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LEAD ARTICLES

International Crisis and Neutrality: United States Foreign Policy Toward the Iran-Iraq War

by Francis A. Boyle*

Prescript

This Article was written in 1986 and submitted to the University of New Orleans Symposium on Neutrality. The Article reflects the author's analysis regarding the United States military interventionism into the Middle East with a special focus on the Persian Gulf region. The author analyzes the United States' policies to divide-and-conquer the Arab oil

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fields that originated as early as in the 1973 Arab oil boycott of Europe. The body of the Article traces the historical developments leading into the Reagan Administration's own foreign policies toward the Iran-Iraq War. Following the body of the Article, the author then continues an analysis of the United States' role in the Middle East in the Postscript. The board of editors has decided to reprint the Article at this time because it provides important historical background to the Iran-Iraq War that is necessary to analyze the United States War against Iraq.

Editors

I. THE HISTORICAL BACKGROUND OF UNITED STATES NEUTRALITY POLICIES

On the domestic level, current United States neutrality legislation dates back to the first Neutrality Act of June 5, 1794, which expired after two years, was renewed in 1797 for two more years, and was permanently enacted by an Act of April 20, 1818. Sections 1 through 6 of the 1818 Act made the following acts crimes: (1) for an American citizen within United States territory to accept and exercise a commission in the military forces of a foreign government engaged in a war against another foreign government with which the United States was at peace; (2) for any person within United States territory to enlist or to procure the enlistment of another person, or proceed beyond United States territory with the intent to be enlisted in the forces of a foreign sovereign, subject to a proviso for transient foreigners; (3) for any person in United States territory to fit out and arm a vessel for the purpose of engaging in hostilities on behalf of a foreign sovereign against another foreign sovereign with which the United States was at peace; (4) for any United States citizen outside United States territory to fit out and arm a vessel of war for the purpose of committing hostilities on United States citizens or their property; (5) for any person within United States territory to increase or augment the force of foreign armed vessels at war with another foreign government with which the United States was at peace, and finally; (6) for any person in United States territory to set on foot any military expedition or enterprise against the territory of a foreign sovereign with which the United States was at peace. The 1818 Act authorized the President to employ the land or naval forces or the militia to carry out its provi-

1. Neutrality Act of June 5, 1794, ch. 50, 1 Stat. 381.
4. 3 Stat. at 447-50, §§ 1-6.
sions or to compel any foreign ship to depart from the United States when so required by the laws of nations or treaty obligations.\(^5\)

Historically, the United States government played a leading role in the development of the international laws of neutrality by endeavoring to obtain general acceptance of its internal policy pronouncements on neutrality from the countries of Europe throughout the late eighteenth, nineteenth, and early twentieth centuries. During this isolationist period, the United States government anticipated being neutral in the event of another general war in Europe and, therefore, actively supported the institution of neutrality. For example, the aforementioned proscriptions of United States domestic neutrality legislation and practice found their way into the three great principles of the seminal 1871 Treaty of Washington.\(^6\)

The treaty between the United States and Great Britain led to a settlement of the famous "Alabama Claims" arising out of the latter's provision of assistance to Confederate raiders during the American Civil War.\(^7\) The three rules of article 6 provided that:

A neutral government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.\(^8\)

Although formulated with reference to a domestic armed conflict like the United States Civil War, these three principles enunciated requirements of customary international law concerning neutrality that were applicable to an international armed conflict as well.

On the international level, the next major development in the institution of neutrality occurred when the First Hague Peace Conference of 1899 adopted a voeu that the second conference consider the question of

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5. 3 Stat. at 447, 449, § 8.
7. 17 Stat. at 863.
8. 17 Stat. at 863, 865.
the rights and duties of neutrals in warfare. Pursuant to that wish, the
Second Hague Peace Conference of 1907 adopted the Convention Res-pec-
ting the Rights and Duties of Neutral Powers and Persons in Case of
War on Land and the Convention Respecting the Rights and Duties of
Neutral Powers in Naval War. In addition, the 1907 Convention Re-
tive to the Laying of Submarine Contact Mines protected neutral ship-
ping, and article 1 of the 1907 Convention Relative to Certain Restrict-
on the Exercise of the Right of Capture in Maritime War contained
protections for neutral postal correspondence. When the Great War in
Europe erupted in the summer of 1914, the United States was a party to
these four Hague Conventions. Since the time of that conflagration,
the two major 1907 Hague neutrality conventions governing land and sea
warfare have been universally considered to enunciate the rules of cus-
tomary international law on this subject and bind parties and nonparties
alike even today.

Taken as a whole, the laws of neutrality were designed to operate in a
system of international relations in which war was considered to be an
inescapable fact of international life, yet in which the outbreak of war,
even between major actors, did not automatically precipitate a total sys-
temic war among all global powers. According to the laws of neutrality,
the conduct of hostilities by a belligerent was supposed to disrupt the
ordinary routine of international intercourse between neutral nationals
and the belligerent's enemy to the minimal extent required by the dict-
tates of military necessity. Such arrangements were intended to permit
the neutral power to stay out of the conflict and, at the same time, allow
its nationals to take advantage of international commerce and intercourse
with all belligerents.

Int'l L. 103, 106 (Supp. 1907).
10. Convention Respecting the Rights and Duties of Neutral Powers and Persons in
Case of War on Land, Oct. 18, 1907, 36 Stat. 2310, T.S. No. 540 (hereinafter War on Land
1907).
11. Convention Concerning the Rights and Duties of Neutral Powers and Persons in
Naval War, Oct. 18, 1907, 36 Stat. 2415, T.S. No. 545 (hereinafter Naval War).
12. Convention Relative to the Laying of Automatic Submarine Contact Mines, Oct. 18,
13. Convention Relative to Certain Restrictions With Regard to the Exercise of the
Right of Capture in Naval War, Oct. 18, 1907, art. 1, 36 Stat. 2396, 2408, T.S. No. 544
(hereinafter Capture in Naval War).
No. 541; 36 Stat. at 2396, T.S. No. 544.
15. "Neutrals have the right to continue during war to trade with the belligerents, sub-
ject to the law relating to contraband and blockade. The existence of this right is universally
admitted, although on certain occasions it has been in practice denied." John B. Moore, 7 A
Digest of International Law 99-103 (1906).
The political and strategic dimensions of the international laws of neutrality were complicated because they operated upon the basis of a legal fiction concerning the neutral government's reputed responsibility for intrinsically nonneutral acts committed by its citizenry against a belligerent during wartime. Generally, a belligerent state could not hold a neutral government accountable for the private activities undertaken by the neutral's citizens—even if they worked directly to the detriment of the belligerent's wartime security interests. The laws of neutrality were essentially predicated upon Lockeian assumptions concerning the nature of government and its proper relationship to the citizen; namely, that the political functions of government must impinge upon the private affairs of the citizen to the least extent possible, especially in the economic realm, in which the right to private property and its pursuit are deemed fundamental. Typical of this Lockeian attitude was the prohibition on the confiscation of private property found in article 46 of the Regulations annexed to both the 1899 and 1907 Hague Conventions with Respect to the Laws and Customs of War on Land. In the same category fell the futile attempts by the United States government at both the First and the Second Hague Peace Conferences to secure international agreement upon the principle of immunity from capture and confiscation of noncontraband private property during maritime warfare.

Hence, the primary duty of a neutral government was to maintain strict impartiality in its governmental relations with all belligerents. The laws of neutrality, however, specifically denied that the neutral government had any obligation to guarantee that its nationals conduct affairs with belligerents in a similar fashion or in accordance with any but the most rudimentary set of rules. For example, according to article 1 of the 1907 Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, the territory of neutral powers was "inviolable," and under article 2 belligerents were "forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power." A neutral power was not, however, required to

20. Id.
do the following: (1) prevent the exportation or passage through its territory, on account of either belligerent, of arms, ammunition, or anything useful to an army or navy; and, (2) forbid or restrict the use, in behalf of belligerents, "of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals." These two latter provisions only applied when all restrictive or prohibitive measures taken by a neutral power in regard to these matters were applied uniformly to both belligerents and companies or individuals owning such telecommunication facilities respecting this rule. The national of a neutral power would not compromise his neutrality by furnishing supplies or loans to one of the belligerents, provided he did not reside in the territory of the other belligerent or territory that it occupied, and that the supplies did not come from these territories. Finally, article 10 made it clear that it would not be considered a hostile act for a neutral power to take even forcible measures to prevent violations of its neutrality.

In a similar vein, according to article 1 of the 1907 Hague Convention Respecting the Rights and Duties of Neutral Powers in Naval War, belligerents were "bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality." Also, under article 2, any act of hostility committed by belligerent warships in the territorial waters of a neutral power constituted a violation of neutrality and was strictly forbidden. In return, article 6 provided that a neutral government could not supply warships, ammunition, or war materials of any kind to a belligerent under any circumstances. However, the neutral government was under no obligation to "prevent the export or transit, for the use of either belligerent, of arms, ammunitions, or, in general, of anything which could be of use to any army or fleet." Nevertheless, the neutral power must apply equally to the two belligerents any "conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes." Finally, article 26 made it clear that a neutral government's exercise of its rights under the con-

22. War on Land 1907, supra note 10, 36 Stat. at 2323, art. 8, T.S. No. 540.
24. War on Land 1907, supra note 10, 36 Stat. at 2326, art. 18, T.S. No. 540.
27. Id.
29. Naval War, supra note 11, 36 Stat. at 2428, art. 7, T.S. No. 545.
30. Naval War, supra note 11, 36 Stat. at 2428, art. 9, T.S. No. 545.
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vention could never be considered an "unfriendly act" by any belligerent that was a contracting power.31

Historically, the United States government vigorously opposed international recognition of any provisions which would require neutral powers to impose a mandatory embargo upon trade in contraband of war between neutral nationals and belligerents. The government opposed such provisions for the express purpose of ensuring the economic well-being of American citizens during a European war in which the United States expected to remain neutral.32 Contraband of war shipped by neutral nationals to a belligerent, however, was subject to capture and confiscation by the offended belligerent. Nevertheless, the belligerent had to undertake these actions in accordance with the laws of war at sea and the international law of prize. For this reason, these interrelated bodies of customary international law contained important protections for the rights of neutrals during an international armed conflict.

