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US Foreign Policy and the Iran-Iraq War

Review Article

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Global Research Editor's note

This article by Professor Boyle, first published in February 1986 provides an incisive historical review of Washington's foreign policy agenda during the Iran Hostage crisis and the Iran-Iraq war.

It is of particular relevance to an understanding both of the US sponsored Iraq war as well as the foreign policy stance of the Bush adminstration in relation to Tehran.

It is worth noting that the *Reagan administration's anti-Iranian policy was conducted by many of the same NeoConservatives who are today working for the Bush Junior Adminstration*

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INTERNATIONAL CRISIS AND NEUTRALITY:

U.S. FOREIGN POLICY TOWARD THE IRAQ-IRAN WAR*

by

Francis A. Boyle

U.S. "Neutrality" Toward the Iraq-Iran War

In the modern world of international relations, the only legitimate justifications 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 voluntarily joined the United Nations Organization. These include and are limited to the right of individual and collective self-defense in the event of an "armed attack" as defined by article 51, chapter 7 "enforcement action" by the U.N. Security Council, chapter 8 "enforcement action" by the appropriate regional organizations acting with the authorization of the Security Council as required by article 53, and the so-called "peacekeeping operations" organized under the jurisdiction of the Security Council pursuant to chapter 6 or under the auspices of the U.N. General Assembly in accordance with the Uniting for Peace Resolution27 or by the relevant regional organizations acting in conformity with their proper constitutional procedures and subject to the overall supervision of the U.N.

Security Council as specified in chapter 8 and articles 24 and 25. All other threats or uses of force are deemed to be 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 will now be possible to critically analyze and evaluate the U.S. policy of so-called "neutrality" toward the Iraq-Iran War from an international law perspective. 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 l980 because of its shortsighted belief that the pressures of belligerency might expedite release of the U.S. diplomatic hostages held by Teheran since November of 1979.28 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 l92l Russo-Persian Treaty of Friendship.29 These articles were unilaterally abrogated by Iran on November 5, l979,30 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 l980 as a last minute fillip to bolster his prospects for reelection was credible.31 It coincided with a substantial increase of U.S. 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 hostages crisis simply prepared the way for Iraq to invade Iran in September, l980.32 The American policy of "neutrality" toward the Iraq-Iran 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 believes that the American government has consistently "tilted" in favor of Iraq throughout the war despite its public proclamation of "neutrality."33

For example, from the very outset of the conflict, U.S. 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 they had collected on Iranian military movements.34 Clearly, this activity constituted a non-neutral, hostile act directed against Iran which, under pre-U.N. 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 U.S. government to Iraq against Iran rendered America an accomplice to the former's egregiously lawless aggression upon the latter.

This illegal U.S. policy toward Iran progressively worsened after the simultaneous termination of the hostages 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 decision-making, 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 U.S. 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 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 U.S. 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 where 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 is not the distant prospect of Soviet intervention but rather a continuation of the ongoing Iraq-Iran 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 U.S. 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 in order 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 countercoup, among other nefarious projects.35

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

Undaunted, the Reagan Administration could not content itself with the mere sponsorship of such covert measures that were specifically designed to topple the Islamic regime 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 reestablishment of normal diplomatic relations between the United States and Iraq, which 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 re-instituting normal diplomatic relations with the United States in November of 1984.36

As part of this progressive development in their anti-Iranian rapprochement, in March of 1982 the Reagan Administration removed Iraq from the official list of states that allegedly provided support to so-called acts of international terrorism despite the fact that there was little evidence that Iraq had fundamentally altered whatever its policies were in this regard.37 Such de-listing rendered Iraq eligible to purchase "dual-use" equipment and technology in the United States that could readily be employed for either civilian or military purposes and would most probably be used in the latter manner.38 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.39 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.40 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.41

