with humanitarian crisis, and he cited UN Secretary General Kofi Annan as warning that, if the UN is prevented from acting in these situations, it will destroy the UN itself.

The irony was that, on this issue of "humanitarian intervention," John Norton Moore and other self-identified "conservatives" found themselves in wholehearted agreement with Halperin—someone whom they normally regard as practically a crypto-communist.

Thoroughly out of place on this panel was Maj. Gen. John D. Altenburg, the Assistant Judge Advocate General of the United States Army.

Altenburg first said that there are fundamental legal issues regarding the NATO intervention in Kosovo, which he was not going to discuss, although he did note that the absence of a UN Security Council Resolution was a major issue. The issue of humanitarian intervention is "extraordinarily subjective," he pointed out, as to how such a decision is made, and who makes it; he also posed the question of whether any state or regional organization is free to decide this on its own, thus abrogating the UN Charter.

The issue of humanitarian interventions is of particular importance to the Army, General Altenburg said, reporting that from 1945 to 1989, there were ten operations in which the Army was deployed, but since 1989 to the present, there have been 33. And, this is with Army personnel having been cut by almost one-third.

With the exception of General Altenburg, the panel represented a tortured effort to define some legal rationale for the NATO intervention in Kosovo. The most convoluted attempt was by Prof. Sean Murphy of George Washington University, who presented six arguments as to why the intervention was legal, only to conclude that none of them actually justified it.

Murphy's rather astounding conclusion was, therefore, that "NATO's attack on Serbia must be viewed as a law-shaping event . . . or a law-shaping 'incident' "—in other words, that the bombing itself created its own justification. (This is truly the notion of customary law run amok.)

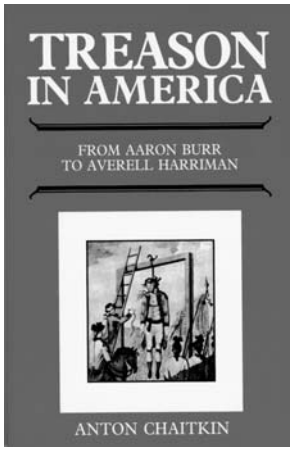
Murphy went on to boldly suggest that "we may be in a period of transformation of the law, where further incidents will be necessary for a clear legal rule to emerge." (The more you bomb, the more "legal" it becomes.)

And, in an argument that should have reminded everyone of Professor Rubin's earlier warnings against the "consensus," Murphy declared: "So, as much as I may see no clear legal rationale for NATO's intervention, most of the global community seems to have sanctioned it. To claim that it was unlawful rings hollow given the global reaction, and those who persist in calling it unlawful, risk becoming irrelevant voices in the wilderness."

Given Murphy's invocation of such a Biblical reference, one is tempted to recall that the voice crying in the wilderness, turned out to be tehe only one worth listening to.

Treason in America

From Aaron Burr To Averell Harriman



By Anton Chaitkin

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