THE NEW WORLD ORDER AND
THE RULE OF LAW

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I. INTRODUCTION

"Out of these troubled times," President Bush told a joint session of Congress in September 1990, "a new world order can emerge, a new era, freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace. An era in which the nations of the world, east and west, north and south, can prosper and live in harmony."

Bush spoke against the backdrop of the military confrontation in the Persian Gulf. The concerted United Nations (U.N.) action, the opposition to aggression, he said, heralded an era in which international conflicts could be managed, and in which aggression would no longer be feasible. The international community, free of the scourge of war, could address itself to other serious problems confronting the planet. It would be, Bush said, "a world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the

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1. Transcript of President's Address to Joint Session of Congress, N.Y. TIMES, Sept. 12, 1990, at A20. See also Excerpts from President's News Conference on Gulf Crisis, N.Y. TIMES, Aug. 31, 1990, at A11 (Bush stating, "as I look at the countries that are chipping in here now, I think we do have a chance at a new world order").
strong respect the rights of the weak." Bush said that "America and the world must support the rule of law. And," he promised, "we will."\(^2\)

Bush's view of the Persian Gulf situation was not universally shared. Some regarded the United States' outrage over Iraq's invasion of Kuwait as selective. They pointed to other situations in which the United States had condoned or perpetrated aggression. The United States, they said, manipulated the United Nations, taking advantage of the Soviet Union's internal weakness. From this perspective, the Persian Gulf situation bespoke not a new era of harmony but a continuation of United States dominance over Third World resources, backed by the use or threat of military force. It was anything but a harbinger of a bright future. These critics also pointed to the United States' 1989 invasion of Panama, which was widely condemned as aggression, as further evidence that a new era of harmony was but a distant dream.

If a new world order is to emerge, it must, as President Bush said, be based on the rule of law in the world community. A prerequisite to the emergence of a new world order is adherence to the rule of law by the United States, the only functioning superpower. A critical question, therefore, is the United States' commitment to the rule of law.

This article reviews the United States' recent practices, both executive and congressional, to assess whether they bespeak an adherence to the rule of law. The article explores two aspects of United States practice: the extent to which the United States works cooperatively through international organizations, and the frequency with which it resorts to use of armed force.

II. THE UNITED STATES IN INTERNATIONAL ORGANIZATIONS

A major postulate of the new world order, as expounded by President Bush, is cooperation through international institutions to solve world problems. The Reagan Administration did not look to international organizations as a forum in which to resolve major issues. For the most part, it "avoid[ed] multilateral institutions and accountabilities."\(^3\) To the extent that it worked through international organiza-

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tions, the Reagan Administration adopted a confrontational approach. This approach, said analysts, involved a "radical new theory about international law and institutions," and "a dramatic break with past administrations."

In the early years of the U.N. and the Organization of American States (O.A.S.), the United States found most other members prepared to follow its lead. With the end of colonialism in the 1960s and 1970s, however, the voices of the formerly dispossessed peoples were heard. In the United Nations, emancipated colonies promoted new principles. Meanwhile, in the O.A.S., the Latin states began to assert themselves. The Reagan Administration's adversarial approach was a reaction against a loss of control.

In international organizations, the Reagan Administration sought less to reconcile conflicting interests than to advance its own agenda. Ambassador Alan L. Keyes, Assistant Secretary of State for International Organization Affairs, explained, "[w]e must create in the United Nations and in other international organizations a political environment that is conducive to the pursuit of well-articulated and carefully defined U.S. foreign policy goals and objectives." That statement alone might not have been objectionable, since each state pursues its own objectives. The Reagan Administration, however, carried this approach to an extreme. Secretary of State George Shultz criticized prior administrations for being too conciliatory at the U.N. "While other[] [states] worked hard to organize and influence voting blocs to further their interests and promote their ideologies," he complained, "the United States did not make similar exertions on behalf of our values and our ideals." In the U.N. General Assembly, the Administration's promotion of its own agenda increasingly put it in a small minority when voting on resolutions. In the Security Council, the Administration increasingly resorted to use of its veto power.

The Reagan Administration pressured states that opposed its positions. For example, the General Assembly's decolonization committee expressed doubts that Puerto Rico was self-governing and asked

5. Id. at 5.
the Assembly to "examine the question of Puerto Rico." In response, the Administration threatened to cut aid to developing states that appeared likely to vote in the Assembly to take up the Puerto Rico issue. The Administration took the position that Puerto Rico had achieved self-determination and did not want the Assembly to study that question. The Assembly succumbed to this pressure and voted to keep the issue off its agenda.

Resisting a strong international consensus, the Reagan Administration opposed the United Nation's Convention on the Law of the Sea, probably the most important multilateral treaty of the era. Although the United States played a key role in negotiating the treaty in the 1970s, the Administration voted against its final text. It opposed the Convention's provisions to establish an international authority over mineral mining in the deep seabed, viewing these provisions as overly restrictive of U.S. mining companies. The Administration insisted on a view, rejected by most other states, that deep seabed mining was protected by the concept of freedom of the seas. The Administration's position on the Law of the Sea Convention set back efforts to achieve universally accepted norms to regulate the seas. On a similar rationale, the Reagan Administration opposed the General Assembly's Moon Treaty, which called for international control of the moon's mineral resources.

The above-mentioned policy statements and positions are evidence of the Reagan Administration's low regard for working in a

collaborative fashion with other states over issues of mutual concern. One major mechanism for international collaboration to which the Administration gave low priority was adjudicatory processes.

A. International Adjudication

If the rule of law is to prevail in the world community, states must resolve their disputes in accordance with internationally accepted principles. A primary mechanism for achieving this end is international adjudication.

The Reagan Administration limited international cooperation in the resolution of disputes by adjudication. The Administration, as the International Court of Justice (ICJ) later determined, committed aggression against Nicaragua in the early 1980s. But in 1984, when Nicaragua was about to sue the United States over that aggression, the Administration filed with the Court a new exception to the United States' 1946 acceptance of the Court's jurisdiction. The new exception was that the United States would not submit itself to the Court's jurisdiction for two years, regarding "disputes with any Central American State or arising out of or related to events in Central America." Since acceptance of the Court's compulsory jurisdiction is based on consent, the new document was intended to prevent the Court from hearing Nicaragua's complaint.

After Nicaragua filed, however, the Court decided that the United States was bound by a clause in its 1946 acceptance that promised it would not withdraw the acceptance without giving six months notice. The Court found that the Administration violated that undertaking by trying to avoid Nicaragua's suit.

