

PANEL THREE: GENERAL DISCUSSION

John Broderick

I would like to address my question, if it is a question, to Ambassador Kampelman. First, I would like to say, Ambassador, the United States is indeed honored to have a person like yourself with your background, your experience, and your articulateness and perspicacity representing it and doing the excellent job you are doing. Secondly, you mentioned that change is inevitable. The French have a saying that everything changes, but everything remains the same. I would like your opinion as to what change, if any, you see if death comes to Mr. Brezhnev and the other members of the Politburo within the next year or two. How will that affect everything that you have said and everything we stand for in the distinctions you have made between the two forms of government?

Max M. Kampelman

First, let me thank you for your comments, and then let me say I do not know the answer to your question. We would like to believe that the succeeding leadership will be less ideological, more pragmatic, and more willing to face the realities of the world, and therefore, more willing to try to work out an accommodation with the West. In Madrid, where there is a large Soviet delegation headed by an ideologue, there are some very capable younger deputies. There is no pattern in the secondary leadership of that delegation. There are some who give signs of repeating their fathers, and there are others who give signs of being more hopeful and outgoing from our point of view. In my discussions with them, and over the last 18 months I have had about 170 hours of private discussions with them, I have stated to them that I certainly cannot, from my exposure to them, communicate any sense of confidence that the change in leadership will necessarily be for the better. But I do not know.

Jordan Paust

I would like to address this question to Paul Szasz and Justice Newman. I understand from both of your comments that you agree that violations of fundamental human rights and the precept of

self-determination negate the argument that internal conflicts are essentially within the domestic jurisdiction of a single nation state. But might there be different thresholds with regard to different types of intervention?

Paul C. Szasz

Once one has decided that a human rights violation constitutes a matter of international concern, then the reaction must be considered separately. It is really a matter for purely political decision by the competent organs, of which there are more and more. We have the General Assembly and the Economic and Social Council as principal organs. We also have the Human Rights Commission, which has a sort of standing mandate. Under many of the individual treaties, such as the International Racial Discrimination Treaty, the Convention on the Elimination of Discrimination Against Women, and the Civil and Political Rights Convention, special committees have been set up to monitor violations. But, of course, they only apply to the states that are parties to them. The functions of the General Assembly or Economic and Social Council, on the other hand, apply to all states, whether or not they are a party to a particular convention. So to repeat, having established that a human rights violation is of international concern, what to do about such violations depends on all these particular organs, and depends on exactly which convention is being violated. Generalizations at this stage are impossible.

Frank Newman

I was delighted to learn from Mr. Szasz that he decided way back in 1955 that article 2(7) did not cover the situation illuminated and illustrated by various kinds of human rights violations. I think it would be a mistake to read degrees of wrongdoing into article 2(7). It is very important that those degrees be specified in certain provisions dealing with human rights. For example, under resolution 1503 of the Economic and Social Council, the phrase used is "consistent pattern of gross and reliably attested violations of human rights," and that is a good phrase. It keeps a lot of junk off of the agenda. But what I have observed since I have been working with these groups is that the whole approach has changed. There is a ritual, and sometimes now even the ritual is not followed. Beginning with the Chile case and the decision in August of 1974 that the subcommission could move in, every time a government was attacked by the subcommission its representatives would

get up and deny everything you say. But, once the ritual was over, the people would get down to business and discuss the facts; this is where it all begins, you have to have the facts.

G.I.A.D. Draper

Is it possible, because of the difficulty when discussing questions like human rights with the Soviets at Madrid, that in a way the two proponents are discussing the matter in a language which is completely alien to the other, possibly not even understood? If one works out the basic premises from which the Soviet Union took off in 1917 in relation to international law, I think much of their attitude becomes clear. For many years the Soviet Union was the sole communist state in a world of bourgeois states, the only one. When one looks at the letters that passed between Lenin and Marx, one is amazed at the total lack of attention that those two worthies, one so impractical that he could not keep a laundry book and the other running a successful business in England, paid to the law. It was Lenin, indeed Lenin, who had the percipience to realize that the Bolshevik state of the future would have to have a posture in relation to law, and up it came, law as the tool of exploitation of one class by another. Because that struggle with the proletariat is still going on, they still need law in the Soviet Union.

There is certainly no shortage of law in the Soviet Union. But in my student days, in 1936, there came a most remarkable development in a certain province in the south of the U.S.S.R. The region proclaimed that the moment had come when law was no longer necessary. They abolished the law courts, they got rid of all the lawyers, they repealed their whole code of civil and criminal law. All was going splendidly; they had reached the goal. Exploitation was over; the workers' class was triumphant. All power to the workers. Law was unnecessary. The very chilling reply from Moscow was to lock up at once all those responsible for the nonsense.