Nevertheless, despite the Reagan Administration's best efforts, the provision of political, military and economic assistance by the United States, its NATO allies and Middle Eastern friends to Iraq proved insufficient to stem the tide of Iranian military advances. Hence, near the start of 1984, it was publicly announced that the United States government had informed various "friendly" nations in the Persian Gulf that Iran's defeat of Iraq would be "contrary to U.S. interests" and that steps would be taken to prevent this result.42 Accordingly, in April of 1984 it was 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.43 One of the options under consideration was the further U.S. provision of so-called dual-use equipment such as helicopters to Iraq.44 In addition, the Reagan Administration let it be known that it would look "more favorably" upon the sale of weapons to Iraq by friends and allies of the United States government.45 The very next month, it was publicly revealed that the Reagan Administration was prepared to intervene militarily in the Iraq-Iran war in order to prevent an Iranian victory that would install a so-called "radical" Shi'ite government in Baghdad.46

Pursuant to this set of decisions, in February of 1985, Textron's Bell helicopter division agreed to sell 45 large helicopters to Iraq, and Iraqi defense officials were involved in negotiating this transaction.47 Six months later it was reported that these 45 American-made helicopters being sold to Iraq were initially developed as Iranian troop carriers. One official of the United States government monitoring the transaction said the helicopter model involved was "clearly a dual-use item" with "a potential for military use."48

From all of the above facts that have so far surfaced into the public domain, it can quite fairly be concluded that since its ascent to power in 1981, the Reagan Administration has abandoned all pretense of alleged American "neutrality" toward the Gulf war in order to come down decisively on the side of Iraqi aggression against Iran. Under the traditional customary international laws of neutrality, such activities clearly constituted hostile acts that Iran would have been entitled to oppose with a formal declaration of war against the United States. Of course prudence has so far 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 arises from Iraq's calculated policy of escalating the severity of its attacks against Iranian oil installations and supplies for the express purpose of precipitating direct U.S. military intervention to keep the Straits of Hormuz open from retaliatory interference by Iran. Baghdad's hope is that such outright U.S. military involvement in the Gulf war would ultimately rescue Iraq from capitulation or defeat at the hands of Iran. As the recent boarding of a U.S. merchant ship by Iranian sailors near the Straits of Hormuz indicates,49 unless the Reagan Administration reverses its current policy of alleged "neutrality" toward the Gulf war, it will prove to be increasingly difficult for Iran and the United States to avoid some form of outright military conflict in the region.

Restoring International Peace and Security to the Persian Gulf

Even if the United States had been factually as well as legally "neutral" in the Iraq-Iran war, that position would itself be shocking and indefensible under the most rudimentary principles of international law. When in the post-U.N. 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 l930s, peace is indeed indivisible. In a thermonuclear age, aggression per se is the most dangerous threat to world peace. The United States can not possibly 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 fools no one but itself.

The United States, its NATO allies, and Japan possess 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. Continued destabilization of Iran only generates further opportunities for Soviet penetration and exploitation. The United States must not permit the development of a permanent threat to Saudi Arabia and to the free flow of Gulf oil through the Straits of Hormuz 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 possess the exclusive right to determine their own form of government without overt or covert U.S. intervention, even if this means the continuation of an Islamic fundamentalist regime in Teheran.

In order 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 would be to work toward the establishment of a strong, stable, and secure government in Teheran that is 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 it, the Reagan Administration should move to restore normal diplomatic relations with Iran as soon as possible and without any prior conditions. Most importantly, the Reagan

Administration must completely reverse and publicly repudiate the Carter Administration's policy of alleged "neutrality" toward the Iraq-Iran War.

The American government must officially label Iraq as the aggressor in the Gulf war and publicly call for an immediate ceasefire. The Reagan Administration must attempt 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 should work at the United Nations Security Council for the formal adoption of this program and its implementation by the deployment of a U.N. 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.50 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. These Iranian concerns should be recognized as valid by the United States government and should be accommodated to some extent within whatever framework is ultimately adopted for the peaceful settlement of this dispute by the U.N. Security Council.