As a result of the failure by the Second Hague Peace Conference to codify this international law of maritime warfare and prize, Great Britain summoned a conference of representatives of the major maritime powers of the world to meet in London at the end of 1908. These representatives included Germany, the United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, the Netherlands, and Russia. The goal of this conference was to determine the generally recognized principles of international law applicable to maritime warfare and national prize adjudications. This meeting resulted in the 1909 Declaration of London Concerning the Laws of Naval War.33

The Declaration of London built upon the foundations established by an informal compromise on the codification of maritime warfare that was proposed, but not adopted, at the Second Hague Peace Conference. At the beginning of the first World War, the Declaration of London was generally considered the most authoritative enunciation of the customary international laws of maritime warfare applicable to belligerents in their conduct of hostilities and by their respective national prize courts.34 Its provisions set forth substantial protections for the rights of neutral nationals that both sets of belligerents generally honored during the first two years of the Great War.

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31. Naval War, supra note 11, 36 Stat. at 2433, T.S. No. 545.
Without the recognition of a status such as neutrality by international law, nonbelligerents virtually would be compelled to choose sides in a war to maintain political and economic relations with at least one set of belligerents. In theory, the neutral state had an economic disincentive to participate in the war because its citizens could greatly prosper from only moderately restricted international trade with all belligerents who would be desperately in need of goods that could be purchased from nationals of the neutral state. Conversely, a belligerent supposedly would not act to violate the neutral's rights and those of its nationals to keep the neutral from entering the war on the enemy's side. Another theory prevalent at the time of the Second Hague Peace Conference held that since the number and strength of neutral states in a future war would be proportionately greater than those of belligerents, the community of neutral states could enforce the laws of neutrality upon the belligerents.35

In practice, however, these theories were undercut because each neutral's normal international trading patterns invariably worked to the greater advantage of one set of belligerents during the war.36 Therefore, the disadvantaged belligerent had to engage in a complicated cost-benefit analysis to decide whether the greater harm was the continued sufferance of this strategic disadvantage in trade or its termination through outright destruction of the neutral commerce, the latter with the risk that the neutral power would eventually oppose the belligerent. Also, instead of acting as part of some international community of neutrals, each neutral state constantly assessed the relative advantages and disadvantages of maintaining its own neutrality, as opposed to belligerency on one side of the war or the other, in accordance with quite selfish calculations of its own vital national security interests. Unless guaranteed by treaty, the violation of one neutral's rights did not obligate another neutral to declare war or even to undertake measures of retortion against the violator.

For example, the United States did not enter the first World War in order to defend the international laws of neutrality in the abstract. Its failure to consider the German invasions of either neutral Belgium or neutral Luxemburg as a casus belli provides evidence of this. It was only when Germany's gross and repeated violations of American citizens' neutral rights of trade and intercourse with Great Britain seriously interfered with the United States' ability to engage in international commerce, resulting in the large-scale destruction of American lives and property, that the United States government invoked the sacred cause of neutrality as one of the primary justifications for its intervention into the war. The

United States generally believed that the quality and quantity of violations against its neutral rights by the Allied Powers were of a nature and purpose materially different from, and far less heinous than, those perpetrated by the Central Powers: destruction of property as opposed to destruction of life and property.

As the intensity of the war heightened, and the Allies imposed their stranglehold over commerce shipped by nationals from the neutral United States to Europe, the Central Powers took the position that the American government was under an obligation to take affirmative measures to rectify the developing imbalance of trade in arms, munitions, and supplies that United States nationals were successfully transporting to the Allies but not to the Central Powers. However, the United States government was quite emphatic in its rejection of their complaint. If one belligerent was militarily unable to secure the safe passage of neutral commerce to its shores because of the misfortunes of war, that was not the problem of the neutral government, which possessed the perfect right under international law to permit its citizens to continue trading with the militarily more powerful belligerent. For a neutral government to discriminate in favor of the weaker belligerent to compensate for the military imbalance would constitute an unneutral act that could ultimately precipitate a declaration of war upon the weaker belligerent by the stronger belligerent. Moreover, the United States argued that even if the neutral government were to embargo all trade in contraband of war by its citizens with both sets of belligerents, this affirmative departure from the normal rules of neutral practice during the course of an ongoing war could compromise its neutrality.37

The United States government's insistence upon the international legal right of its citizens to trade with the Allies no matter how unequal the military situation appeared played a significant part in the Central Powers' decision to pursue their policy of waging unrestricted submarine warfare to destroy this vital neutral commerce, regardless of the international laws of neutrality and the laws of war at sea. The United States government eventually responded by entering the war to secure those rights of its nationals and thus uphold the international laws of neutrality and armed conflict. Indeed, that was exactly how the European system of public international law was supposed to operate before the foundation of the League of Nations.

Resort to warfare by one state against another was universally considered to constitute the ultimate sanction for the transgressor's gross and repeated violations of the victim's international legal rights. The United States ultimately fought in the Great War precisely to vindicate the inter-

national laws of neutrality. America's decision to abandon its neutrality and enter the war on the side of the Allied Powers ineluctably spelled defeat for the Central Powers. This proved to be the definitive and most effective sanction for Germany's violation of the international laws of neutrality.

Nevertheless, the incongruous suppositions underlying the international laws of neutrality could not withstand the rigors of twentieth century total warfare with its all-encompassing political, military, economic, and propagandistic dimensions. The first World War demonstrated the abject failure of the laws of neutrality to perform their intended purpose of constricting the radius of the war. This tragic experience led many American international lawyers, diplomats, and statesmen to the unavoidable conclusion that in the postwar world the international community had to abandon neutrality as a viable concept of international law and politics and instead create a system of international relations in which some organization would be charged with the task of enforcing international law against recalcitrant nations. Henceforth, the international legal rights of one state must be treated as rights pertaining to all states. National security could no longer be a matter of individual concern, but rather must be a collective responsibility shared by the entire international community organized together. This line of reasoning induced many powerful American international lawyers both in and out of government to support the creation of the League to Enforce Peace and later to champion the foundation of the League of Nations.

In the opinion of these international lawyers, the United States government must at last definitively repudiate its traditional policies of isolationism in peace and neutrality in war in order to become a formal participant in the new European and worldwide balance-of-power system. Admittedly, this balance had been wrought by brute military force. Yet its continued existence could be legitimized, if not sanctified, by the adoption and effective enforcement of the principles of international law set forth in the Covenant of the League of Nations. In this manner, America's vital national security interests on the one hand, and its professed philosophical and moral ideals on the other, could most success-


fully be reconciled and, indeed, would coincide and reinforce each other by means of United States’ membership in the League.

According to the then prevailing viewpoint, the creation of the League of Nations was supposed to have sounded the deathknell for the institution of neutrality and thus for the international laws of neutrality. This supposed watershed in international legal and political relations was made quite clear by articles 10 and 11(1) of the League Covenant:

ARTICLE 10. The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11-1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

Nevertheless, contemporaneous prognostications concerning the imminent demise of neutrality proved to be quite premature. This was because the United States government never joined the League of Nations and never became a party to the Statute of the Permanent Court of International Justice ("PCIJ"), due to strident opposition to both international organizations consistently mounted by isolationist members of the United States Senate and their supporters. Even the technical separation of the court from the League by the device of adopting a Protocol of Signature for the PCIJ Statute (which permitted nonLeague members to ratify the latter without joining the League) was insufficient to induce the Senate into giving its advice and consent to the Protocol on terms acceptable to the covenant’s contracting parties. Shorn of United States participation, the League of Nations arrived into the world stillborn. So it came as no surprise that, in the absence of the United States, the League ultimately proved to be congenitally incapable of preserving world peace against the onslaughts of fascist dictatorships.

During the period between the first and second World Wars, America’s innate isolationist tendencies, dating all the way back to President George Washington’s Farewell Address of 1796, reasserted themselves and triumphed over America’s relatively more recent internationalist for-

eign policies promoting multilateral organizational solutions to the problems of maintaining international peace and security. United States membership in the World Court and some league to enforce the peace would occur only after, and as a direct result of, the tragic experience of World War II. The shocked reaction of the United States government and people to this second worldwide conflagration produced a profound realization of the dangers of a continued American foreign policy premised upon the interrelated principles of isolationism in peace and neutrality in war.

Whether accurate or not, the thesis developed that if the habitually obstructionist United States Senate had ratified the Treaty of Versailles, which contained the League of Nations Covenant, there was a strong possibility that the second World War might never have occurred. Hence, in order to avoid a suicidal third World War, the United States must not repeat the same near-fatal mistake it made after the termination of the first World War by retreating into isolationism in peace and neutrality in war. These perceptions convinced the United States government of the compelling need to sponsor and join the United Nations Organization in 1945.