As an additional objection to Nicaragua's suit, the Administration argued that only the Security Council may handle ongoing military conflict. Although the conflict was ongoing, the acts of aggression alleged by Nicaragua had already occurred. The fact that the conflict continued was no obstacle to a determination of Nicaragua's claim. The United States' position, if accepted, would have

meant that an aggressor could escape judicial condemnation by continuing to commit aggression. Rejecting this position, the Court found Nicaragua's application admissible. The United States position would have dealt a serious blow to the resolution of international disputes by adjudication, for it would have deprived the Court of the ability to hear disputes involving the most serious international issue, armed conflict.

At that point the United States withdrew from the case, refusing to take part in further proceedings. Then it withdrew entirely its 1946 acceptance of the Court's compulsory jurisdiction, giving as its reason the Court's finding in the Nicaragua case. It called the ruling on admissibility a threat to U.S. security:

For the United States to recognize that the ICJ has authority to define and adjudicate with respect to our right of self-defense, therefore, is effectively to surrender to that body the power to pass on our efforts to guarantee the safety and security of this nation and of its allies.

Although a state using force determines that it is being invaded, it does not have the final word on whether its invocation of self-defense was proper. "The question of the legality of self-defense loses its essential meaning," wrote one analyst, "if the answer is left solely to the judgment of the state purporting to exercise that right." Although the Security Council has competence under the Charter regarding breaches of the peace, that competence is not exclusive of the jurisdiction of the Court, which has accepted cases involving aggression.

Unfortunately, the United States' turn away from the Court came as the U.S.S.R., which had never accepted the Court's compulsory jurisdiction, was contemplating doing so. Soviet President

24. Id. at 70.
27. Schachter, supra note 25, at 231.
28. Id. at 223, 224 (discussing Corfu Channel case).
Mikhail Gorbachev urged that the five permanent members of the Security Council agree on common criteria under which to accept the Court's jurisdiction. The United States did not respond to this initiative.

Former U.S. Permanent Representative to the U.N. Donald McHenry, reflecting on President Reagan's first term in office, observed that the administration was pursuing:

a broad attack on the U.N. system and on the concept of U.S. participation in any institution which the United States does not dominate. It is an attempt to sail against the current of interdependence and a rejection of the idealistic notion that our long-term interests are best served by the rule of law and by the nurturing of institutions which attempt to improve relations among nations.

Ambassador McHenry said that the United States was joining "the ranks of the lawless" and ignoring criticism, not only by traditional adversaries, but also by close allies.

The administration's retreat on international adjudication represented a significant withdrawal from a rule of law policy by the United States. It reduced the range of problems that might be resolved through adjudication and increased the number that might cause serious friction.

B. Dues in International Organizations

If the new world order is to be based on the rule of law, states must work collaboratively to make international organizations function. Those organizations operate on the basis of dues contributed by member states. The United States, because of its economic status, is a major financial contributor. The past decade, however, witnessed a reluctance on the part of the United States to make payments, as a result of its objections to certain aspects of the activity of the organizations. In one important instance, it withdrew from membership.

During the 1980s, the United States had a major confrontation with members of the United Nations over the payment of its assessed dues. Both the Administration and Congress took the initiative in objecting to paying for U.N. programs.

32. Id.
In the early years of the U.N., when the U.S. was not seriously challenged, it paid its due assessments for the U.N. as a whole, and for its specialized agencies. In the 1970s, however, Congress began to balk at the assessments as Third World states increasingly opposed U.S. policy at the U.N.\(^ {33} \)

In the early 1980s, for the first time the President began to take the lead in withholding payments to object to U.N. programs of which he disapproved, and Congress became more active as well. Beginning in 1982, President Reagan refused to pay the United States’ assessed expenses for the Law of the Sea Preparatory Commission.\(^ {34} \)

In 1983, Congress called for a withholding of 25% of the United States’ assessment for programs connected with the Committee on the Exercise of the Inalienable Rights of the Palestinian People and the Special Unit on Palestinian Rights, and for projects that would benefit either the Palestine Liberation Organization (PLO) or the South West Africa People’s Organization (S.W.A.P.O.).\(^ {35} \)

In 1985, Congress ordered a 25% withholding for funds that would be used for the Second Decade to Combat Racism and Racial Discrimination, for the construction of a headquarters of the Economic Commission for Africa, and for any implementation of the General Assembly resolution that equated Zionism with racism.\(^ {36} \)

These Congressionally-ordered payment reductions violated the

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budget provisions of the U.N. Charter. Every member state does not find every United Nations program to its liking, but a state must contribute to the budget as assessed. It may not pick and choose. After several states refused to contribute assessed monies to programs of which they disapproved, the ICJ ruled that U.N. member states must contribute for all assessed expenditures.

In 1985, the United States began to withhold partial payments of assessments to object to U.N. budget procedures. The United States felt the procedures gave smaller states too great a role. Congress adopted the Kassebaum amendment, which called for a 20% reduction in U.S. payment of its assessments to the U.N. and its specialized agencies, until those organizations allowed member states to vote in proportion to their contributions in setting the budget.

The Kassebaum amendment violated the United States’ obligations to the U.N. The Charter of the U.N. and the constitutions of its specialized agencies do not contemplate consensus procedures to set budgets. For the United Nations, the annual budget is fixed by the General Assembly, which then determines the shares to be paid by each state. On both the issue of adopting a budget and of allocating the dues obligation among member states, the Assembly operates on a two-thirds majority vote. By ratifying the United Nations Charter, the United States agreed to these budget provisions and to make payments as assessed. The 1985 act violated these provisions, since its call for voting on budget-setting in proportion to assessments was inconsistent with the two-thirds majority procedure. In 1987, in response to the U.S. objections, the General Assembly took steps to in-

38. Certain Expenses of the United Nations (Article 17, para. 2, of the U.N. Charter) (adv. op.), 1962 I.C.J. 151, 168 (July 26). See also Nelson, supra note 33, at 978 - 79 (noting that both the State Department and Congress approved the Court’s approach).
40. Id. at 633 (as to U.N.).
41. U.N. Charter art. 17(1).
42. U.N. Charter art. 17(2). Nelson, supra note 33, at 977 - 78.
43. U.N. Charter art. 18(2). Nelson, supra note 33, at 974.
44. ICJ Statute, supra note 18.
volve member states more fully in the budget process, but the Assembly did not deviate from the Charter procedures for voting on the budget.

By 1990, the United States was in danger of losing its vote in the Food and Agriculture Organization (F.A.O.). The U.S. arrears totaled nearly two years of its dues. The arrears built up from non-payment attributable to the Kassebaum amendment.

In 1988, the United States began a modest reversal on the U.N. dues issue. It resumed full payment of current United Nations dues. In 1989, it began payments on its arrears which totaled nearly $1 billion. By late 1990, it still owed $296 million. In 1990, Congress softened its language on budget procedures, requiring the President to try to get the United Nations and its specialized agencies to set budgets through "consensus-based decision-making procedures" that "assure that sufficient attention is paid to the views of the United States and other member states who are major financial contributors to such assessed budgets."