Of course the improvement and normalization of American diplomatic relations with Iraq was a desirable objective as well. But it should not have been purchased by derogation from the fundamental principle of international law requiring the condemnation of aggression and by writing off Iran to its own fate or to the account of the Soviet Union. Indeed, if the Reagan Administration truly believes that the major U.S. strategic objective in the Persian Gulf is to counteract a threatened Soviet thrust through Iran toward Saudi Arabia, the best American defense can be 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 play an effective role consistently with the requirements of international law. Such action would be in furtherance of the right of collective self-defense recognized by article 51 of the U.N. Charter.

As for the Iranian threat to close the Straits of Hormuz in the event Iraq escalates its attacks against Iranian oil installations, world public opinion should hold the U.S. government's illegal pro-Iraqi policies fully accountable for whatever political, military and economic catastrophes might result therefrom. So as long as the conflict continues, the Iranian government has 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. In the meantime, to the extent 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 this war has simply encouraged these Arab countries temporarily to 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 has fatally compromised

their alleged “neutrality” toward the Gulf war as well.51 Under the pre-U.N. Charter customary international law of neutrality, Iran would have been entitled to treat the provision of such military and economic assistance by these countries to Iraq as an act of hostility directed against it, thus warranting a declaration of war. So far, Iran has wisely refrained from so acting. Nevertheless, the United States government has done nothing to discourage, and indeed in many instances has encouraged and assisted, such non-neutral practices by numerous Middle Eastern countries against Iran. This misguided American policy must be reversed immediately before it thoroughly and irrevocably destabilizes international peace and security in the Persian Gulf and Middle East.

Restoring peace to the Persian Gulf demands 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 seems to be “tilting” quite strenuously in favor of Iraq against Iran. Continued and demonstrable U.S. partiality for Iraq will only prolong this tragic conflict by discouraging Iran from working with the U.N. Security Council to end the war precisely because one of the latter’s permanent and most important members is evisceraly and implacably prejudiced against it. For this very reason, those inexcusably few U.N. Security Council resolutions that have so far been adopted on the Gulf war have all been clearly and admittedly biased in favor of Iraq.52

From a long-term perspective on Persian Gulf security, the Reagan Administration should abandon Haig’s Machiavellian objective of creating a formal anti-Soviet “strategic consensus” in the region under American leadership and substitute for it a policy that promotes the foundation of an effective regional collective self-defense and policing arrangement. Therefore, the Reagan Administration should encourage the efforts of six regional states (i.e., Saudi Arabia, Kuwait, Bahrain, United Arab Emirates, Oman, Qatar) to form a viable Gulf Cooperation Council. Such an organization could someday metamorphosize into an effective Gulf Security Organization, affiliated with the United Nations Organization under chapter 8 of the Charter, and possess a standing peacekeeping force or the ability to field one on short notice. Though the Council aims to keep both superpowers out of the region, a Gulf Security Organization could only advance the interests of the U.S., its NATO allies, and Japan by the establishment of some degree of peace, order, and stability in this volatile area.

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 Rapid Deployment Force (now renamed the U.S. Central Command) ever could.53 The United States must not become a member of or play any formal role within such a Gulf Security Organization so as not to undermine the Organization’s claims to regional legitimacy and to formal non-alignment vis-à-vis the two superpowers. But America should make clear its intention to provide military assistance to such an Organization in the event of an armed attack upon one of its members by an extra-regional power such as the Soviet Union. Such assistance would be in furtherance of the right of collective self-defense recognized by article 51 of the United Nations Charter.

In regard to U.S. 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 U.S. 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; 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 U.S. government or the U.N. Security Council deems violative of international law. Hence, the Israeli air strikes with American-made planes against the Iraqi nuclear reactor and the PLO headquarters in Beirut combined with Israel's threat to bomb Syrian anti-aircraft 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 reevaluation 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 U.S. domestic law.54 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 current events in the Middle East demonstrate, 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 becomes 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 Rapid Deployment Force, 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, l982, was egregiously shortsighted. The monumental 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.