Now, when it came to consider international law, I would venture to suggest that the Soviet Union jurists were caught with their juridical clothing in disarray. Namely, they had no prepared posture as to how to deal with their formulation of law as a tool of exploitation by one class of another. How do we fit that to the question of the relationship between states, of which the Soviet Union found itself the latest, and the only communist state in a world of bourgeois states? That world of bourgeois states had evolved, particularly in the European matrix, the whole system of classic international law, a large part of which was customary and

the slightly smaller part of which was treaty law. This put the Soviet Union at an enormous ideological disadvantage. They saw at once that they had had no hand in the molding of that customary, and therefore bourgeois, international law.

Treaties were another matter. The Soviet Union was prepared to embrace treaties with love and affection, because you do not go into a treaty you do not like. You can negotiate to get your workers' Soviet ideology into the treaty, or you do not join it. But custom was tough; you brought it before you arrived. It came with you in the cradle with your mother's milk, and it was bourgeois milk at that. This was their predicament. You can see when you trace the history of their international law theoreticians, that they wandered around the 360 degrees of the clock to find a resting spot where they could argue international law with the bourgeois world. For you see, how can you talk of exploitation of one class by another in the context of relationships between states that are governed by international law norms, when these norms are the modus for exploitation? In other words they fouled their own ideological nest, and this has taken them quite a time to sort out. Now they know better. When it comes to the forum, and the immediate context of human rights, such as the Helsinki Act of 1975, you find the Soviet Union advancing the former type of theoretical argument.

I think there may be some merit in the Soviet/non-Soviet dialogue that divides the world. So far this dialogue has been concerned with international law, and more specifically, that part of it which we call the regime of human rights, whether universal or regional. The Soviets take a stance which is based on an attitude that we have not yet mastered, and it might be easier to refute their stance if we had. By definition, the Soviet state is composed of people's ministers. The government is the people's government. How then can the people have rights against the people's government? On top of that is the whole doctrine of sovereignty which the Soviets press to the outer limits. How many hours have we spent in diplomatic conferences listening to the Soviets arguing the implications of sovereignty in eliminating things like the use of the protecting power in international armed conflicts? We have almost, some of us with tears in our eyes, begged them to come into the 20th century of international law and kick clear the traces of the age of Dickens, whom they read with such avidity. Come out of the 19th century we beg them, and think with us, and try to be modern. Their reply is that the so-called sphere of human rights, what goes on inside the Soviet Union between the people and the peo-

ple's government, is nonsense, because the ministers are the people's ministers. If the basis of human rights is people's rights, how can the people have rights against themselves? Away with it. How dare you interfere with what goes on inside the Soviet Union! That is a question of sovereignty. If you were a state which was the only Bolshevik state in a world of bourgeois states, you too would press sovereignty until almost its snapping point. It is that attitude which I suggest we study and try to refute.

Max M. Kampelman

The essence of your position, as I understand it Colonel Draper, is very valid. It is a question of whether we understand each other as we talk, whether the words we use mean the same thing, particularly in the area of human rights and international obligations. That is the very question. With respect to the question of human rights, it is clear that the Soviets emphasize the right to economic advantages, the right to a job. They use the term right to life. We think in terms of political rights. They understand what we mean; they just do not agree with what we say. At Madrid we have discussed these differing concepts of rights. Surprisingly to many, they have already informally agreed to a proposal that we made to them, that if and when Madrid should end, prior to the next review meeting we would have a conference in which we discuss the very question of our differing philosophies of human rights. I do think that with repetition by us and insistence by us, we will develop a concept of shame as Justice Newman pointed out. We can get their attention. This is, after all, what this process is all about.

Waldermar A. Solf

I would like to jump in and support Colonel Draper's point of view. I spent 15 years in Germany, largely at the Max Planck Institute in Heidelberg, and I saw how little the Americans know about the Germans. I am, to my satisfaction, reliably informed that the two leading American professors on the Soviet legal system cannot sit down and discuss any Russian legal question comfortably with a Soviet expert because they do not know enough Russian. I think Colonel Draper was suggesting that seventy-eight hours or 278 hours of discussion someplace does not give enough understanding of that system to enable us to bargain as effectively with them as we ought to. Whether we want to set up an academy of peace and pay one million or one billion dollars instead of 200 billion for military purposes, I do not know. But my experience has shown re-

peatedly that there has been complete misunderstanding between two such close allies as the United States and West Germany. If this is true, then I imagine we must have much greater misunderstandings between countries like the United States and the U.S.S.R. Some way is urgently needed to obtain better communications with the Soviets, and it would be worth whatever it costs.