Thus, under the regime of the United Nations Charter, neither the Organization itself nor any of its members were supposed to remain neutral in the face of an unjustified threat or use of force, nor when confronted by the existence of a threat to the peace, breach of the peace or act of aggression, nor in the event of an actual armed attack or armed aggression by one state against another state. According to article 2(5), all United Nations members were to give the Organization every assistance in any action it took in accordance with the Charter and refrain from giving any assistance to any state against which the Organization took preventive or enforcement action. Article 2(6) even empowered the Organization to act against nonmembers “so far as may be necessary for the maintenance of international peace and security.”

Article 24 determined that the Security Council shall have “primary responsibility” for the maintenance of international peace and security, and article 25 required all members of the United Nations “to accept and

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42. U.N. CHARTER art. 1.
43. Id. art. 39.
44. Id. art. 51.
45. Id. art. 2, ¶ 5.
46. Id. art. 2, ¶ 6.
47. Id. art. 24.
carry out” the decisions of the Security Council.\textsuperscript{48} This injunction included the mandatory adoption of Security Council enforcement measures under articles 41, 42, and 43, though the special agreements needed to bring this last article into effect were never concluded. Finally, Charter article 51 also permitted, but did not obligate, United Nations members to come to the assistance of any state that was the victim of an armed attack or armed aggression by another state pursuant to what was therein denominated the international legal right of “collective self-defense.”\textsuperscript{49}

Clearly, the continued existence of the institution and laws of neutrality did not fall within the contemplation of the drafters of the United Nations Charter. Nevertheless, reports of the death of the international laws of neutrality proved to be greatly overexaggerated. At the time of the founding of the United Nations Organization, the most that could have been expected was that the Security Council would somehow preserve and extend the uneasy wartime alliance among the five great powers into the postwar world upon the basis of its fundamental underlying condition—unanimity. To the degree that the five permanent members of the Security Council (namely, the United States, United Kingdom, USSR, France, and China) could maintain, or at least selectively reinstitute, their World War II coalition to handle postwar international crises, the United Nations Security Council would provide a mechanism to enforce the peace of the world in a manner basically accepted as legitimate by the remainder of the international community.

The atomic bombings of Hiroshima and Nagasaki occurred, however, shortly after the United Nations Charter was signed in San Francisco on June 26, 1945 and even before the Organization itself came into existence on October 24, 1945. The ensuing Cold War between the United States and the Soviet Union, each supported by its respective allies, led to a breakdown of their World War II coalition and thus to a stalemate at the United Nations Security Council because of the veto power over substantive matters accorded to its five permanent members by Charter article 27(3).\textsuperscript{50} Hence, if the Security Council should fail to act in the event of a threat to the peace, breach of the peace, or act of aggression, and the state members of the United Nations choose not to exercise their right of collective self-defense to come to the assistance of the victim of an armed attack or armed aggression as permitted by article 51, presumably the customary international laws of neutrality would come into effect to govern the relations between the neutral states on the one hand, and each set of belligerents on the other. Thus, even under the reign of the intrinsi-
cally nonneutral United Nations Charter, in default of the Security Coun-
cil taking measures “necessary to maintain international peace and secur-
ity,” the customary international laws of neutrality still have an
important role to play in the preservation of international peace and se-
curity by constricting the radius and intensity of an ongoing war.81

II. United States "Neutrality" Toward the Iran-Iraq War

In the modern world of international relations, the only legitimate jus-
tifications and procedures for the perpetration of violence and coercion by
one state against another are those set forth in the United Nations Charter. The Charter alone contains those rules which have been consented to
by the virtual unanimity of the international community that has volun-
tarily joined the United Nations Organization. These include and are lim-
ited to the article 51 right of individual and collective self-defense in the
event of an "armed attack,"82 chapter 7 "enforcement action" by the
United Nations Security Council,83 chapter 8 "enforcement action" by the
appropriate regional organizations acting with the authorization of the
Security Council as required by article 53,84 and the so-called peacekeep-
ing operations organized under the jurisdiction of the Security Council
pursuant to chapter 685 or under the auspices of the United Nations Gen-
eral Assembly in accordance with the Uniting for Peace Resolution86 or
by the relevant regional organizations acting in conformity with their
proper constitutional procedures and subject to the overall supervision of
the United Nations Security Council as specified in chapter 887 and arti-
cles 2488 and 25.89 All other threats or uses of force are presumptively
illegal and are supposed to be opposed in one fashion or another by the
members of the Organization acting individually or collectively or both.

In light of the aforementioned historical background, it is now possible
to critically analyze and evaluate the United States policy of so-called
neutrality toward the Iran-Iraq War from an international law perspec-
tive. There were several indications from the public record that the
Carter Administration tacitly condoned, if not actively encouraged, the
Iraqi invasion of Iran in September of 1980 because of the administra-
tion's shortsighted belief that the pressures of belligerency might expe-

51. Id. art. 51.
52. Id.
53. Id. arts. 39-51.
54. Id. arts. 52-54.
55. Id. arts. 33-38.
57. U.N. CHARTER arts. 52-54.
58. Id. art. 24.
59. Id. art. 25.
dite release of the United States diplomatic hostages held by Teheran since November of 1979. Presumably the Iraqi army could render Iranian oil fields inoperable and, unlike American Marines, do so without provoking the Soviet Union to exercise its alleged right of counter-intervention under articles 5 and 6 of the 1921 Russo-Persian Treaty of Friendship. Iran unilaterally abrogated these articles on November 5, 1979, the day after the American diplomats were seized in Teheran.

The report by columnist Jack Anderson that the Carter Administration was seriously considering an invasion of Iran to seize its oil fields in the Fall of 1980 as a last minute attempt to bolster his prospects for re-election was credible. It coincided with a substantial increase of United States military forces stationed in the Indian Ocean and Arabian Gulf. In the aftermath of the Anderson exposé, the Soviet government raised the specter of their counter-intervention in order to ward off any contemplated American invasion of Iran.

In any event, American efforts to punish, isolate, and weaken the Khomeini regime because of the hostage crisis simply prepared the way for Iraq to invade Iran in September 1980. The American policy of neutrality toward the Iran-Iraq War, first adopted by the Carter Administration and supposedly continued by its successor, misrepresented fact if not the law. A substantial body of diplomatic opinion believed that the American government consistently tilted in favor of Iraq throughout the war despite its public proclamation of neutrality.

For example, from the very outset of the conflict, United States Airborne Warning and Control Aircraft ("AWACS") that had been stationed in Saudi Arabia for the alleged purpose of legitimate self-defense of that

country proceeded to supply Iraq with intelligence information collected on Iranian military movements. Clearly, this activity constituted a non-neutral, hostile act directed against Iran that, under pre-United Nations Charter international law, would have been tantamount to an act of war in accordance with the traditional and formal definition of that term. Under the regime of the United Nations Charter, such provision of outright military assistance by the United States government to Iraq against Iran rendered America an accomplice to the former's egregiously lawless aggression upon the latter.

This illegal United States policy toward Iran progressively worsened after the simultaneous termination of the hostage crisis and the installation of the Reagan Administration in January of 1981. At the outset of the Reagan Administration, Secretary of State Alexander Haig and his mentor, Henry Kissinger, devoted a good deal of time to publicly lamenting the dire need for a geopolitical approach to American foreign policy decisionmaking, one premised on a grand theory or strategic design of international relations. Their conceptual framework toward international relations consisted essentially of nothing more sophisticated than a somewhat refined and superficially rationalized theory of Machiavellian power politics. Consequently, Haig quite myopically viewed the myriad of problems in the Persian Gulf, Middle East, and Southwest Asia primarily within the context of a supposed struggle for control over the entire world between the United States and the Soviet Union. Haig erroneously concluded that this global confrontation required the United States to forge a strategic consensus with Israel, Egypt, Jordan, Saudi Arabia, the Gulf Sheikhdoms, and Pakistan in order to resist anticipated Soviet aggression in the region.

Haig's vision of founding a United States centered strategic consensus in Southwest Asia was simply a reincarnated version of Kissinger's "Nixon Doctrine" whereby regional surrogates were intended to assist the United States in its efforts to police its spheres of influence throughout the world by virtue of massive American military assistance. According to the Reagan Administration's scenario, Israel would become America's new policeman for stability in the Middle East, filling the position recently vacated by the deposed Shah of Iran whom the Nixon/Kissinger Administration had unsuccessfully deputized to serve as America's policeman for the region. Hence, according to Haig's strategic consensus rationale, the United States had to more fully support the Israeli government of former Prime Minister Menachem Begin, even during the pursuit of its blatantly illegal policies in Lebanon and in the territories occupied as a result of

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the 1967 and 1973 wars, primarily because of Israel's overwhelming military superiority (courtesy of the United States) over any Arab state or combination thereof except Egypt, which had been effectively neutralized by its 1979 peace treaty with Israel.

Whereas the Shah fell over internal domestic conditions that were only exacerbated by the large-scale United States military presence in Iran, Haig's scheme was tragically flawed from the very moment of its conception. Haig totally disregarded the fundamental realities of Middle Eastern international politics in which traditionally all regional actors have been far more exclusively concerned about relationships with their surrounding neighbors than about some evanescent threat of Soviet aggression. The more immediate danger to stability in the Middle East and Persian Gulf was not the distant prospect of Soviet intervention but rather a continuation of the ongoing Iran-Iraq War and the interminable Arab-Israeli dispute. Nevertheless, the Begin government shrewdly manipulated Haig's Machiavellian delusions in order to generate American support for Israel's plan to invade Lebanon in the summer of 1982 for the express purpose of destroying the PLO and, as a result of the process, further consolidating its military occupation of the West Bank. The Israeli invasion of Lebanon was intended to serve as a prelude to the gradual de facto annexation of the West Bank in explicit violation of the most basic principles of international law.