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 this American president committed the U.S. government to use military force to prevent "any outside force to gain control of the Persian Gulf region"–constituted a dangerous bluff whose potential for nuclear confrontation and escalation was immeasurable. A Pentagon report had already concluded that even with a creditable Rapid Deployment Force (RDF) the United States could not by itself successfully defend Iranian oil fields from a Soviet conventional invasion unless, perhaps, America resorts to the first-use of tactical nuclear weapons.55 But their 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 cannot succeed 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.56 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, as the cornerstone of its foreign policy toward the Persian Gulf. Worse yet, the Reagan Corollary improvidently extended the Carter Doctrine to ordain U.S. opposition to internally-based interference with the free flow of Saudi Arabian oil. The U.S. 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 (e.g., U.S. food supplies), let alone to pay for an economic development program.

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.57 A narrowly drawn exception to this amendment could permit 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 American 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 U.S. interventionary force might be in existence and would be subject to his unfettered discretion. Otherwise, direct U.S. military intervention in the Persian Gulf/Middle East could readily serve as the harbinger for nuclear Armageddon.

Postscript

The research and writing for this paper were finished 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 paper did not take into account the numerous facts surrounding the Reagan Administration's foreign policy toward the Iraq-Iran War that have emerged into the public record since the outbreak of the Iran-contra scandal in October of 1986. This author believes that intellectual honesty requires him to deal with these matters in a Postscript, rather than by revising an already delivered and publicly disseminated scholarly paper in light of subsequently revealed facts. That way, the readers are free to assess for themselves the merit and integrity of this 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, I would like to offer here a necessarily brief and highly impressionistic overview of the Reagan Administration's foreign policy toward the Iraq-Iran war in light of the Iran-contra exposé and subsequent developments. A more detailed treatment of this subject will be found in my forthcoming book The Future of International Law and American Foreign Policy (Transnational Publishers, Inc.: 1989). The following analysis is based upon facts that have emerged into the public record as of January 20, 1988.

At the 1986 Neutrality Symposium, this author stated: "As events in Iran have demonstrated, arms sales can easily become counterproductive. Any U.S. 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 my World Politics and International Law (Duke University Press: 1985), this author saw nothing wrong with the Reagan Administration attempting to negotiate and compromise for the release of American hostages being held in Lebanon by an Islamic fundamentalist group acting in sympathy with Iran over U.S. support for Iraqi aggression throughout the Gulf war. But arms transfers should not have been the currency employed by the Reagan Administration to purchase liberty for the hostages.

These hostages were seized by an Islamic fundamentalist group in order to obtain the release of their comrades imprisoned in Kuwait–some of whom were and still are subject to execution–for bombing attacks they had perpetrated against Kuwaiti, French, and American political targets in that country out of opposition to the latters' 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 have pursued with the Iranian government, inter alia. Indeed, the Reagan Administration can still implement such a policy today if it genuinely wished to obtain the release of American citizens currently held hostage 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 could not be justified under basic norms of international law and U.S. domestic law. These weapons were not required

by Iran for the legitimate defense of that country, which was then no longer in jeopardy. Rather, Iran used the arms to continue the prosecution of its war against Iraq deep into the territory of that country despite repeated calls by the international community for a peaceful settlement. According to articles 2(3) and 33 of the United Nations Charter, Iran was under an obligation to pursue a peaceful termination of its war with Iraq 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 Iraq-Iran war only exacerbated and compounded the already daunting political complexities of the situation.

In any event, the exposé of the U.S. arms transfers to Iran revealed to the entire international community that the basis of the Reagan Administration's alleged "neutrality" policy toward the Iraq-Iran war had been thoroughly unprincipled, duplicitous and hypocritical from the outset. The same can be said for the Reagan Administration's congenitally defective "war against international terrorism" that had been intended to be the keystone of its bankrupt foreign policy toward the Middle East since 1981. Such unscrupulous policies violated the basic principles of international law set forth in my 1986 paper, as well as several well-established prohibitions of United States constitutional, civil and criminal law that would be too numerous to list here but will undoubtedly be invoked by the Independent Counsel/Special Prosecutor Lawrence Walsh when he indicts the principals in the Iran-contra scandal. As argued in the last chapter of World Politics and International Law, the U.S. government's practice of Machiavellianism abroad will ineluctably subvert, if not destroy, constitutionalism and the rule of law at home.