Martin Feinrider

Ambassador Kampelman, I listened with interest as you described the obstacles to peace which the Helsinki process faces as a result of the Soviet leadership's building of a ponderous military machine, being frozen by ideological rigidity, and its belief that the very existence of the other side is incompatible with international peace and security. Unfortunately, I believe the present United States administration has these same shortcomings. We have two superpowers that very often act the same and have identical perceptions of each other.

I note that this colloquium has primarily considered internal conflicts in terms of United States foreign policy, although to some extent with regard to the international relations framework. But, with the exception of Mr. McCarthy, we have essentially ignored the positive substantive rules of international law, such as those provided by the European Convention on Human Rights, the American Convention on Human Rights, the O.A.S. Charter provisions that provide competence to the Inter-American Commission, and the International Covenant. All of these have been or soon may be relevant to internal conflict. I want to ask you why it is that the current administration decided, after the imposition of martial law in Poland, to cite Helsinki rather than the International Covenant, since in the latter Poland confessed that its human rights are a matter of international concern and that it is bound in terms of limiting derogation?

Max M. Kampelman

Let me start by saying that I was appointed by President Carter and reappointed by President Reagan, and I am a Democrat. But I find it very difficult to accept a conclusion that the behavior of this Administration in any way can be compared to the behavior of the Soviet's totalitarian society. To tie in with a comment made earlier, it is correct that we could all understand each other more than we do now. This is an extremely difficult problem, this problem of understanding. I know Democrats who do not understand Republi-

cans, and Republicans who do not understand Democrats. We will strengthen ourselves as a society by understanding each other better, and we will strengthen the international community by understanding each other better. But that should not make us immobile, it should not make us neutral where values are concerned and where vital distinctions exist. There are vital distinctions between Soviet society and behavior and American society and behavior. I think the world understands this. I know the people of Eastern Europe understand this, the people of Western Europe understand this, and we must understand it, even though we may be critical of what we sometimes see in this country under any administration. Even as we criticize ourselves, which is a healthy part of our democracy, it is vital that we not lose sight of these important distinctions. The Helsinki Final Act, the Helsinki process, and the Madrid meeting are designed to do something about this misunderstanding. It takes a long time to achieve understanding, and in dealing with the Soviet Union you can never be quite certain whether they understand you or not. I have a feeling we understand them a little better than they understand us because we study their system in our universities. We make an effort to understand their system and their language. And I hope, and as I observe this I believe it to be the case, that as we study their system we try to do so in a sense as scholars and not necessarily as propagandists, which is not necessarily the case on the other side.

The end question that you asked was why did President Reagan, in dealing with and in commenting on the Polish crisis, highlight the Helsinki violation and not the stronger basis in law which exists in the other agreements that both we and they have signed. I wish that he had used these other agreements as well as the Helsinki agreements. Let me say why I think he did not. I have now been in Europe for two years: I have traveled a great deal through Western Europe and talked a great deal with diplomats and people involved with public opinion, and it is my perception that since the Madrid meetings began, the Helsinki Final Act has somehow taken on a new coloration. It certainly has taken on a new coloration in this country because people who were prepared to dismiss it as irrelevant, or to suggest that we abandon it because of Soviet violations, are now ready to go ahead and use it as an instrumentality. I think the reason is that public opinion in Western Europe looks at this as an extremely important document now. It reflects human rights values; it is a place where East talks to West and, to the extent that we talk to each other, they hope we will not be shoot-

ing at each other. It has assumed an importance that it did not have a few years ago. From a political point of view, the President decided that he was going to try to use this political weapon by referring to it as having been violated, particularly since these actions in Poland took place while the Madrid meeting was going on.

I will conclude by saying further in support of my statement on dialogue that when we deal with the Soviet Union, we must remember that their computer is fed all of the messages we give them. We do not know how it is translated, but when it has an effect, if it should have an effect, we will suddenly hear about it. Let me give you an illustration. We spent a great deal of time arguing about a military question. A position that the West advanced was thoroughly dismissed and attacked by the Soviets and their colleagues in Madrid as disrespectful and wrong, as violating the spirit of the Final Act, and as counter-productive. Then one day Brezhnev made a speech and made a concession to us. The Soviet delegation was certainly not aware of this concession two days before when they made a statement saying how terrible we were to advance this proposal. But suddenly, out of the blue, that computer worked out a change of position for Moscow, and Brezhnev made a speech to us. There was no advance notice. We were surprised by it, I know they were surprised by it, and we could not have predicted it. So we have to keep on with our messages about human rights. We have to talk to them. We have to add the element of shame. We have to explain our views. We have to assert our concerns over and over and over again, in the hope that at some point we may hear that the computer has come out with something which may be more hopeful to us. I would not like us to be immobilized merely because of the complexity of the problem. I would not like us to be silent about this merely because we do not have the full understanding of them, or they of us.