With particular respect to the Persian Gulf, the Reagan Administration's persistent characterization of the Iranian hostage-taking as an act of international terrorism impeded the formulation of a rational United States foreign policy toward Iran that could protect America's legitimate national security interests in a manner fully consistent with the requirements of international law. The Reagan Administration readily succumbed to the seductive temptation of exploiting the American public's paranoid fear over the spread of Islamic fundamentalism from Khomeini's Iran throughout the Persian Gulf oil fields to justify covert assistance and overt alignment by the United States and its European allies and Middle Eastern friends with the Iraqi aggressor. Apparently, this perception blindly led the Reagan Administration to foment a comprehensive campaign to destabilize the Khomeini government by means of C.I.A. sponsorship for paramilitary raids launched from Egypt, Turkey, and Iraq into Iran by various Iranian opposition groups and for an internal military coup, among other nefarious projects.67

These developments represented a serious retrograde step for American national security interests in the Persian Gulf and the overall integrity of

the international legal order. Undaunted, the Reagan Administration was not content with the mere sponsorship of such covert measures that were specifically designed to topple the Khomeini Government in Teheran. More ominously, it proceeded to forge an overt diplomatic and military alignment with Iraq against Iran throughout the subsequent course of the Gulf War. Presumably, this was because the Reagan Administration intended Iraq to play a key role in the implementation of its strategic consensus approach toward the region by preventing revolutionary Iran from subverting its conservative, wealthy, pro-Western, and strategically important neighbors. Hence, the Reagan Administration accelerated the policy of its predecessor to encourage the re-establishment of normal diplomatic relations between the United States and Iraq, relations that had been severed by the latter in reaction to the 1967 Arab-Israel War. Somewhat paradoxically, seventeen years later the pressures of another Middle Eastern war would propel Iraq into reinstituting normal diplomatic relations with the United States in November of 1984.68

As part of this progressive development in their anti-Iranian approach, the Reagan Administration, in March of 1982, removed Iraq from the official list of states that allegedly provided support to so-called acts of international terrorism despite the existence of little evidence that Iraq had fundamentally altered its policies in this regard.69 Such delisting rendered Iraq eligible to purchase "dual-use" equipment and technology in the United States, equipment that could readily be employed for either civilian or military purposes and would probably be used for the latter.70 This administrative act prepared the way for the Reagan Administration to issue a license permitting the export of six Lockheed L-100 civilian transport aircraft to Iraq.71 Although the sale of the aircraft was licensed to Iraqi Airways, the L-100 is the civilian version of the Lockheed C-130 Hercules military transport and troop carrier.72 In a similar vein, four months later the Commerce Department licensed the sale of six small jets to Iraq, four of which admittedly possessed military applications.73 Nevertheless, despite the Reagan Administration’s best efforts, the provision of political, military, and economic assistance by the United States, its North Atlantic Treaty Organization (“NATO”) allies, and Middle

69. Under the provisions of the Export Administration Act of 1979, the Secretary of Commerce in consultation with the Secretary of State can review and adjust the list of restricted countries. 50 U.S.C. app. § 2405(l) (1988).
Eastern friends to Iraq proved insufficient to stem the tide of Iranian military advances. Hence, near the start of 1984, the United States government publicly announced that it had informed various friendly nations in the Persian Gulf that Iran’s defeat of Iraq would be “contrary to United States interests” and that steps would be taken to prevent this result. Accordingly, in April of 1984 sources revealed that President Reagan had signed two National Security Decision Directives to set the stage for the United States government to take a more confrontational stance against Iran. One of the options under consideration was the United States provision of so-called dual-use equipment such as helicopters to Iraq. In addition, the Reagan Administration made it known that it would look “more favorably” upon the sale of weapons to Iraq by friends and allies of the United States government. The very next month, the Reagan administration publicly revealed that it was prepared to intervene militarily in the Iran-Iraq War to prevent an Iranian victory that would install a radical Shi’ite government in Baghdad.

Pursuant to this set of decisions, in February of 1985, Textron’s Bell helicopter division agreed to sell forty-five large helicopters to Iraq, and Iraqi defense officials were involved in negotiating this transaction. Six months later, sources reported that the forty-five American made helicopters sold to Iraq were initially developed as Iranian troop carriers. One United States official monitoring the transaction said the helicopter model involved was “clearly a dual-use item” with “a potential for military use.”

With such incidents having been brought to light, one can conclude that since the Reagan Administration’s ascent to power in 1981, the United States government abandoned all pretense of alleged American neutrality toward the Iran-Iraq War in order to come down decisively on the side of Iraqi aggression against Iran. Under the traditional international laws of neutrality, these activities clearly constituted hostile acts.

75. Middle East Policy Survey, no. 102 (20 April 1984):1.
79. David Seib, Textron’s Bell Unit and Iraq Seen Near Final Agreements on Sale of 45 Helicopters, WALL ST. J., Feb. 28, 1985, at 32.
81. Id.
that Iran could have opposed with a formal declaration of war against the United States. Of course, at the time prudence dictated that Iran avoid being provoked by the United States and Iraq into making a formal declaration of war against the United States.

Acute danger arose from Iraq's calculated policy of escalating the severity of attacks against Iranian oil installations and supplies for the express purpose of precipitating direct United States military intervention to keep the Straits of Hormuz free from retaliatory interference by Iran. Baghdad officials hoped that such outright United States military involvement in the Gulf War would ultimately rescue Iraq from defeat at the hands of Iran. The boarding of a United States merchant ship by Iranian sailors near the Straits of Hormuz indicated how the Reagan Administration reversed its policy of alleged "neutrality" toward the Gulf war.

III. RESTORING INTERNATIONAL PEACE AND SECURITY TO THE PERSIAN GULF

Even if the United States had been factually and legally neutral in the Iran-Iraq War, such a position would itself be shocking and indefensible under the most rudimentary principles of international law. When in the post-United Nations Charter world has the United States been neutral in the face of outright aggression? As the United States government should have learned from the tragic history of American neutrality toward widespread acts of aggression committed by fascist dictatorships during the 1930s, peace is indeed indivisible. In a thermonuclear age, aggression per se is the most dangerous threat to world peace. The United States could not be consistent, believable, or effective in condemning the Soviet invasion of Afghanistan without likewise condemning the Iraqi invasion of Iran. America's rank hypocrisy in this matter fooled no one but itself.

The United States, its NATO allies, and Japan all possessed vital national security interests in preventing the disintegration of Iran due to factional strife, regionally based autonomous breakaway movements, or external aggression or subversion originating from Iraq or the Soviet Union. The continued destabilization of Iran only generated further opportunities for Soviet penetration and exploitation. The United States should not have permitted the development of a permanent threat to Saudi Arabia and the free flow of Gulf oil through the Straits of Hormuz.

82. FRANCIS A. BOYLE, WORLD POLITICS AND INTERNATIONAL LAW 45 (1985).
by encouraging conditions that might lead to the installation of an Iranian regime acting at the behest of the Soviet Union. Nevertheless, it is crucial to reiterate that the Iranian people possessed the exclusive right to determine their own form of government without overt or covert United States intervention, even if this means the continuation of an Islamic fundamentalist regime in Teheran.

To forestall any potential for a Soviet invasion of Iran under the pretext of the 1921 Russo-Persian Treaty, the most prudent course for the Reagan Administration to have taken would have been to work toward the establishment of a strong, stable, and secure government in Teheran that was able to undertake the military measures necessary to offset Russian divisions massed on Iran's borders with the Soviet Union and Afghanistan. With the hostages crisis far behind, the Reagan Administration should have moved to restore normal diplomatic relations with Iran as soon as possible and without any prior conditions. Most importantly, the Reagan Administration should have completely reversed and publicly repudiated the Carter Administration's policy of alleged neutrality toward the Iran-Iraq War.

The American government must officially label Iraq as the aggressor in the Iran-Iraq War. Furthermore, the American government should have publicly called for an immediate cease-fire. The Reagan Administration should have attempted to convince its NATO allies, Egypt, Jordan, and the Sudan, to terminate their provision of military weapons, equipment, supplies, and soldiers to Iraq. Operating in conjunction with its allies and Iran, the United States could have worked with the United Nations Security Council for the formal adoption of this program and its implementation by the deployment of a United Nations peacekeeping force along the Iraq-Iran border designated to replace withdrawing Iraqi and Iranian troops on a transitional basis.