In the aftermath of the Iran-contra revelations starting in October of 1986, the Reagan Administration sought to undo this 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 pretense of feigned neutrality toward the war and actively and directly intervened on the side of Iraq against Iran by means of U.S. 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 purportedly justify to the American people and Congress the introduction of U.S. military forces directly into the war in overall support of Iraq's strategic objectives.

But after the destruction of the Stark by an Iraqi (not Iranian) jet fighter, both the American people and Congress should have made it quite clear to the Reagan Administration that they would not tolerate U.S. sailors and airmen being put "in-harm's-way" to support the bloodthirsty dictatorship of Saddam Hussein for any reason. Nevertheless, after expressing some lukewarm reservations, Congress caved in by refusing to insist that the Reagan Administration obey the terms of the War Powers Act when introducing U.S. naval and air forces to escort the "reflagged" Kuwaiti tankers in the Persian Gulf war. How many more U.S. servicemen will die in the Gulf war? How likely is it that the U.S. government will refrain from further escalating its direct involvement into the war in the event of more American casualties or Iranian victories (e.g., at Basra)? This was precisely the type of outcome the War Powers Act was designed to prevent–at least without formal Congressional authorization for direct U.S. military intervention into a situation of armed combat.

Yet today, there are several otherwise sensible political leaders and public pundits who have disingenuously argued that since the Reagan Administration has apparently successfully gotten away with refusing to obey the War Powers Act in the Persian Gulf, the Act itself has demonstrated its impracticability and therefore should either be repealed or eviscerated. To

the contrary, the Reagan Administration's creeping military intervention into the Persian Gulf war on the side of Iraq during the past seven years demonstrates precisely the need for the more (not less) restrictive amendment to the Act that this 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." The Rapid Deployment Force was renamed the U.S. Central Command, and it is under this rubric that the current round of direct U.S. military intervention in the Gulf war is taking place.

The Reagan Administration's so-called reflagging of Kuwaiti oil tankers was entitled to no international legal significance whatsoever. First, the reflagged Kuwaiti oil tankers lacked the "genuine link" between the United States and the tankers that is required by article 5 of the 1958 Geneva Convention on the High Seas in order to establish U.S. nationality for the tankers. Furthermore, pursuant to the ruling of the International Court of Justice in the Nottebohm Case (Liechtenstein v. Guatemala), [1955] I.C.J. Rep. 4, concerning the meaning of a "genuine link" involving the contrived alteration of nationality by a person in contemplation of war, Iran would have the perfect right to disregard this obviously sham transaction and continue to treat the tankers as possessing Kuwaiti nationality. Moreover, even if the change of nationality for the tankers were considered to be 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 directed against Iran.

Finally, as discussed in my 1986 paper, Iran had a perfect right under international law to exercise its belligerent rights by stopping, searching for contraband, and if necessary confiscating 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, inter alia, has never been a "neutral" in the war against Iran. Rather, Kuwait has consistently sided with Iraq throughout the course of the war, though to be sure perhaps against its better judgment. Nevertheless, Kuwait's acts of co-belligerence have included the provision of billions of dollars of loans to Iraq; the trans-shipment of munitions, equipment and supplies through Kuwait to and from Iraq; the allocation of a fixed percentage of Kuwaiti oil exports to the account of Iraq in order to finance the war; the provision of reconnaissance information and intelligence to Iraq; some degree of military cooperation with 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 non-neutral merchant shipping. Perhaps somewhat foolishly, the Reagan Administration readily acquiesced to an Iraqi-Kuwaiti plan specifically designed to elicit direct U.S. 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, this author is of the personal opinion that the Reagan Administration most probably orchestrated the Kuwaiti/Iraqi request to both superpowers 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 U.S. military forces into the war in order 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 this war. For all of the above reasons, therefore, the Kuwaiti tankers have never been "neutral shipping" that would be entitled to the benefits of such a designation under the international laws of neutrality. And this holds true irrespective of their so-called reflagging by the United States government. So today, the United States Navy is escorting non-neutral shipping in violation of U.S. 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 is an ally of Iraq against Iran, and has 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 that term, therefore, can it even be arguably said that the United States government is any longer "neutral" in the Iraq-Iran war. Hence, the claim by the Reagan Administration that U.S. naval forces were directly introduced into the Persian Gulf 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 has publicly admitted that it was Iraq which started the so-called tanker war in 1984. It has also been generally agreed that the vast majority of destruction that has been inflicted against any type of shipping in the Gulf has been perpetrated by Iraq, not by Iran. According to the supposed logic of the Reagan Administration's legal rationale (whose very premises this author completely rejects), if the purpose of direct U.S. military intervention was either in fact or in law designed to prevent the destruction of genuinely neutral shipping in the Gulf, then protective U.S. military activities should have been directed primarily against Iraq, not Iran. To be sure, for reasons that will become clear below, this author does not advocate that course of conduct either.