The 1990 language differed from prior language in that it did not require that voting on the budget be based on contributions. However, the "consensus-based" procedures it contemplated still varied from the Charter procedures. The 1990 act also used a different formula for reducing the United States payment, putting the (stating that implementation of Kassebaum amendment would put U.S. in violation of U.N. Charter art. 17).


49. FOOD AGRIC. ORG. CONST., 12 U.S.T. 980 (as amended 1959).

50. Paul Lewis, U.S. and U.N. Food Agency Head for a Clash, N.Y. TIMES, July 12, 1990, at A10. See FOOD AGRIC. ORG. CONST., supra note 49, art. 18(2) ("Each Member Nation undertakes to contribute annually to the Organization its share of the budget, as apportioned by the Conference."). art. 3(4) (providing for loss of voting right if a state is two years behind in dues payments).


onus on the President to determine whether appropriate procedures were being used. It specified that the President must withhold 20% of the funds appropriated by Congress to the United Nations, or a specialized agency, until he determines that it used “consensus-based decision-making procedures” as defined in the act. 55

In specialized agencies, as in the United Nations itself, the United States used its financial clout to block programs it opposed. In the World Health Organization (W.H.O.), 56 the U.S. threatened to withhold its dues if Palestine were admitted as a member state. 57 Yassir Arafat, the Chairman of the PLO, called the threat “blackmail,” as the U.S. then contributed one fourth of W.H.O.’s budget. 58 The W.H.O. Director General, fearful over the loss of revenue, asked the PLO to withdraw its application. 59 Ultimately the W.H.O. voted to postpone the application, primarily because of the United States pressure. 60

Such withholding would have violated the W.H.O. Constitution, which requires payment of dues as apportioned by W.H.O. 61 Regardless of the merits of the Palestinian application, the admission of Palestine would not have amounted to a material breach of the Constitution. 62 Even if it had been a breach, the withholding of such a large share of the W.H.O. budget would have been a disproportionate response. 63

Beyond withholding dues, the United States began to use withdrawal as a weapon against international organizations whose polices

55. Id., § 405(c). The President must certify to Congress that such procedures are being used. Id.
61. WORLD HEALTH ORG. CONST., supra note 56, arts. 7, 56.
62. Frederic L. Kirgis, Jr., Admission of “Palestine” as a Member of a Specialized Agency and Withholding the Payment of Assessments in Response, 84 AM. J. INT’L L. 218, 223 - 25 (1990).
63. Id. at 226 - 27.
it found inappropriate. It threatened to withdraw from, or suspend financial contributions to, specialized agencies when Arab states moved to expel Israel from such agencies. In 1984, citing political issues, the Reagan Administration withdrew the United States from the U.N. Economic, Social and Cultural Organization (UNESCO). The Administration said that UNESCO promoted Third World views directed against the West, particularly on the issue of control of the activities of Western news media in Third World states. "UNESCO policies," explained Gregory J. Newell, Assistant Secretary of State for International Organizations, "have served anti-U.S. political ends." In addition to concern over press freedom, Newell mentioned "collectivist" trends in UNESCO, such as its espousal of the New International Economic Order, whereby Third World states sought to re-order their economic relations with the West to compensate for the profit the West gained during the colonial period.


The Bush Administration continued the UNESCO boycott. In 1990, however, Congress said that some of the United States' concerns about UNESCO had been answered and asked the Secretary of State to work with the UNESCO leadership "to promote the progress necessary to justify United States consideration of reentry into UNESCO." 

The practice reflected in the United States' policy towards international organizations in the Reagan and Bush Administrations has been to exert strong financial pressure on them to make them act in ways the Administrations considered appropriate, and to withdraw funding or participation if the organizations did not comply. This approach is at odds with the establishment of a world community based on the rule of law. If international organizations are to function effectively, they must be supported by member states, even when the organizations undertake policies to which some member states dissent. With more than one hundred states in the major international organizations, all policy decisions will engender dissent from some members. If the dissenters withhold funding, the organizations will not be able to carry out policy. International organizations are a key element of the rule of law, yet the Reagan and Bush Administrations have not shown a willingness to abide by majority approaches.

C. Access to the United Nations

If the United Nations is to function effectively, it must be able to invite to its proceedings the parties involved in international disputes. With the United Nations headquarters located in New York, this imposes a special obligation on the United States.

In 1987, for the first time, the United States took action limiting the access of accredited delegates to the U.N. headquarters in New York. Congress passed legislation to close the Palestine Liberation Organization mission at the United Nations, which had granted the PLO observer status. The General Assembly resolved that the action would violate the United States' obligations to the U.N. Under

71. An Act to authorize appropriations, supra note 54, § 408(a).
72. Id., § 408(b).
the Headquarters Agreement between the United States and the United Nations, the United States was not to "impose any impediments to transit to or from the headquarters district" by "persons invited to the headquarters district by the United Nations ... on official business."

Deciding that a dispute existed between the United States and the U.N. under the Headquarters Agreement, the General Assembly asked the ICJ for an advisory opinion on whether, under an arbitration provision of the Headquarters Agreement, the United States must arbitrate this dispute with the U.N. Rather than wait for an answer, the U.S. Department of Justice ordered the PLO to close its U.N. mission in New York, and when it did not, filed suit in the United States District Court for the Southern District of New York.

The ICJ ruled that the United States was obliged to arbitrate its dispute with the U.N. The United States refused. That issue became moot, however, when the District Court ruled against the Justice Department. The court said that the 1987 Act did not expressly state that it was to prevail over the Headquarters Agreement, and, therefore, that the Agreement took precedence. After the State Department expressed concern over the issue, the Justice Department did not appeal this ruling.

The following year the State Department refused a visa to PLO Chairman Yassir Arafat, who had been invited to speak at a General


77. Headquarters Agreement, supra note 76, art. IV § 11.
82. See United States v. Palestine Liberation Organization, 690 F. Supp. 1243, 1243 - 60 (S.D.N.Y. 1988) (stating that under the Supremacy Clause of the U.S. Constitution, a subsequent act of Congress prevails over a treaty obligation, as a matter of U.S. domestic law, only if the act evidences an explicit intent to override the treaty obligation).
Assembly session in New York. 84 The Department gave as its reason terrorist acts committed by the PLO. 85 Because the PLO was accredited as an observer, however, the refusal to admit Arafat violated the Headquarters Agreement. 86 The General Assembly moved its session to Geneva to hear Arafat. In 1989, Arab states asked the General Assembly to change the status of the PLO from an observer organization to a non-member state, after the PLO declared statehood in 1988. The State Department threatened to withhold its U.N. dues if the resolution were adopted, and the proponents backed off. Secretary General Javier Perez de Cuellar said that any withholding of dues by the United States would violate its dues obligations under the Charter. 87

The spat over access to U.N. headquarters for the PLO and Arafat represented a serious violation by the United States of its obligation to host the organization. The U.N. must have the ability to invite and receive necessary parties if it is to fulfill its mission. That mission is crucial if the rule of law is to prevail in the world community. If the United States seeks to promote the rule of law, it must let the U.N. invite whom it chooses.