The dispute between Iraq and Iran over the Shatt al-Arab estuary should be submitted to the procedures for compulsory arbitration set forth in article 6 of the 1975 Iran-Iraq Treaty on International Borders and Good Neighborly Relations. Although insufficient to justify a counter-invasion of Iraq, Iranian demands for the payment of reparations and for the deposition of President Saddam Hussein because of Iraq's war of aggression are quite reasonable and fully supportable under fundamental principles of international law. The United States government should recognize these Iranian concerns as valid and should accommodate them to some extent within the framework ultimately adopted by the

85. See supra note 60.

Of course the improvement and normalization of American diplomatic relations with Iraq was a desirable objective as well. But that objective should not have been pursued in derogation of the fundamental principle of international law requiring the condemnation of aggression and by abandoning Iran to its own fate or to the account of the Soviet Union. Indeed, if the Reagan Administration truly believed that the major United States strategic objective in the Persian Gulf was to counteract a threatened Soviet thrust through Iran toward Saudi Arabia, the best American defense could have been mounted, not from the borders of Iraq, but from the eastern and northern frontiers of Iran, at the request of the Iranian government and with the assistance of the Iranian army. Within this context a creditable American Rapid Deployment Force ("RDF") could have played an effective role within the requirements of international law. Such action would be in furtherance of the right of collective self-defense recognized by article 51 of the United Nations Charter.87

As for the Iranian threat to close the Straits of Hormuz in the event Iraq were to escalate attacks against Iranian oil installations, world public opinion should hold the United States government's illegal pro-Iraqi policies fully accountable for any political, military, and economic catastrophes that might result therefrom. During the conflicts, the Iranian government had the perfect right under international law to board and search merchant ships transiting the Straits of Hormuz for the purpose of confiscating any contraband of war en route to Iraq.88 Meanwhile, to the extent that Persian Gulf oil can be transported via pipelines terminating on the Red Sea, the strategic importance of controlling the Straits of Hormuz will diminish.

The criticism that such a dramatic reversal of American policy in the Gulf would alienate friendly regimes in Egypt, Saudi Arabia, Kuwait, and Jordan, inter alia, overlooks the fact that American neutrality in the Iran-Iraq war simply encouraged Arab countries to temporarily put aside their deep-seated animosities for the purpose of aligning themselves with an aggressive Iraq against non-Arab Iran. Furthermore, the direct contribution of massive war loans to Iraq by Saudi Arabia, Kuwait, and the Gulf Sheikhdoms fatally compromised their alleged neutrality toward the Iran-Iraq War.89 Under the pre-United Nations Charter customary international law of neutrality, Iran was entitled to treat the provision of such military and economic assistance by these countries to Iraq as an act of

87. U.N. Charter art. 51.
hostility directed against it, thus warranting a declaration of war.90 Iran wisely refrained from so acting. Nevertheless, the United States government did not discourage, and indeed in many instances encouraged and assisted, such nonneutral practices by numerous Middle Eastern countries against Iran.91 This misguided American policy should have been reversed immediately. Consequently, because this policy was not reversed, it thoroughly and irrevocably destabilized international peace and security in the Persian Gulf and Middle East.

Restoring peace to the Persian Gulf demanded vigorous American leadership acting in strict accordance with the rules of international law and in full cooperation with the relevant international institutions. Unfortunately, despite its continued protestations of neutrality toward the Gulf war, the Reagan Administration still tilted quite strenuously in favor of Iraq against Iran. Continued and demonstrable United States partiality for Iraq only prolonged this tragic conflict by discouraging Iran from working with the United Nations Security Council to end the war because one of the latter’s permanent and most important members was unreasonably and implacably prejudiced against it. For this very reason, those excusably few United Nations Security Council resolutions that have so far been adopted on the Gulf War were all clearly and admittedly biased in favor of Iraq.92

From a long-term perspective on Persian Gulf security, the Reagan Administration should have abandoned Haig’s Machiavellian objective of creating a formal anti-Soviet strategic consensus in the region under American leadership,93 and substitute for it a policy that promoted the foundation of an effective regional, collective self-defense and policing arrangement. Therefore, the Reagan Administration should have encouraged the efforts of six regional states, namely, Saudi Arabia, Kuwait, Bahrain, United Arab Emirates, Oman, and Qatar, to form a viable Gulf Cooperation Council. Such an organization could have metamorphosed into an effective Gulf Security Organization, affiliated with the United Nations Organization under chapter 8 of the Charter, and possessing a standing peacekeeping force or the ability to field one on short notice.94 Though the Council aims to keep both superpowers out of the region, a

93. BOYLE, supra note 82, at 228.
94. Id.
Gulf Security Organization could only advance the interests of the United States, its NATO allies, and Japan by the establishment of some degree of peace, order, and stability in this volatile area.95

Geography gives the Soviet Union advantages the West cannot match without supporting the creation of such an effective regional collective self-defense and policing system. A Gulf security organization would be far more successful at the pacific settlement of local disputes, opposing intra-regional aggression, and the suppression of externally fomented disturbances than the American RDF (now renamed the United States Central Command) ever could.96 The United States should not become a member of or play any formal role within such a Gulf security organization so as not to undermine the organization's claim to regional legitimacy and to formal nonalignment vis-à-vis the two superpowers. But America should have made clear its intention to provide military assistance to such an organization in the event of an armed attack upon one of the organization's members by an extra-regional power such as the Soviet Union. Such assistance would have been in furtherance of the right of collective self-defense recognized by article 51 of the United Nations Charter.97

In regard to United States measures designed to promote individual self-defense by the states of this region, the purveyance of sophisticated American weapons systems and technology to Israel, Saudi Arabia, Jordan, and Pakistan, is a most disturbing factor. As events in Iran have demonstrated, arms sales can easily become counterproductive. Any United States arms transfer policy must be required by the legitimate defensive needs of these countries as defined by international law and interpreted in good faith by the American government. Unilateral policy determinations by these foreign governments do not provide adequate criteria. Thus, the Reagan Administration should not have provided weapons to Saudi Arabia simply to curry favor and thus secure a stable flow of expensive oil to the West; or to China in the expectation of utilizing that country as a geopolitical card to be played in some Machiavellian balancing game of power politics with the Soviet Union over Afghanistan; or to Jordan for the purpose of creating a surrogate force for illegal military intervention throughout the Persian Gulf.

Nor must such weapons be given to any state in this or other regions of the world that manifests a tendency to employ them in a manner either the United States government or the United Nations Security Council deems violative of international law. Hence, the Israeli air strikes with

95. Id.
97. BOYLE, supra note 82, at 229.
American-made planes against the Iraqi nuclear reactor and the PLO headquarters in Beirut combined with Israel's threat to bomb Syrian antiaircraft missiles in Lebanon during the summer of 1981, followed by its patently illegal invasion of that country one year later, should have been grounds for additional concern and re-evaluation by the Reagan Administration. The same can be said for Pakistan's three wars with India and its frantic pursuit of a nuclear weapons capability.

All of these states bore heavy burdens of proof in regard to pending American arms transfers that were not discharged in a manner satisfactory to the requirements of both international law and United States domestic law. Unfortunately, the Reagan Administration apparently chose to rely upon the wholesale provision of American military equipment to various governments in this region and around the globe as an ineffectual and ultimately self-defeating substitute for the hard task of formulating a set of coherent principles for the conduct of American foreign policy on some basis other than Haig's Machiavellian predilections. Most regretfully, his successor, George Shultz, proceeded to heedlessly and quite enthusiastically embrace Haig's strategic consensus approach to this region of the world.

Finally, as events in the Middle East have demonstrated, the success of any American foreign policy in the Persian Gulf cannot be divorced from the compelling need to achieve an overall peace settlement between Israel and its Arab neighbors. An absolute precondition to the security of the Persian Gulf oil lifeline to Europe and Japan is active American support for progress toward implementing the international legal right of the Palestinian people to self-determination in accordance with the rules of international law and in full cooperation with the relevant international institutions. Otherwise, the primary political objective of Gulf states will continue to be to organize their efforts and substantial resources in opposition to both Israel and the United States. In the meantime, the Reagan Administration's decision to assign troops from the 82nd and 101st Airborne Divisions, already designated as parts of the RDF, to serve as component units within the multinational peacekeeping force that is policing the easternmost section of the Sinai desert in the aftermath of Israel's withdrawal on April 25, 1982, was egregiously shortsighted. The monu-

98. Id. at 228.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id.
104. See, e.g., 22 U.S.C. §§ 2302, 2314(d), 2753(c), 2754 (1976).
105. BOYLE, supra note 82, at 229.
mental peace between Egypt and Israel should not have been linked in any way to the prospect of illegal American military intervention in the Persian Gulf.

IV. CONCLUSION

If a third World War should occur, it will probably result from a direct confrontation between the United States and the Soviet Union over the Middle East/Persian Gulf region. Southwest Asia could readily become the Balkans of the 1980s. For example, the promulgation of the so called Carter Doctrine, in which President Carter committed the United States government to use military force to prevent "any outside force to gain control of the Persian Gulf region,"106 constituted a dangerous bluff whose potential for nuclear confrontation and escalation was immeasurable. A Pentagon report had already concluded that even with a creditable RDF the United States alone could not successfully defend Iranian oil fields from a Soviet conventional invasion unless, perhaps, America resorts to the first-use of tactical nuclear weapons.107 But deployment in a conventional conflict with the Soviet Union would probably degenerate into strategic nuclear warfare between the two superpowers and their allies.

Likewise, as publicly admitted, the RDF would not have succeeded at its two other appointed tasks of seizing and operating Persian Gulf oil fields against the wishes of the local governments in the event of another cutoff along the lines of 1973 or of protecting petroleum facilities from destruction by opposition movements indigenous to the region or by externally supported saboteurs.108 Such disruptions are beyond the substantial capacity of the RDF to counteract. Consequently, since the Carter Doctrine can neither deter a Soviet invasion nor stem the tide of revolutionary change in the Gulf, the Reagan Administration should have abandoned it.