Well before direct U.S. military intervention into the Persian Gulf war, the Pentagon had publicly stated that Iran was essentially respecting the international laws relating to the exercise of its belligerent rights when it came to the search and seizure of merchant ships and contraband in the Persian Gulf and Straits of Hormuz. With respect to the Iranian destruction of merchant tankers destined to or from Iraq/Kuwait, Iran has engaged in this activity primarily in reprisal for Iraqi attacks against merchant shipping destined to and from Iran. Under the customary international law doctrine known as reprisal, in time of war what otherwise would be a violation of international law can nevertheless be excused if it is undertaken for the express purpose of bringing an original violator of the laws of war (i.e., 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, that latter restriction would not apply to protect such non-neutral merchant ships in the Gulf, especially when they have voluntarily decided to enter proclaimed exclusion zones by either side,

oftentimes carry contraband of war anyway, and are fully aware of the Iranian reprisal policy.

Moreover, Iran has publicly taken the position that the primary reason it has attacked merchant tankers destined to or from Iraq/Kuwait is in reaction to and for the express purpose of discouraging Iraqi attacks on merchant shipping sailing 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 in order 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 destined from Iran.

So between the two countries it has been Iraq that has done far more damage to the free flow of oil from the Gulf. Once again, if the Reagan Administration 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 to the American people and Congress overt and direct U.S. military intervention in favor of Iraq against Iran. 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 actually transit the Straits of Hormuz by tanker, and a good deal of that is Iranian oil anyway.

Ironically, but not surprisingly, it is Iran, not Iraq, that has demonstrated the greater degree of respect for the rules of international law concerning neutrality and belligerency in the Gulf and the Straits. Furthermore, it is the United States that is engaging in hostile and provocative military maneuvers and actions against Iran–not vice versa–and is 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, this was not a legitimate act of self-defense as recognized by article 51 of the United Nations Charter.

Indeed, these actions were specifically designated to be measures of "retaliation" by President Reagan. Yet until the advent of the Reagan Administration, it had never been the case that the United States government took 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 going all the way back to the famous 1837 case of the good ship Caroline. There U.S. 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." 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.

More recently came the World Court's seminal Corfu Channel Case (United Kingdom v. Albania), [1949] I.C.J. Rep. 4 that, interestingly enough, involved a state's use of force to remove mines 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 the 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. All fifteen members of the International Court of Justice, together with a judge ad hoc appointed by Albania, were unanimous in holding, 16 to 0, 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. 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 defense. 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, are 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.

Even more significantly, the World Court repudiated these vagarious doctrines without explicitly relying upon the U.N. Charter because Albania was not yet a party while Great Britain was. Hence, the Court's holding on this point can be construed to constitute an authoritative declaration of the requirements of customary international law on the use of force that is binding upon all members of the international community irrespective of the Charter. A fortiori, therefore, when both parties to an international conflict are U.N. members, such as the United States and Iran, articles 2(3), 2(4), and 33 absolutely prohibit any threat or use of force that is 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," relatiation is not self-defense but murder and aggression.