D. U.N. Voting Records of Other States

If international organizations are to function effectively, the member states must be free to voice their views. Stronger states, however, have an ability to influence weaker states. The United States, as a strong state, undertook a policy during the 1980s to pressure weaker states.

Congress reacted to the United States' loss of control in the U.N. In addition to passing a law to keep the PLO away from the U.N., it ordered the Secretary of State to submit annual reports "with respect to each foreign country member of the United Nations, [and] the voting practices of the governments of such countries at the United Nations." 88 The reports were to "evaluate [the] General Assembly and Security Council actions and the responsiveness of those governments to United States' policy on issues of special importance to the United

88. An Act to authorize appropriations, supra note 54, § 406(a).
States."\(^89\) They were to analyze "the extent to which member countries supported United States' policy objectives at the United Nations,"\(^90\) and provide a country-by-country breakdown for every plenary vote in the General Assembly "on issues which directly affected important United States interests and on which the United States lobbied extensively."\(^91\)

For U.N. plenary session votes on all issues, the reports were to provide "a comparison of the votes cast by each member country with the vote cast by the United States."\(^92\) They were also to analyze "the extent to which other members supported United States' policy objectives in the Security Council" and give "a separate listing of all Security Council votes of each member country in comparison with the United States."\(^93\)

The Secretary of State was "to inform United States diplomatic missions of the United Nations General Assembly and Security Council activities."\(^94\) The obvious, though unstated, intention was to enable ambassadors to pressure the host government. This practice compromised the spirit of free and genuine participation that is necessary for the U.N. to operate as an effective institution.

E. Panama and Iraq

One of the most important aspects of the work of the United Nations is to cope with armed conflict. Yet in two situations the Bush Administration itself resorted to armed force, acting alone, rather than seeking a U.N. approach.

The Bush Administration paid little regard to international procedure in its 1989 military action in Panama. It had urged the O.A.S. to pressure Gen. Manuel Noriega to resign from office as de facto leader of Panama, and the O.A.S. did so.\(^95\) But when this pressure did not produce prompt results, the United States invaded and over-

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89. Id., § 406(a).
90. Id., § 406(b)(1).
91. Id., § 406(b)(3)(a).
92. An Act to authorize appropriations, supra note 54, § 406 (b)(4).
93. Id., § 406(b)(5).
94. Id., § 406(d).
threw Gen. Noriega. Then the O.A.S., with the United States casting the lone negative vote, "deeply deplored" the invasion and called on the United States to withdraw immediately, stating that withdrawal was necessary to protect "the right of the Panamanian people to self-determination without outside interference." The U.N. General Assembly also condemned the invasion and demanded an immediate U.S. withdrawal from Panama.

In the 1980s, the U.S.S.R. called for a stronger role for the Security Council in resolving international crises. The United States did not respond to these proposals. President Mikhail Gorbachev suggested that a U.N. mechanism be devised to monitor arms reduction treaties, crisis situations, and even a state's military preparations that seemed directed at aggression. Military observers, he said, should be sent more frequently as observers in conflict situations. When Iraq invaded Kuwait in 1990, the U.S.S.R. proposed that the long dormant Military Staff Committee of the Security Council, composed of its five permanent members, coordinate whatever military action might be taken by other states against Iraq or its shipping. As a result of its proposal, the Security Council's resolution on enforcement of the commercial blockade of Iraq asked member states to coordinate their vessel-searching activity through the Committee.

100. Gorbachev, supra note 30.
101. Id.
With Iraq’s invasion of Kuwait, however, the United States pursued a unilateral approach, seeking international endorsement only after the fact. It sent troops to Saudi Arabia without seeking U.N. endorsement.\textsuperscript{104} It instituted military interdiction of Iraqi shipping unilaterally and then asked the Security Council to endorse that course of conduct.\textsuperscript{105} Only after building up its forces in Saudi Arabia to a level adequate to invade Iraq did it ask the Security Council to endorse an invasion.\textsuperscript{106}

The endorsement it sought and received, moreover, was not for the kind of U.N. action contemplated by the U.N. Charter.\textsuperscript{107} Chapter VII of the Charter calls for force organized and directed by the Military Staff Committee.\textsuperscript{108} The resolution on Iraq did not mention the Military Staff Committee, but authorized any member state to take unilateral action against Iraq.\textsuperscript{109}

The resolution authorized states to use “all necessary means” to get Iraq out of Kuwait. Although the resolution did not expressly mention the use of military force, it impliedly authorized it, but only if such force was “necessary,” meaning that other efforts had failed. But economic sanctions were then in place against Iraq, and a strategy of negotiation based on the pressure created by those sanctions held a prospect of success. Nevertheless, the Bush Administration avoided negotiations with Iraq over issues whose resolution might have led Iraq to withdraw from Kuwait.\textsuperscript{110}

The Bush Administration used military force for purposes that went beyond getting Iraq out of Kuwait. By the time it began a ground war against Iraq, the U.S.S.R. was close to an agreement with Iraq for its pullout from Kuwait. Since there was a reasonable pros-


\textsuperscript{107} Id.

\textsuperscript{108} U.N. CHARTER art. 46.


\textsuperscript{110} Such issues included Iraq - Kuwait financial disputes arising out of loans Kuwait made to Iraq during the Iraq - Iran war, a dispute over a pool of oil under the two states' border, and Iraqi access to the Persian Gulf. They also included an international conference on the Palestinian - Israeli question. Most states in the Security Council favored such a conference in principle and advocated speedy action on it as an inducement for Iraq to leave Kuwait. But the U.S. administration refused to deal with that issue while Iraq occupied Kuwait. By threat of veto, it prevented the Council from calling for a Palestinian - Israeli peace conference at an early and definite date. S.C. Res. 681, U.N. SCOR, 2970th mtg., U.N. Doc. S/RES/681 (1990) (see appended statement of Council president indicating that the permanent members could not agree on an “appropriate time for such a conference”).
pect of Iraqi withdrawal, further force against Iraq was not a “necessary means.” A few days after the ground war began, the U.S.S.R. secured a firm commitment from Iraq to begin an immediate withdrawal from Kuwait. Yet the Administration continued operations several more days, for the apparent purpose of reducing Iraqi military capability for the future.

In attacking Iraq, the United States did not adhere to the laws of war, particularly in its aerial bombardment. Under the humanitarian law, only military targets may be bombed. The bombing in Baghdad, Basra, and other cities in Iraq hit public services such as electric power plants, water pumping stations, and government office buildings. While these targets had some military significance, their primary purpose was civilian. A team from the U.N. investigated the damage in Iraq and concluded that life in Iraq had been reduced to a “pre-industrial age.” The bombing was largely responsible.