Nevertheless, somewhat paradoxically, the Reagan Administration eagerly embraced this ill-conceived, rhetorical flourish by a former opponent, hastily uttered during the heat of an unsuccessful election campaign,109 as the cornerstone of its foreign policy toward the Persian Gulf. Worse yet, the Reagan Corollary improvidently extended the Carter Doc-

106. Id. at 215.
109. Boyle, supra note 82, at 216.
trine to ordain United States opposition to internally based interference with the free flow of Saudi Arabian oil. The United States government should not have been tempted to enter into de facto alliances with feudal or reactionary regimes in order to guarantee their continued survival against internal adversaries in return for stable supplies of expensive oil, especially at the calculated risk of precipitating a theoretically "limited" tactical nuclear war with the Soviet Union. As demonstrated by the Iranian revolution, even a perceptibly radical successor regime will recognize the need to sell oil to Western Europe, Japan, and the United States for the hard currency necessary to finance imports essential to fulfilling the basic human needs of its citizenry, such as United States food supplies, let alone to pay for an economic development program.

Because of the RDF's demonstrative susceptibility to abuse and to its impermissible use under international law, the United States Congress should have amended the War Powers Act of 1973110 to provide that the President of the United States cannot order the introduction of RDF troops into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances without prior authorization by a joint resolution of Congress. A narrowly drawn exception to this amendment would have permitted the President to use RDF troops solely for the purpose of rescuing a substantial number of American citizens from situations where they face imminent danger of death without the need for prior Congressional authorization, though subject to the other requirements of the Act. Without such an amendment, any United States President will be constantly tempted to order the RDF into combat for all sorts of reasons and under a variety of pretexts simply because a seemingly effective United States interventionary force might be in existence and would be subject to his unfettered discretion. Otherwise, direct United States military intervention in the Persian Gulf/Middle East could readily serve as the harbinger for nuclear Armageddon.

Postscript

The author finished the research and writing for this Article as of February 1, 1986, when it was submitted in advance to the organizers of the University of New Orleans Symposium on Neutrality for distribution and delivery at the conference two weeks later. Hence, the Article did not take into account the numerous facts surrounding the Reagan Administration's foreign policy toward the Iran-Iraq War that have emerged into the public record since the outbreak of the Iran-contra scandal in October

of 1986. The author believes that intellectual honesty requires him to deal with these subsequently revealed facts in a Postscript, rather than by revising an already delivered and publicly disseminated scholarly paper. This way, the readers are free to assess for themselves the merit and integrity of the author's analysis as of early 1986.

Therefore, except for minor editorial corrections, the above section of this chapter contains the exact text of the paper which the author submitted to and delivered before the Symposium. Nevertheless, for the sake of completeness, this postscript offers a necessarily brief and highly impressionistic overview of the Reagan Administration's foreign policy toward the Iran-Iraq war in light of the Iran-contra exposé and subsequent developments. A more detailed treatment of this subject will be found in a forthcoming book entitled The Persian Gulf War and International Law. Facts that have emerged into the public record as of January 20, 1988 form the basis for the following analysis.

At the 1986 Neutrality Symposium, the author stated that as events in Iran have demonstrated, arms sales can easily become counterproductive. Any United States arms transfer policy must be required by the legitimate defensive needs of these [Middle Eastern] countries as defined by international law and interpreted in good faith by the American government. These words were not written in reference to or with knowledge of the Iran-contra scandal, but they nevertheless seem to have constituted the major lesson to be learned from it. For reasons better explained in chapter 8 of World Politics and International Law, the author saw nothing wrong with the Reagan Administration's attempt to negotiate and compromise for the release of American hostages who were being held in Lebanon by an Islamic fundamentalist group which was acting in sympathy with Iran over United States support for Iraqi aggression throughout the Gulf war. However, arms transfers by the Reagan Administration should not have employed the currency to purchase liberty for the hostages.

An Islamic fundamentalist group seized the hostages in order to obtain the release of its comrades imprisoned in Kuwait—some of whom were and still are subject to execution—for bombing attacks perpetrated against Kuwaiti, French, and American political targets in Kuwait in opposition to their joint support for Iraq against Iran. A negotiated exchange of American hostages in Lebanon for the release of Lebanese prisoners in Kuwait would have been a proper policy for the Reagan Administration to pursue with the Iranian government, inter alia. Indeed,

112. Boyle, supra note 82, at 102-21.
the Reagan Administration could have implemented such a policy if it
genuinely wished to obtain the release of the American hostages in
Lebanon.

The Reagan Administration's provision of sophisticated weapons to
some of the most radical elements in Iran was never part of a self-styled
strategic opening to that country, but simply constituted a straight out
arms-for-hostages swap that basic norms of international law and United
States domestic law could not justify. Iran did not require these weapons
for the legitimate defense of its country, which was no longer in jeopardy.
Rather, Iran used the arms to continue the prosecution of its war against
Iraq despite repeated calls by the international community for a peaceful
settlement. According to articles 2(3) and 33 of the United Nations Char-
ter, Iran was under an obligation to pursue a peaceful termination of its
war with Iraq\footnote{U.N. \textsc{Charter} arts. 2, \S\ 3, 33.} despite the undeniable fact that Iran was the original
victim of Iraqi aggression. The sale of sophisticated weapons by the
United States government to Iran at this penultimate stage in the Iran-
Iraq War only exacerbated and compounded the already daunting politi-
cal complexities of the situation.

In any event, the exposure of the United States arms transfers to Iran
revealed to the entire international community that the basis of the Rea-
gan Administration's alleged neutrality policy toward the Iran-Iraq War
had been thoroughly unprincipled, duplicitous, and hypocritical from the
outset. The same can be said for the Reagan Administration's congeni-
tally defective war against international terrorism that was the intended
keystone of its bankrupt foreign policy toward the Middle East since
1981. Such unscrupulous policies violated the basic principles of interna-
tional law as set forth in my 1986 paper, as well as several well-estab-
ished prohibitions of United States constitutional, civil, and criminal law
that are too numerous to list here but which the Independent Counsel/
Special Prosecutor Lawrence Walsh will invoke when he indicts the prin-
cipals in the Iran-Contra scandal. As argued in the last chapter of \textit{World
Politics and International Law}, the United States government's practice
of Machiavellianism abroad will ineluctably subvert, if not destroy, con-
stitutionalism and the rule of law at home.\footnote{Boyle, supra note 82, at 293-95.}

In the aftermath of the Iran-Contra revelations, starting in October of
1986, the Reagan Administration sought to undo the self-inflicted damage
to its credibility with the American people and with Arab states in the
Middle East by adopting an even more intransigent and overtly hostile
stance against Iran. The Reagan Administration abandoned even the pre-
tense of feigned neutrality toward the Iran-Iraq War and actively and
directly intervened on the side of Iraq against Iran by means of United States military forces. This decision produced the so-called reflagging of Kuwaiti oil tankers under the American flag in order to provide a thin veneer of legal respectability to justify to the American people and Congress the introduction of United States military forces directly into the war in overall support of Iraq's strategic objectives.

However, after the destruction of the *Stark* by an Iraqi (not Iranian) jet fighter, the American people and Congress should have made it clear to the Reagan Administration that they would not tolerate the placing of United States sailors and airmen in harm's way to support the bloodthirsty dictatorship of Saddam Hussein for any reason. Nevertheless, after expressing some lukewarm reservations, Congress caved in to the Reagan Administration by refusing to insist that the Reagan Administration obey the terms of the War Powers Act when introducing United States naval and air forces to escort the reflagged Kuwaiti tankers in the Persian Gulf War. How many United States servicemen could have been prevented from dying in the Gulf War? This is precisely the type of outcome the War Powers Act is designed to prevent—at least without formal Congressional authorization for direct United States military intervention into a situation of armed combat.

Yet today, several otherwise sensible political leaders and public pundits have argued disingenuously that because the Reagan Administration successfully refused to obey the War Powers Act in the Persian Gulf, the Act itself has demonstrated its impracticability and should be repealed or eviscerated. To the contrary, the Reagan Administration's creeping military intervention into the Iran-Iraq War on the side of Iraq during the past seven years precisely demonstrates the need for more (not less) restrictive amendment to the Act that the author called for in 1986:

Because of the Rapid Deployment Force's demonstrative susceptibility to abuse and to its impermissible use under international law, the American Congress should amend the War Powers Act of 1973 to provide that the President of the United States cannot order the introduction of RDF troops into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances without prior authorization by a joint resolution of Congress.116

The RDF was renamed the United States Central Command, and direct United States military intervention in the Iran-Iraq War took place under this rubric.

No international legal significance was given to the Reagan Administration's so-called reflagging of Kuwaiti oil tankers. First, the reflagged

115. *Id.* at 217.
Kuwaiti oil tankers lacked the "genuine link" to the United States that is required by article 5 of the 1958 Geneva Convention on the High Seas in order to establish United States nationality for the tankers.\textsuperscript{116} Furthermore, pursuant to the ruling of the International Court of Justice in the \textit{Nottebohm Case}\textsuperscript{117} concerning the meaning of a "genuine link" as involving the contrived alteration of nationality by a person in contemplation of war, Iran would have had the perfect right to disregard this sham transaction and continue to treat the tankers as possessing Kuwaiti nationality. Moreover, even if the change of nationality for the tankers was considered effective under international law and opposable by the United States against Iran, for the Reagan Administration to have undertaken this admittedly partial type of activity in favor of one belligerent during the course of an ongoing war, fatally compromised its alleged neutrality and constituted a hostile act against Iran.