The Corfu Channel Case 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 Corcyra, then a city-state on the island of Corfu. The Reagan Administration's demented interpretation of self-defense to include retaliation is 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! Not coincidentally, the Athenians had rejected a Melian offer of neutrality in their war against Sparta as incompatible with

their imperial destiny:

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."

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

There is an alternative solution, however, to the Reagan Administration's fictitious dilemma of choosing between either further escalation of direct U.S. military intervention in support of Iraq, or the installation of a puppet regime in Baghdad acting at the behest of Iran. As indicated in my 1986 paper, this third option can 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 would essentially require that the United States government indicate a willingness to satisfy those reasonable Iranian conditions for terminating the war that can be fully justified by the principles of international law.

In my 1986 paper I specified the basic components of and reasons for a practicable peace plan that merited support by the United States government and endorsement by the U.N. Security Council: (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 U.N. 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 has given every indication that it would be prepared to terminate the Gulf war on essentially these terms.

Instead of working along these lines, however, the Reagan Administration sponsored and obtained the passage of U.N. Security Council Resolution 598 (1987) which 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 U.S. government's stubborn insistence that the terms of Resolution 598 be implemented in this precise sequence of events was an obvious non-starter in the first place and was thus

probably designed to produce Iranian non-compliance precisely in order to serve as a pretext for imposing U.N. Security Council sanctions against Iran to stave off an Iraqi defeat.

This author seriously doubts that after seven years of being on the receiving end of incredible bloodshed and devastation, Iran will withdraw from Iraq upon the mere promise by the Security Council that the inequities of the situation might be redressed somewhat afterwards. Recall that due to the influence of the U.S. government, the U.N. Security Council has yet to pass a resolution even condemning Iraq for its initiation of 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 did not either. 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. Nothing should be further from the truth.

As explained in my 1986 paper, the Security Council was never designed to be "neutral" in the face of outright aggression. If it purports to be so for any reason, then the Security Council and its membership–especially the five permanent members possessing the veto power (i.e., U.S., U.K., U.S.S.R., France, and China)–simply betray their partiality in favor of an aggressor against its victim and thus seriously undermine, if not permanently abnegate, their "primary responsibility for the maintenance of international peace and security" under U.N. Charter article 24(1). So long as the Security Council continues to act at the behest of the U.S. government and Iraq in this matter, it will probably have little positive effect upon the ultimate outcome of the Iraq-Iran 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 reported–presumably determining that Iraq was responsible for committing aggression–and the logical consequences from that determination were implemented (i.e., 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 at their 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 toward Resolution 598 by specifically violating the terms of paragraph 5 thereof when it decided to use the U.S. 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 . . ." Direct U.S. military intervention in support of the Kuwaiti tankers and retaliatory acts against Iranian ships and oil drilling platforms did the exact opposite from what the Security Council had ordered. Then the Reagan Administration sanctimoniously demanded that the Security Council impose an arms embargo against Iran because it had failed to comply with Resolution 598!

Even if the Reagan Administration is ultimately successful in its quest for Security Council sanctions against Iran, the latter would probably have a limited impact upon Iranian calculations because the Security Council has no credibility in their eyes. Furthermore, any additional forms of unilateral direct U.S. military intervention into the Persian Gulf war are probably doomed to failure as well. 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 U.N. 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 U.N. approval in order to provide a thin veneer of "multilateral" protective cover to seduce the American people and Congress into supporting the interjection of U.S. marines into the Lebanese civil war on the side of the Gemayel family. Will the results of such lawless intervention by the United States and some of its NATO allies into the Persian Gulf war be as tragic and bloody as it was for U.S. marines and French soldiers in Lebanon? Let us hope not.

In any event, the Reagan Administration has surrendered the initiative for war and further acts of hostility to Iran as part of some cosmic game of "chicken," wherein the U.S. government has publicly admitted that its military calculations are based upon the assumption that Iran will not do something "foolish" or "irrational" as the Reagan Administration defines those terms. In other words, the American people must now depend upon the good sense of Iran to keep us out of further involvement in the Gulf war. Only time will tell whether or not the Reagan Administration's reckless gamble with the lives of U.S. sailors and airmen as well as with the destiny of this country and its people, inter alia, will pay off.