The record of U.S. participation in and support for international organizations reflects a rejection of multilateral approaches and a readiness to use heavy-handed methods by the Reagan and Bush Administration to get their way in these organizations. Even the United States’ handling of the Persian Gulf situation in 1990-91, cited by the Bush Administration as an instance of multilateralism, involved primarily a unilateral approach by the United States. The symbolism was not lost on the U.N. when Secretary of State Baker submitted with one hand the draft resolution to authorize military force against Iraq and with the other hand a partial payment on U.S. arrears.

The Bush Administration has not yet shown that it is prepared to work with international organizations rather than to use them for its own purposes. It has not yet indicated that it will comply with international organizations that try to restrain it from pursuing United States policy objectives. If the rule of law is to prevail, the United

112. Protocol I Additional to the Geneva Conventions of 12 August 1949 (Int’l Comm. Red Cross, 1977), art. 52 (“military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”). See also id., art. 54 (prohibiting attack on drinking water installations).
States, as a major power, must follow a more clearly multilateral approach.

III. NATIONAL INTEREST AND THE USE OF FORCE

The Panama and Iraq crises saw the United States using military force abroad. Resort to armed force is perhaps the most difficult situation for the international community to regulate in its pursuit of the rule of law. States may deem their interests so vital as to override their regard for international processes. In recent years, the United States has developed new rationales to justify the use of force. These rationales must be explored to determine whether they are compatible with the rule of law.

The shift in the United States' international practice in the 1980s, as reflected in its participation in international organizations, was in part a product of the Reagan Administration's highly ideological approach to international relations. President Reagan's characterization of the Soviet Union as an "evil empire" lent an East-West element to issues that had little to do with superpower politics.

Prior post-War administrations, to be sure, had viewed the East-West confrontation as the overriding factor in international relations and had injected it in situations where it played little role. Prior administrations, as they intervened militarily abroad, had typically either lied about what they were doing or skewed the facts to make it appear that they were acting within some accepted international-law principle. But the Reagan Administration developed a theory that asserted the lawfulness of providing material aid to insurgencies that represent "democratic forces" against "totalitarian governments." The accepted view is that, in a civil war, an outside state must keep hands off, at least if no other state has aided one of the contending parties.

117. Franck & Lehrman, supra note 4, at 3 - 4.
A. Military Intervention

The Reagan Administration's willingness to resort to armed force was dramatically displayed in its policy towards Nicaragua. Opposing Nicaragua on ideological grounds, the Reagan Administration went well beyond simply aiding a contending party. It fomented and organized an insurgency to bring down the government of Nicaragua.\(^{119}\) It set up and financed an external opposition and directed its efforts. Keeping "the democratic resistance [contras] alive in Nicaragua," President Reagan said, was necessary to "prevent[ ] the Soviets from establishing a beachhead in Central America. . . . [T]hose who govern in Nicaragua chose to turn their country over to the Soviet Union to be a base for communist expansion on the American mainland."\(^{120}\) The Administration set mines in the waters of Nicaragua's major port and attacked oil depots at that port.\(^{121}\) The ICJ found that the mining, the attacks, and the organization of an insurgent force constituted aggression.\(^{122}\)

The Reagan Administration also encouraged neighboring states to oppose Nicaragua.\(^{123}\) It militarized Honduras as a counterweight to Nicaragua.\(^{124}\) It set up contra training bases in Panama\(^{125}\) and convinced Costa Rica to forego its traditional policy of not maintaining


\(^{121}\) Nicaragua Case, supra note 16, at 50 - 51.

\(^{122}\) Id. at 128.


\(^{124}\) See James LeMoyne, Army Games Due with Hondurans, N.Y. TIMES, Mar. 27, 1985, at A6 (7000 GIs took part in military exercises in Honduras; use of pilotless aircraft for reconnaissance missions over El Salvador); Nicaragua Protests War Games, N.Y. TIMES, Mar. 30, 1985, at A3 (U.S. troop presence in Honduras "increases tension and unrest in the region"); Gerald M. Boyd, Honduras Is Told U.S. Will Defend It, N.Y. TIMES, May 22, 1985, at A5 (Reagan promises to defend Honduras "against communist aggression"); Richard Halloran, G.I. Training: Build a Road in Honduras, N.Y. TIMES, Aug. 30, 1985, at A4 (construction of roads, airstrips; exercises a show of force to caution Nicaragua); Woodward, supra note 123, at 312 (Honduras exercises "gunboat diplomacy to scare neighboring Nicaragua").

armed forces.\textsuperscript{126}

In 1987, Guatemala, Nicaragua, Honduras, Costa Rica, and El Salvador called for a withdrawal of outside military aid and a negotiated end to all insurgencies in the region. The Administration ignored the request and continued military aid to the contras and to the government of El Salvador, which was involved in a major civil war.\textsuperscript{127} It justified this aid as necessary to pressure Nicaragua and the Salvadoran insurgents to negotiate, although most other states involved thought the aid prolonged the hostilities.\textsuperscript{128} The Reagan Administration violated a ceasefire that had been arranged between the contras and the Nicaraguan government by giving direct cash aid to the contras and by encouraging the contras to refuse to negotiate.\textsuperscript{129}

\textbf{B. Opposition to Self-Determination}

The Reagan Administration's opposition to self-determination was demonstrated by its policies in the Middle East, Africa and elsewhere. In the Middle East, the Reagan Administration also followed a path that put it at odds with the rule of law. It rejected the demand for statehood of the Palestinian Arab people. It provided substantial military and economic aid to Israel, which Israel used to maintain its occupation of the Arab territory it occupied in 1967. That occupation was viewed by the U.N. Security Council as unlawful.\textsuperscript{130} Given the fact that Israel used either the funds directly coming from the U.S. or other funds thereby available to it to maintain the unlawful occupation, the provision of this aid by the U.S. was unlawful.\textsuperscript{131} The U.N.


\textsuperscript{128} Neil A. Lewis, \textit{Contra Aid a Key. U.S. Official Says}, \textit{N.Y. Times}, Aug. 19, 1987, at A9; Peter Ford, \textit{Central American Peace Summit: Recriminations or Renewed Resolve?}, CHRISTIAN SCIENCE MONITOR, Jan. 15, 1988, at 7 (International Verification and Follow-up Commission of the peace plan, consisting of five Central American and eight other Latin American governments, plus the U.N. and O.A.S., which reported in Jan. 1988 that "the definitive end" of U.S. aid to the contras "continues to be an indispensable requirement for the success of peace efforts").