Finally, as discussed in my 1986 paper, Iran had a right under international law to exercise its belligerent rights by stopping merchant ships, searching the ships for contraband, confiscating any contraband discovered or, in certain circumstances, destroying merchant ships that proceeded through the Straits of Hormuz into and out of the Persian Gulf on their way to and from Kuwait and the other Gulf states that were acting as de facto allies of Iraq throughout the war. Despite the Reagan Administration's disingenuous protestations to the contrary, Kuwait had never been neutral in the war against Iran. Rather, Kuwait has consistently sided with Iraq throughout the course of the war, though against its better judgment. Nevertheless, Kuwait's acts of cobelligerence included providing billions of dollars in loans to Iraq; shipping munitions, equipment, and supplies through Kuwait to and from Iraq; allocating a fixed percentage of Kuwaiti oil exports to account in order to finance the war; providing reconnaissance information and intelligence to Iraq; giving some degree of military cooperation and logistical support for Iraq, etc.

Recall that it was Kuwait—Iraq's de facto ally—that had originally requested Soviet and American protection for its nonneutral merchant shipping. Perhaps somewhat foolishly, the Reagan Administration readily acquiesced to an Iraqi-Kuwaiti plan specifically designed to elicit direct United States military intervention on the side of Iraq against Iran under the flimsy pretext of protecting the passage of allegedly neutral ships through international straits and on the high seas. On the other hand, the author personally believes that the Reagan Administration probably orchestrated the Kuwaiti/Iraqi request to the United States and the So-

\textsuperscript{117} Nottebohm (Liech. v. Guat.), 1955 I.C.J. 4 (Apr. 6).
viet Union in the full knowledge and expectation that the White House could then successfully manipulate the evanescent threat of a picayune Soviet naval presence in the Gulf for the purpose of convincing a reluctant American people and Congress to acquiesce in an already planned direct intervention by United States military forces into the war. The purpose of this plan would be to prevent a feared Iraqi defeat upon Iran's otherwise anticipated renewal of its annual offensive near Basra in the winter of 1988.

In any event, it was completely and purposefully misleading for the Reagan Administration to have publicly characterized Kuwait as a neutral in the Iran-Iraq War. For all of the above reasons, the Kuwaiti tankers were never engaged in neutral shipping that would be entitled to the benefits of such a designation under the international laws of neutrality. This holds true irrespective of their so-called reflagging by the United States government. Therefore, the United States Navy escorted nonneutral shipping in violation of United States obligations as a neutral under international law, in direct contradiction to Iran's belligerent rights under the laws of war, and at the risk of precipitating an Iranian declaration of war or at least acts of hostility directed against the United States in the Gulf or elsewhere for such belligerent behavior.

In other words, the Reagan Administration proceeded to provide military assistance to Kuwait, which was an ally of Iraq against Iran, and thus rendered the United States a de facto ally of Iraq against Iran in the Gulf War. In no sense of the traditional meaning of the term, therefore, can it even be arguably said that the United States government was any longer neutral in the Iran-Iraq War. Hence, the Reagan Administration's claim that it introduced United States naval forces into the Iran-Iraq War for the twin purposes of (1) permitting neutral shipping to transit the Straits of Hormuz and the Persian Gulf, and (2) ensuring the free flow of Gulf oil through the Straits, becomes legal, factual, and political nonsense.

For example, the State Department publicly admitted that it was Iraq which started the so-called tanker war in 1984. The State Department also generally agreed that Iraq, not Iran, perpetrated the vast majority of destruction that had been inflicted against any type of shipping in the Gulf. According to the supposed logic of the Reagan Administration's legal rationale (whose very premises the author completely rejects), if the purpose of direct United States military intervention was, either in fact or in law, intended to prevent the destruction of genuinely neutral shipping in the Gulf, then protective United States military activities should have been directed primarily against Iraq, not Iran. For reasons that will become clear below, the author does not advocate that course of conduct either.
Well before direct United States military intervention into the Persian Gulf War, the Pentagon publicly stated that Iran was essentially respecting the international laws relating to the exercise of its belligerent rights regarding the search and seizure of merchant ships and contraband in the Persian Gulf and Straits of Hormuz. Iran had engaged in destruction of merchant tankers travelling to or from Iraq/Kuwait primarily in reprisal for Iraqi attacks against merchant shipping destined to and from Iran. Under the customary international law doctrine known as reprisal, what otherwise would be a violation of international law in time of war nevertheless can be excused if it is undertaken for the express purpose of bringing an original violator of the laws of war (that is, Iraq) into compliance therewith; provided that the reprisal is essentially proportionate to the original violation and that people and property who are afforded special protections by international law are respected. Under the current circumstances of the Gulf War, the latter restriction could not apply to protect nonneutral merchant ships in the Gulf, especially when they voluntarily decided to enter exclusion zones proclaimed by either side, frequently carried contraband of war anyway, and were fully aware of the Iranian reprisal policy.

Moreover, Iran had publicly taken the position that the primary reason it attacked merchant tankers destined to or from Iraq/Kuwait was to react to and discourage further Iraqi attacks on merchant shipping to or from Iran. It has consistently been in the national interest of Iran to maintain the free flow of oil through the Straits of Hormuz to continue financing its war effort. By contrast, with the closure of Iraqi ports on the Shatt al-Arab estuary and the diversion of its oil exports by pipelines running through Syria and Turkey to the Mediterranean and through Saudi Arabia to the Red Sea, it has been in Iraq's interest to close the Straits of Hormuz and the Persian Gulf to oil tanker shipping from Iran.

Therefore, between Iran and Iraq, it was Iraq that did far more damage to the free flow of oil from the Gulf. Once again, if the Reagan Administration had really intended to intervene in order to maintain the flow of oil from the Gulf through the Straits, it should have intervened against Iraq, not Iran. Just like the neutrality argument, therefore, this oil rationale was totally spurious to begin with and quite cynically manipulated by the Reagan Administration as another pretext in order to justify overt and direct United States military intervention in favor of Iraq against Iran to the American people and Congress. As a direct result of the Iraqi attack upon Iran in 1980, as well as the institution of the tanker war by Iraq in 1984, only a miniscule percentage of annual world oil supplies ac-

118. Kelsen, supra note 90, at 20-22.
tually transit the Straits of Hormuz by tanker, and a good deal of that is Iranian oil anyway.

Ironically, but not surprisingly, it was Iran, not Iraq, that demonstrated the greater degree of respect for the rules of international law concerning neutrality and belligerency in the Gulf and the Straits. Furthermore, it was the United States that is engaged in hostile and provocative military maneuvers and actions against Iran—not vice versa—and was illegally preventing Iran from exercising its belligerent rights under well-recognized principles of international law. Thus, when United States naval forces attacked Iranian ships and Iranian oil drilling platforms in the Gulf, it was not a legitimate act of self-defense as recognized by article 51 of the United Nations Charter.119

Indeed, these actions were specifically designated to be measures of retaliation by President Reagan. Yet until the advent of the Reagan Administration, the United States government had never taken the position that retaliation is a legitimate act of self-defense under article 51 of the United Nations Charter. To the contrary, even during the darkest days of the Vietnam War, the United States government had always argued that retaliation was not self-defense and therefore was prohibited by the terms of article 51.

The Reagan Administration’s interpretation of the right of self-defense to include retaliation in the Gulf (as well as in Lebanon, Libya, and its so-called war against international terrorism) represents a truly perverse innovation in the universally accepted corpus of both customary and conventional international law on self-defense which goes back to the famous 1837 case of the good ship Caroline.120 There, United States Secretary of State Daniel Webster took the official position on behalf of the United States government that alleged measures of self-defense can only be justified when the “necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”121 The Caroline test for the validity of any act of alleged self-defense was later adopted and approved by the International Military Tribunal convened at Nuremberg in 1945 for the purpose of trying the major Nazi war criminals.122

More recently came the World Court’s seminal Corfu Channel Case123 that, interestingly enough, involved a state’s use of force to remove mines

119. U.N. CHARTER art. 51.
120. See The Caroline, in MOORE, supra note 15, at 409, 412.
121. Id.
from an international strait by entering another state's territorial waters. In that case a squadron of British warships traversing the North Corfu Strait struck some mines with resulting loss of lives and ships. Three weeks later, British minesweepers swept the North Corfu Channel under the protection of a British armada and entered Albanian territorial waters for the purpose of removing and later examining moored mines. 124 All fifteen members of the International Court of Justice, together with a judge ad hoc appointed by Albania, were unanimously held that by reason of the acts of the British Navy in Albanian territorial waters in the course of the minesweeping operation, the United Kingdom had violated the sovereignty of Albania. 125 In this regard, the World Court emphatically rejected all grounds of alleged defense under customary international law that were proffered by the British government:

The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.

The United Kingdom Agent, in his speech in reply, has further classified [the minesweeping operation] among methods of self-protection or self-help. The Court cannot accept this defence either. Between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Court recognizes that the Albanian Government's complete failure to carry out its duties after the explosions, and the dilatory nature of its diplomatic notes, were extenuating circumstances for the action of the United Kingdom Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty. 126

Even more significantly, the World Court repudiated these vagarious doctrines without explicitly relying upon the United Nations Charter because Albania was not yet a party while Great Britain was. 127 Hence, one can construe the Court's holding on this point to constitute an authoritative declaration of the requirements of customary international law, binding upon all members of the international community irrespective of the Charter, on the use of force. A fortiori, therefore, when both parties to an

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124. Id. at 12-13.
125. Id. at 36.
126. Id. at 35.
127. Id.
international conflict are United Nation members, such as the United States and Iran, articles 2(3), 2(4), and 33 absolutely prohibit any threat or use of force not specifically justified by the article 51 right of individual or collective self-defense. Furthermore, pursuant to article 38(1)(c) of the Statute of the International Court of Justice, under "the general principles of law recognized by civilized nations," retaliation is not self-defense but murder and aggression.  