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 Persian Gulf war could readily produce an incredible disaster for everyone concerned. As of this writing, it has not yet materialized–assuming that one is prepared to write off the 37 dead crewmen of the Stark as an "accident," which this 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 now seven years in office. I guess we will have to live with it until the bitter end–whenever and whatever that might be.

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Notes

1. U.S. Congress, Neutrality Act of June 5, 1794, ch. 50, 3rd Cong., 1st sess., 1 United States Statutes at Large [hereinafter Stat.] 381.

2. U.S. Congress, Act of March 2, 1797, ch. 5, 4th Cong., 2d sess., 1 Stat. 497. 3. U.S. Congress, Act of April 20, 1818, ch. 88, 15th Cong., 1st sess., 3 Stat. 447 (currently reissued as 18 U.S.C.A. §967).

4. Ibid., 447-450. 5. Ibid., sec. 8, 449. 6. Treaty of Washington, May 8, 1871, 17 Stat. 863, T.S. No. 133. 7. Ibid., 865. 8. Final Act of the International Peace Conference, July 29, 1899, reprinted in American Journal of International Law [hereinafter Am. J. Int'l L.] 1 (Supp. 1907):106.

9. Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, Oct. 18, 1907, 36 Stat. 2310.

10. Convention Concerning the Rights and Duties of Neutral Powers in Naval War, Oct. 18, 1907, 36 Stat. 2415, T.S. No. 545.

11. Convention Relative to the Laying of Automatic Submarine Contact Mines, Oct. 18, 1907, 36 Stat. 2332, T.S. No. 541.

12. 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 at 2408, T.S. No. 544.

13. See 36 Stat. at 2310, 2332, 2396, 2415. 14. "Neutrals have the right to continue during war to trade with the belligerents, subject 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, A Digest of International Law (Washington, D.C.: Government Printing Office, 1906) 7:99-103.

15. Francis Boyle, "The Law of Power Politics," University of Illinois Law Forum, 1980:936-937. 16. Convention with Respect to the Law and Customs of War on Land, July 29, 1899, Annex, art. 46, 32 Stat. 1803, 1822, T.S. No. 403; Convention with Respect to the Law and Customs of War on Land, Oct. 18, 1907, Annex, art. 46, 36 Stat. 2277, 2306-07, T.S. No. 539.

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18. Barbara J. Fuschholz and John M. Raymond, "Lawyers Who Established International Law in the United States, 1776-1914," Am. J. Int'l L. 76 (1982):806-07.

19. Christian L. Wiktor, ed., "Declaration of London, Feb. 26, 1909," Unperfected Treaties of the United States of America (Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1976) 4:129.

20. James B. Scott, The Declaration of London February 26, 1909 (New York, Oxford University Press, 1919), v; id., "The Declaration of London of February 26, 1909," Am. J. Int'l L. 8 (1914):274.

21. Charles H. Stockton, "The International Naval Conference of London 1908-1909," Am. J.

Int'l L. 3 (1909):614.

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32. Claudia Wright, "Implications of the Iraq-Iran War," Foreign Affairs, 59 (1980-81):275; Adeed I. Dawisha, "Iraq: The West's Opportunity," Foreign Policy, Winter 1980-81, no. 41:134.

33. See e.g. Wash. Post, 27 Aug. 1981, sec. 6, p. 31, col. 3; New York Times, 7 Mar. 7, 1982, p. 1, col. 3; see also The Middle East, 24 Aug. 1980, 24; New York Times, 18 July 1983, p. 3, col. 1.

34. Jim McGuish and Antony Terry, "How U.S. Sky Spies Help Iraq's War," Sunday Times (London), 7 March 1985, sec. 1, p. 21.

35. David Alpern et al., “America’s Secret Warrior’s,” Newsweek, 10 Oct. 1983, 38-45; Jay Peterzell, “Can Congress Really Check the C.I.A.?” Wash. Post, 24 April 1983, 61.

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