\textsuperscript{131} John Quigley, \textit{United States Complicity in Israel's Violations of Palestinian Rights},
Security Council called on states not to provide Israel with assistance to establish settlements of its own citizens in the occupied territories, because it found such settlements illegal.132

The Reagan Administration also set up roadblocks to self-determination in southern Africa. It increased cooperation with the government of South Africa by letting it buy commodities with military application.133 This violated Security Council resolutions aimed at pressuring South Africa to end apartheid.134 When bills were introduced in Congress to limit United States investment in South Africa, the Administration opposed them.135 When Congress passed a sanctions bill, it had to overcome a presidential veto to implement its plan.136 The Administration continued to oppose sanctions.137

To justify its weak stand on self-determination, the Reagan Administration characterized the African National Congress, the major opposition group, as "Soviet-armed guerrillas"138 that used "calculated terror,"139 and whose goals reflected "continuing close ties via the South African Communist Party to its Soviet counterpart."140 As in Central America, it was inserting an ideological element into an issue where that was at best a marginal factor.

On the related issue of Namibia, the Administration thwarted a

139. Id. at 2.
process that could have achieved independence in the early 1980s. South Africa, as the administering power in Namibia since World War I, introduced apartheid in Namibia, in violation of its obligation to promote self-determination.\textsuperscript{141} The U.N. General Assembly and Security Council both called on South Africa to withdraw, but it refused.\textsuperscript{142} In 1978, the Security Council established a process to lead to independence.\textsuperscript{143} A "contact group" of five Western states (including the United States) negotiated with South Africa and by 1982 was close to an agreement for early elections in Namibia.

In 1982, however, South Africa stated that it would not withdraw from Namibia so long as Cuba maintained troops in Angola, where the Administration covertly provided material aid to the National Union for the Total Independence of Angola (U.N.I.T.A.), a South Africa-supported insurgency.\textsuperscript{144} The Administration backed South Africa's linking of the issue of Cuban troops in Angola with that of independence for Namibia and stopped urging South Africa to hold the Namibia elections.\textsuperscript{145} The Administration took up the issue again only in 1988, chairing talks with Angola, South Africa, and Cuba. As a result, a ceasefire was declared, South Africa withdrew its troops from Angola and South Africa let Namibia hold elections that led to its independence.\textsuperscript{146} But the Reagan Administration declared that it would continue to aid U.N.I.T.A.\textsuperscript{147} The Bush Administration also continued


that aid.148

By impeding self-determination in South Africa and Namibia, the Reagan Administration blocked the effectuation of the legal rights of the populations of those states. By aiding U.N.I.T.A., it unlawfully intervened in a civil conflict in Angola.

If the rule of law is to prevail, the United States must take a stricter view of the permissible use of armed force. At the same time, it must support the effectuation of self-determination and must not interfere financially or militarily to block self-determination.

C. Terrorism

One aspect of international life that led to the formulation by the United States of new rationales for use of armed force was terrorism. As the cold war diminished, so too did the use of anti-communism as a rationale for military intervention. "Notwithstanding the alteration in the Soviet threat," President Bush said, "the world remains a dangerous place with serious threats to important U.S. interests wholly unrelated to the earlier patterns of the U.S.-Soviet relationship."149

General A. M. Gray, Commandant of the Marine Corps, said:

If we are to have stability in these regions, maintain access to their resources, protect our citizens abroad, defend our vital installations, and deter conflict, we must maintain within our active force structure a credible military power projection capability with the flexibility to respond to conflict across the spectrum of violence throughout the globe.150

General Carl Vuono, Army Chief of Staff, said that "because the United States is a global power with vital interests that must be protected throughout an increasingly turbulent world, we must look beyond the European continent and consider other threats to our national security."151

The insertion of a military force in Saudi Arabia in 1990 showed that President Bush was willing to take action on this line of thinking. The ideology of intervention was shifting from anti-communism to one of maintaining the U.S. predominance in the Third World, primarily to ensure access to natural resources. That ideology, like anti-

151. Id. at 418.
communism, put the United States at odds with international legality, which prohibits intervention to enhance a state's financial or material position.152

One aspect of the ideology of the Reagan and Bush Administrations has been a strong emphasis on opposing terrorism. To the extent that actual terrorism is targeted, there is, to be sure, nothing objectionable. However, the two Administrations have defined terrorism broadly, to give themselves latitude to use force in situations in which it is not justifiable.

This emphasis on terrorism grew out of President Reagan's effective political use of the Carter Administration's inability to get U.S. personnel out of Iran. The Reagan Administration used an anti-terrorist rationale to justify actions it took on ideological grounds.153 It commissioned, from the Central Intelligence Agency, a study of the frequency of terrorist acts. The Agency concluded that terrorist attacks against United States citizens were declining.154 Since that finding did not suit the Administration's planned use of the anti-terrorism rationale, it asked the Agency to re-do the study using a broader definition of terrorism. The second study showed terrorist attacks against United States citizens to be increasing.155

When it invaded Grenada, the Reagan Administration's motive was to overthrow a government allied with Cuba.156 President Reagan gave, however, as one of several justifications, that Grenada was "being readied as a major military bastion to export terror and undermine democracy. We got there just in time," he said.157 The Administration also cited its supposed concern that the government of Grenada might take United States' citizens resident in Grenada as hostages.158 An Administration official, referring to undisclosed doc-

152. U.N. CHARTER art. 2, para. 4.
155. Id.
It is clear from these documents and other information we now have that serious consideration was being given to seizing Americans as hostages and holding them for reasons that are not entirely clear, but seem to involve an effort to embarrass the United States and, more immediately, to forestall American military action in Grenada. The Administration did not make public these or any other documents to substantiate its claim of a possible hostage-taking. When the United States invaded, Grenadian officials treated United States citizens courteously, even during the combat that led to their removal and arrest. It seems probable that the Administration invented the specter of a hostage-taking as a pretext for its invasion.

The Administration exploited terrorism to get support for another ideologically motivated enterprise, its military operation against Nicaragua. In asking Congress to fund the operation, President Reagan referred to “[l]inks between the Sandinistas, the PLO and Libyans” and suggested that a refusal to finance the contras would make Nicaragua “a refuge and safe haven for terrorism” and would “result in the creation of another Libya on our doorstep.” He said: “[g]athered in Nicaragua already are . . . all the elements of international terrorism—from the P.L.O. to Italy’s Red Brigades.” President Reagan did not substantiate these alleged linkages.

The Reagan Administration invoked its efforts against terrorism to justify two other legally suspect military actions against ideological opponents. In 1985 it forcibly diverted an Egyptian aircraft over international waters in the Mediterranean Sea, to detain persons on board whom it suspected of participation in the hijacking of the Achille Lauro cruise ship. It justified the violation of international airspace on the grounds that the suspected hijackers, or perhaps other hijackers, might be planning terrorist attacks against United States' citizens in the future. President Reagan stated that his aim was to “send a message to terrorists everywhere, . . . you can run but you can’t hide.”