The Corfu Channel Case\textsuperscript{128} invokes the memory of one of history's great conflagrations that started as a simple dispute over the colonial status of Epidamnus between ancient Corinth and Coreya, then a city-state on the island of Corfu.\textsuperscript{129} The Reagan Administration's demented interpretation of self-defense to include retaliation was a throwback to the Athenian position taken at the Melian Conference in Book 5 of Thucydides' The Peloponnesian War: "The strong do what they will, and the weak suffer what they must!"\textsuperscript{131} Not coincidentally, the Athenians had rejected a Melian offer of neutrality in their war against Sparta as incompatible with their imperial destiny:

\begin{quote}
Melians.—"So that you would not consent to our being neutral, friends instead of enemies, but allies of neither side."

Athenians.—"No; for your hostility cannot so much hurt us as your friendship will be an argument to our subjects of our weakness, and your enmity of our power."

Melians.—"Is that your subjects' idea of equity, to put those who have nothing to do with you in the same category with peoples that are most of them your own colonists, and some conquered rebels?"

Athenians.—"As far as right goes they think one has as much of it as the other, and that if any maintain their independence it is because they are strong, and that if we do not molest them it is because we are afraid; so that besides extending our empire we should gain in security by your subjection; the fact that you are islanders and weaker than others rendering it all the more important that you should not succeed in baffling the masters of the sea."\textsuperscript{132}
\end{quote}

Twenty-five hundred years later, today's master of the sea is another self-styled democracy with a belligerent populace and truculent leaders who imperiously threatened to engulf the civilized world in a cataclysm of unpredictable dimensions if a small power did not capitulate to its diktat.

\textsuperscript{128} The Statute of the International Court of Justice (June 26, 1945), 59 Stat. 1055, T.S. No. 993.
\textsuperscript{129} Corfu Channel (U.K v. Alb.), 1949 I.C.J. 4 (Apr. 9).
\textsuperscript{130} The Complete Writings of Thucydides: The Peloponnesian War (Madean Library ed. 1951).
\textsuperscript{131} Id.
\textsuperscript{132} Id. at 332.
An alternative solution existed, however, to the Reagan Administra-
tion's fictitious dilemma of choosing between further escalation of direct
United States military intervention in support of Iraq, or installing a
puppet regime in Baghdad acting at the behest of Iran. This third option
could be constructed on the basis of international law and organizations if
the Reagan Administration or its successor really desired to do so in good
faith. Pursuing this third alternative essentially would have required that
the United States government indicate a willingness to satisfy those rea-
sonable Iranian conditions for terminating the war that can be fully justi-
fied by the principles of international law.

The basic components of and reasons for a practicable peace plan that
merit support by the United States government and endorsement by the
U.N. Security Council are: (1) the condemnation of Iraq as the original
aggressor in the war; (2) the removal of Saddam Hussein from power; (3)
the payment of war reparations to Iran; (4) the interposition of a United
Nations peacekeeping force along the Iraq-Iran border to facilitate a
withdrawal of forces; and, (5) the restoration of the 1975 border between
the two countries. Iran gave every indication that it would be prepared
to terminate the Iran-Iraq War on essentially these terms.

Instead of working along these lines, however, the Reagan Administra-
tion sponsored and obtained the passage of United Nations Security
Council Resolution 598 (1987) that did not meet any of the minimal
Iranian demands for the termination of the war, but rather seemed to
incorporate the maximalist Iraqi position. In particular, Resolution 598
required that Iran must first withdraw from all Iraqi territory before
steps are taken by the Security Council to satisfy any of the legitimate
Iranian conditions under international law. The United States govern-
ment's stubborn insistence that the terms of Resolution 598 be imple-
mented in this precise sequence of events was an obvious nonstarter in
the first place and was thus probably designed to produce Iranian non-
compliance in order to serve as a pretext for imposing United Nations
Security Council sanctions against Iran to stave off an Iraqi defeat.

It was seriously doubtful that after seven years of being on the receiv-
ing end of incredible bloodshed and devastation, Iran would withdraw
from Iraq upon the mere promise by the Security Council that the inequi-
ties of the situation might be redressed somewhat afterwards. Recall that
due to the influence of the United States government, the United Nations
Security Council had yet to pass a resolution even condemning Iraq for

133. See supra text accompanying notes 85-105.
initiating aggression against Iran in 1980, with all its incalculable consequences for the Iranian and Iraqi peoples. Under the pernicious influence of the Reagan Administration, Resolution 598 also failed to accomplish this. The supposed reason was that the Security Council must be balanced and even-handed between both belligerents when passing resolutions on the Persian Gulf War.136 Nothing should be further from the truth.

The Security Council was never designed to be neutral in the face of outright aggression.137 If the Security Council purported to be so for any reason, then the Security Council and its membership—especially the five permanent members possessing veto power (i.e., United States, the United Kingdom, the Union of Soviet Socialist Republics, France, and China)—simply betrayed their partiality in favor of an aggressor against its victim and thus seriously undermined, if not permanently abnegated, their “primary responsibility for the maintenance of international peace and security” under United Nations Charter article 24(1).138 So long as the Security Council continued to act at the behest of the United States government and Iraq in this matter, it would probably have had little positive effect upon the ultimate outcome of the Iran-Iraq War.

Despite these inherent defects, Iran nevertheless demonstrated a considerable amount of flexibility on the terms and the timing for the implementation of Resolution 598. The Iranians indicated that they would be prepared to declare and observe an informal cease-fire that should be followed by the establishment of an international commission to examine responsibility for the outbreak of the war. Once that commission had made its report—presumably determining that Iraq was responsible for committing aggression—and the logical consequences from that determination were implemented (that is, the departure of Saddam Hussein and at least a promise by Iraq and/or the Gulf states to pay war reparations to Iran), then Iran indicated that it would be prepared to engage in a complete withdrawal from Iraqi territory. The United States government should have taken the Iranians’ word and immediately proceeded to implement this promising procedure for ending the war.

Instead, the Reagan Administration continued to work at the Security Council to obtain the latter’s full support for the maximalist Iraqi position that Iran must first withdraw completely from Iraqi territory before meeting any Iranian terms for ending the war. Later, the Reagan Administration demonstrated its own gross disrespect for and rank hypocrisy

137. See supra text accompanying notes 41-50.
toward Resolution 598 by specifically violating the terms of paragraph 5 thereof when it decided to use the United States Navy to escort the Kuwaiti tankers and to engage in acts of hostility against Iranian ships and oil drilling platforms in the Gulf: "The Security Council . . . 5. Calls upon all other States to exercise the utmost restraint and to refrain from any act which may lead to further escalation and widening of the conflict, and thus to facilitate the implementation of the present resolution . . . ."\textsuperscript{139} Direct United States military intervention in support of the Kuwaiti tankers and retaliatory acts against Iranian ships and oil drilling platforms did the exact opposite of what the Security Council had ordered. Next, the Reagan Administration sanctimoniously demanded that the Security Council impose an arms embargo against Iran because it had failed to comply with Resolution 598.\textsuperscript{140}

Even if the Reagan Administration was ultimately successful in its quest for Security Council sanctions against Iran, the sanctions would probably have had a limited impact upon Iranian calculations because the Security Council had no credibility in Iran's eyes. Furthermore, any additional forms of unilateral direct United States military intervention into the Persian Gulf War were probably doomed to fail. The same can be said for the American-orchestrated multilateral naval force consisting of warships drawn from NATO countries but operating without any type of imprimatur by the United Nations Security Council in the Persian Gulf. Their propulsion into the Gulf War simply raised the specter of the multilateral force that the Reagan Administration had cajoled into Lebanon without United Nations approval in order to provide a thin veneer of multilateral protective cover to seduce the American people and Congress into supporting the interjection of United States Marines into the Lebanese Civil War on the side of the Gemayel family.

The Reagan Administration surrendered the initiative for war and further acts of hostility to Iran as part of some cosmic game of "chicken," wherein the United States government publicly admitted that its military calculations were based upon the assumption that Iran would not do something foolish or irrational as the Reagan Administration defined those terms. In other words, the American people must have depended upon the good sense of Iran to keep the United States out of further involvement in the Iran-Iraq War. Only time will tell whether or not the Reagan Administration's reckless gamble with the lives of United States sailors and airmen and with the destiny of this country and its people will pay off.

\textsuperscript{139} 42 U.N.S.C.O.R., supra note 134.
\textsuperscript{140} Frederick Kempe, U.S. is Tilting Towards Iraquis in The Gulf War, WALL ST. J., March 31, 1987, at 26, col. 1.
The Reagan Administration's apparent resurrection of Thomas Schelling's discredited and dangerous theory propounding "the rationality of irrationality" as the basis for its interventionary policy in the Iran-Iraq War could have an incredible disaster for everyone concerned. As of this writing, the disaster has not yet materialized—assuming that one is prepared to write off the thirty-seven dead crewmen of the U.S.S. Stark as an "accident," which the author is not willing to do. One would hope that the American people had seen quite enough of President Reagan on national television shedding crocodile tears over the bodies of American servicemen whom he had needlessly ordered to their deaths because of his penchant to send in the Marines, Navy, Army, or Air Force, whenever his illegal and bankrupt foreign policies have finally demonstrated their genetic futility. But as Machiavelli said in Chapter XVIII of *The Prince*: ". . . men are so simple-minded and so dominated by their present needs that one who deceives will always find one who will allow himself to be deceived." This maxim seems to have been the guiding principle of the Reagan Administration throughout its years in office. We will have to live with it until the bitter end—whenever and whatever that might be.