Committee on Foreign Affairs, 98th Cong., 1st Sess. 32 (1983)(remarks of Deputy Secretary of State Kenneth Dam).

159. Philip Taubman, U.S. Reports Evidence of Island Hostage Plan, N.Y. TIMES, Oct. 28, 1983, at A14 (the official was identified as “senior” but was not named).
160. See Quigley, supra note 156, at 280.
162. Transcript of the President’s Speech, N.Y. TIMES, Mar. 17, 1986, at A12.
can’t hide." The Administration did not claim to possess evidence of specific future attacks, and there is no reason to believe that it had any.

In 1986, the Reagan Administration bombed Libya, causing deaths and property damage. It asserted as one justification that Libya was likely to undertake future terrorist attacks. It said that it had evidence about planned attacks on United States’ facilities but did not make that evidence public.

Similarly, the Administration asserted a novel theory to justify the seizure of suspected terrorists abroad. It said that it is lawful to enter another state, without its consent, to capture suspected terrorists. Under international law, however, police agents of one state are not permitted to operate in another state without that state’s permission. Specifically, they may not do so to seize suspects. The Administration issued an instruction, however, that United States authorities should seize suspected terrorists in other states and bring them by force to the United States for trial, even if the other state did not give permission. It supported this instruction on a theory of self-defense, citing the possibility that the suspected terrorist might carry out a new terrorist attack in the future.

This rationale stretched self-defense to the breaking point, however. The supposition that a person suspected of terrorism may carry out a future terrorist attack is hardly an “armed attack” under the U.N. Charter. The necessary degree of imminence is lacking, and the attack, presumably aimed at a citizen, is not in any event an act of aggression.

165. Seymour Hersh, Target Qaddafi, N.Y. TIMES, Feb. 22, 1987, § 6, at 17.
169. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 433 (1987) (stating that “[l]aw enforcement officers of the United States” may “exercize their functions in the territory of another state only with . . . the consent of the other state”).
The Reagan Administration put the terrorism label on self-determination movements, like the Palestinian Liberation Organization, the African National Congress in South Africa, and South West African People’s Organization in Namibia. It used that characterization as a basis for refusing to submit to the Senate, for its advice and consent, a treaty to protect the victims of war. Protocol I to the four 1949 Geneva humanitarian conventions expanded international protections for combatants and civilians in international armed conflict. Protocol I, which had been signed by President Carter, characterized as international those armed conflicts in which peoples fight against “colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.” President Reagan said that this provision promoted terrorism: “The repudiation of Protocol I is one additional step, at the ideological level so important to terrorist organizations, to deny these groups legitimacy as international actors.” The State Department’s Legal Adviser termed the concept of self-determination a “justification for terrorist acts.” This position inaccurately equated terrorism and the pursuit of self-determination by military means.

Under the banner of anti-terrorism, the Reagan Administration proposed action against United States citizens who supported self-determination movements. It sought passage of a 1984 anti-terrorism bill to outlaw “logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents” of a “terrorist group.” The State Department would have designated which organizations were “terrorist.” The proposal was rejected by Congress, where it was criticized for the broad power it would give the Administration.

The Administration used terrorism as a pretext to investigate

173. Id., art. 1., para. 4.
175. Abraham Sofaer, Terrorism and the Law, 64 FOR. AFF. 901, 904 (1986).
177. H.R. 5613, supra note 176, ¶ 2.
United States citizens who opposed its policy of aiding the Salvadoran government in its civil war. In 1981, the Federal Bureau of Investigation (FBI) commenced surveillance of the Committee in Support of the People of El Salvador (C.I.S.P.E.S.). The FBI file on the investigation was headed "CISPES - International Terrorism," although the FBI had no basis for suspecting terrorism by C.I.S.P.E.S., as the investigation disclosed, carried out only lawful activity. Despite the lack of evidence of criminal activity, the F.B.I. continued the investigation for five years.

The Justice Department also used anti-terrorism as a pretext for a contingency plan it devised to expel aliens of Middle East origin from the United States. The Investigation Division of the Department's Immigration and Naturalization Service produced a document titled "Alien Terrorists and Undesirables: A Contingency Plan," that contemplated the possible incarceration and deportation of large numbers of Algerians, Libyans, Tunisians, Iranians, Jordanians, Syrians, Moroccans, and Lebanese on the theory that nationals of these countries might be terrorists.

The Justice Department's Alien Border Control Committee established a "working group" charged with the "development of visa restrictions for aliens from certain countries or aliens of certain categories who are likely to be supportive of terrorist activity within the United States." Another working group was charged with carrying out the "expulsion from the United States of alien activists who are not in conformity with their immigration status and expeditious deportation of aliens engaged in support of terrorism."

These plans were aimed less at terrorists than at supporters of self-determination movements. The Immigration and Naturalization Service employed a definition of "terrorism" that included the lawful use of force in support of self-determination. This overbroad defini-

181. Philip Shenon, F.B.I. Papers Show Wide Surveillance of Reagan Critics, N.Y. TIMES, Jan. 28, 1988, at A1 (The F.B.I. said that its investigation was based on reports of "alleged criminal activity," but it disclosed nothing more.).
183. See id. at 19, 24.
185. Id. at 2.
tion was reflected in deportation proceedings it commenced against eight Palestinian aliens (citizens of Jordan) and one Kenyan, accusing them of membership in the Popular Front for the Liberation of Palestine. It acknowledged that it did not have evidence of plans to commit terrorist acts but alleged that the individuals had distributed brochures of the Popular Front. These proceedings, in apparent conformity with the plans set in the quoted 1986 Department of Justice documents, threatened the status of resident aliens based on their nationality and support for self-determination movements.

While terrorism is a phenomenon that states must confront, they must not use it as a basis for inventing new and spurious rationales for the use of armed force. Just as in the domestic context the fight against crime must be kept within certain limits to preserve fundamental values, so in the international context the fight against terrorism must not encroach on other important values. For the rule of law to succeed, the United States must confine its anti-terrorist activities to appropriate channels.

D. New Approaches to the Law of Self-Defense

The primary justification for the use of armed force against another state is self-defense. States that use armed force in legally dubious circumstances typically depict their actions as defensive. Much controversy surrounds the definition of the outer limits of self-defense. If the rule of law is to prevail, self-defense must not become so large a category as to permit the use of force in situations in which the necessity for it is not actually present.

When called upon to justify the use of military force, the Reagan and Bush Administrations asserted views on the use of armed force that contradicted the U.N. Charter's strict prohibition. This posture posed a challenge to international legality, because the new positions asserted by the two administrations threatened to broaden permissible use of force to the point that the Charter would be seriously weakened.

The two Administrations stretched the accepted doctrine in three respects: on the use of force in anticipation of force by an adversary, on the use of force to protect citizens, and on the permissible limits on the amount of force used in self-defense.

Self-defense in anticipation of an attack is a disputed doctrine, because the U.N. Charter requires an "armed attack" for invocation of self-defense.\footnote{See U.N. Charter art 51; Philip Jessup, A Modern Law of Nations 166 - 67 (1948); Louis Henkin, How Nations Behave 141 - 45 (1979).} Publicists who support the doctrine, and states invoking it, have said that the force anticipated must be imminent.\footnote{Derek Bowett, Self-Defence in International Law 184 - 93 (1958) (imminence must be evident).} The Reagan and Bush Administrations, however, routinely ignored the requirement of imminence in invoking self-defense. In the bombing of Libya and the invasions of Grenada and Panama, they did not claim that the attacks they purported to anticipate from those states would occur imminently. Further, the Reagan and Bush Administrations argued that an attack on a United States citizen abroad, at the instigation of a state, was an "armed attack" against the United States, under the Charter. On the basis of possible future attacks on United States citizens the invasion of Panama was justified.\footnote{136 Cong. Rec. S12 (Daily ed. Jan. 23, 1990) (statement of Sen. Kennedy listing justifications put forward by the Administration on Panama and stating, "Nothing on the public record makes any of these justifications persuasive").}


In the Nicaragua litigation, the Reagan Administration expanded the proportionality requirement, an accepted limitation on the force used in self-defense. A state acting in self-defense may use only such force as is necessary to repel an attack.\footnote{Ian Brownlie, International Law and the Use of Force by States 261 - 64 (1963) [hereinafter Use of Force]; Schachter, supra note 118, at 1637 - 38; Bowett, supra note 188, at 105 (as applied to force against another state to assist endangered nationals).} The proportionality rule does not limit a defending state to the use of force precisely equivalent to that used against it,\footnote{Use of Force, supra note 193, at 264.} but it does discourage responsive force that is substantially greater.\footnote{Schachter, supra note 118, at 1637.
The Administration said that it was justified in using force against Nicaragua on the grounds that Nicaragua had carried out an armed attack against El Salvador by providing logistical and material aid to an insurgency there. The ICJ, however, found little evidence of material aid by Nicaragua to Salvadoran insurgents at the relevant time period and thus did not have to decide whether the United States’ force was proportional. But, even if Nicaragua had been aiding the Salvadoran insurgents, the United States exceeded proportionality by mining Nicaragua’s harbors, blowing up its major oil storage depots and by organizing and funding the contra insurgency.

In its invasion of Panama, the Bush Administration also asserted self-defense in a fashion that exceeded the bounds of proportionality. If Panama was about to attack United States citizens, as the Administration alleged, the level of force employed by the United States was excessive. It used 24,500 troops and overthrew Panama’s government. United States aircraft attacking the military headquarters in Panama City levelled several nearby city blocks. The invasion resulted in deaths estimated in the thousands. Several thousand more were hospitalized for wounds.

The United States’ recent invocations of self-defense are not pro-
pitious from the standpoint of the rule of law in the world community. As the state most capable of bringing armed force to bear against others, the United States has a special responsibility to abide by the agreed rules. There is little hope for the rule of law if the United States does not accept international strictures.

IV. CONCLUSION

If a new world order is to emerge, it must be based on an adherence to legality by the United States, a principal player in that new order. The United States' recent record, however, gives little cause for optimism about its willingness to abide by international norms in its dealings with other states, particularly in regard to the Third World. As before, the United States enjoys a preponderance in economic clout and military force and has shown itself reluctant to refrain from using them when it is to their advantage.

Regrettably, the recent international practice of the United States has reflected a disregard for multilateral process and international law. One analyst said, "in a variety of unilateral maneuvers, such as the withdrawal from UNESCO, the operations in Grenada, the closure of the PLO liaison office at the United Nations, and the failure to pay full U.N. dues, the United States has largely isolated itself from world public and legal opinion." That assessment is, unfortunately, accurate. The Persian Gulf actions of 1990-91 have further isolated the United States from public opinion in that region.

The rationale for eschewing multilateral approaches was, supposedly, to promote the United States' national interests. However, a lawful foreign policy better serves national interests, because it can ensure the mutual respect necessary to inter-state cooperation. "The costs of continuing on a separatist course are various, ranging from its direct effect on foreign opinion, to its effect on the overall systemic consideration of the value of strengthening the rule of law internationally by allowing for judicial resolution of disputes."

Only in a law-abiding world community can states and individuals be protected and work together to solve vital international problems.

207. Vagts, supra note 205, at 1717.
And only a law-abiding state has a moral base from which to call other states to account when they violate international law.

If the United States continues to use military force on legally dubious grounds, it is unlikely that the world will be, in President Bush's words, "freer from the threat of terror." To the extent that the United States is perceived as using force inappropriately, those who sympathize with the objects of that force will be encouraged to resort to terrorism, because it provides an available, even if ineffective response.

If the world is to be, in President Bush's words, "stronger in the pursuit of justice," the United States must change its attitude towards international adjudication and must not use military force in ways that violate the rights of other states and peoples.

If, in President Bush's words, the world is to be "more secure in the quest for peace," the United States must pursue non-forceful mechanisms more diligently.

Other states besides the United States, to be sure, must adhere to the rule of law if it is to succeed at the universal level. The United States cannot pursue a rule of law approach if others do not. However, the record of recent years is that the United States has been one of the more frequent lawbreakers. As a powerful state, the significance of that lawbreaking is magnified. If the United States as the state with the greatest military potential is not committed to the rule of law, prospects for its achievement are dim. The end of the cold war has opened the prospect for a higher level of law-adherence in world community relations. To that opportunity must be seized.

For most of this century, unfortunately, the United States has shown itself willing to pursue economic and political interests in ways that violate the rights of other states. That is the background to the practices recounted above. The United States developed a pattern of military intervention in Latin America early in the century, when President Theodore Roosevelt claimed a right to intervene in countries that defaulted on their public debt. After World War II the pattern was extended to the rest of the Third World. The cold war provided a new impetus and rationale for intervention.

The creation of the United Nations, the Organization of Ameri-

can States, and other organizations, held a hope of curbing unilateral intervention. But if the rule of law at the universal level is to prevail, the United States must commit itself to follow multilateral processes. The Bush Administration, in comparison with the Reagan Administration, has made minor steps towards more harmonious inter-action with other states. It has begun to pay arrears to the United Nations. It is not operating on the prior cold war assumptions. However, it has created its own ideology that suggests a need to use military force to maintain dominance abroad. It has not distanced itself from the Reagan Administration’s disregard of legality in the use of force. It has unlawfully used military force itself. It has not re-joined UNESCO.

The concept of a new order in which states interact harmoniously is a laudable ideal. All states should work to achieve this kind of world. Before it can gain a following on its initiative, however, the United States must demonstrate its willingness to comply with international norms more fully.