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### The United States of America, Champion of the Rule of Law or the New World Order?

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# The United States of America, Champion of the Rule of Law or the New World Order?

Jeffrey F. Addicott\* \*\* \*\*\*

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\*\*\* The views expressed herein are the author’s and do not represent the official views of any agency of the United States Government.

*How different the new order would be if we could consult the veteran instead of the politician.<sup>1</sup>*

*Henry Miller (1941)*

## I. INTRODUCTION

Spearheaded by the disintegration of the Union of Soviet Socialist Republics, the past year has witnessed unprecedented upheavals in the world order of things. While many predicted that the *evil empire*<sup>2</sup> would one day collapse under its own weight, it now appears that little thought was given to the consequences of that fall, particularly in regard to the resulting power vacuum.<sup>3</sup> Indeed, not since the days immediately preceding World War II has there been such confusion among the community of nations as to what the future will bring or, for that matter, even what the present means.

Undoubtedly the era popularly called the Cold War has ended, and history will mark its influence from 1945-1991. The challenge that the United States is facing, as is the rest of the world, is to realistically appreciate the next era, keeping, however, a constant eye on the still formidable military forces of the independent republics that comprised the former Soviet empire.<sup>4</sup> "So far, the . . . period has been labeled the post-Cold War era. It does not even have a name of its own because we do not yet know its dominant characteristics."<sup>5</sup>

For the next several years, one characteristic of the post-Cold War era is undeniable; the United States stands alone as the world's bastion

1. THE DICTIONARY OF WAR QUOTATIONS 121 (Justin Wintle ed., 1989) [hereinafter WAR QUOTATIONS].

2. See Strobe Talbott, *The Specter and the Struggle; Marx's Theory, in Soviet Practice, is Both Dangerous and in Danger*, TIME, Jan. 4, 1982, at 38. At the beginning of his presidency, Ronald Reagan remarked on several occasions that the Communist empire ruled by the Soviet Union was an evil empire destined to collapse. Recalling Joseph Stalin's extermination of at least twenty million "class enemies," President Reagan predicted in May of 1981: "The West won't contain Communism; it will transcend Communism. It won't bother to denounce it; it will dismiss it as some bizarre chapter in human history whose last pages are even now being written."

3. *But see* Ted Galen Carpenter, *The New World Disorder*, FOREIGN POLICY, Fall 1991, at 24, 29 (arguing that the power vacuum is "little more than a mirage that will soon vanish").

4. See *New World Order: What's New? Which World? Whose Orders?*, THE ECONOMIST, Feb. 23, 1991, at 25. In testimony before Congress, the Chairman of the Joint Chiefs of Staff, General Colin Powell, "drew a distinction between what that changed — superpower rivalry defined by ideology — and what had not: Soviet military power." General Powell said: "The Soviet Union . . . [is] the only country capable of destroying America in less than thirty minutes."

5. Robert B. Zoellick, *The New Europe in a New Age: Insular, Itinerant, or International? Prospects for an Alliance of Values*, U.S. DEPT OF ST. DISPATCH, Sept. 24, 1990, at 118. The term post-Cold War has been used by both the Soviets and the U.S.

of stability and as the foremost sphere of power and influence. In this context, the United States is rapidly assessing the ramifications of its new found role both from a domestic as well as an international perspective. While the major concern in the post-Cold War era must always revolve around formulating a viable methodology for protecting the stability and security of American interests, serious consideration must be given to America's place in the international arena. However, the formulation of such a position will not be an easy task.

One can forcefully argue that the world has become a far more dangerous place than before the fall of the U.S.S.R.<sup>6</sup> Notwithstanding the unification of Germany, a bright spot by any standard, the general pattern of ethnic and sectarian fragmentation in the rest of the former Soviet empire has introduced an escalating and often uncontrollable level of disorder and violence. Regions that eagerly embraced the principles of representative democracy and self-determination now face a myriad of threats in implementing those ideals. Clearly, this fragmentation is the most endemic problem, particularly as it relates to custody issues over the massive nuclear arsenal now in the hands of the independent republics.<sup>7</sup>

Looking to the condition of the rest of the globe, old problems have not evaporated as a consequence of the changes in Europe. The problems in the Far East and Indochina remain as volatile as ever.<sup>8</sup>

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6. See Vice President Daniel Quayle, America's Objective in the Persian Gulf, Address at Seton Hall University (Nov. 29, 1990), in U.S. DEPT OF ST. DISPATCH, Dec. 10, 1990, at 310-11 [hereinafter Objectives in the Persian Gulf]. Before the military campaign in the Persian Gulf, Vice President Quayle acknowledged that although the Cold War had ended, the world was still facing the "dangerous prospect of a new post-Cold War world that is actually more anarchic, and more violence prone, than the world which preceded it." This view was underscored by the sixty hour Soviet *putsch* in August of 1991, demonstrating the threat of authoritarian regimes emerging as the new forces of the future. See Colonel Samuel S. Whitt, *Reflections on the New World Order*, OFFICER REV., Nov. 1991, at 5.

7. See Douglas Waller, *A Nuclear Nightmare? How the Soviet Arsenal Might Slip Out of Control*, NEWSWEEK, Sept. 9, 1991, at 35. At issue is former Soviet nuclear arsenals positioned in many of the republics. "About 80 percent of the estimated 12,300 offensive strategic warheads and 12,200 tactical warheads are located in the Russian Republic; the rest are scattered in the Ukraine, Belorussia and Kazakhstan and eastern Germany."

8. See Jeffrey F. Addicott, *Developing a Security Strategy for Indochina*, 128 MIL. L. REV. 35, 36 (1990). "In Asia either there has been no movement toward political openness (Mongolia and North Korea), or there has been some progress followed by a retreat (China and Vietnam)." Unlike America's industrialized allies, many of the developing countries in the region are embroiled in all of the internal problems associated with low intensity conflict environments.

While in the Middle East,<sup>9</sup> the 1991 Gulf War<sup>10</sup> is merely the latest bloody chapter in a long history of rivalry and warfare.<sup>11</sup>

Aside from country specific issues, whether one concentrates on the proliferation of weapons of mass destruction or those concerns associated with economic issues, the globe is a dangerous place. Gauged in terms of maintaining peace and stability — critical goals in the world community — it is time for the exercise of extreme caution in the formation and execution of foreign policy. Under this line of reasoning, the United States should not attempt to formulate drastic changes in its foreign policies. Instead, the United States should become the chief advocate of policies which promote global stability and encourage a steadfast adherence to established, well-defined norms of international behavior (i.e., maintaining *the Rule of Law*).<sup>12</sup>

On the other hand, seizing an unprecedented opportunity for constructive change, the likes of which have not been presented since the formation of the League of Nations, attractive arguments can be made for activating what some have termed the "New World Order." President George Bush, in attempting to delineate America's international position in the post-Cold War era, has been the primary proponent of the New World Order.<sup>13</sup> Although the New World Order is a phrase often shrouded in ambiguity, President Bush, more than any other public figure, has attempted to mold the phrase into an international rallying cry for the future. Strongly advocating the need for the United States to take the lead in this process, the Director of the Center for International Studies at New York University School of Law noted: "The world will certainly miss the boat if it does not use the end of the cold war to create a global system for the new millennium, one which preserves peace, fosters economic growth, and prevents the deterioration of the human physical and environmental condition."<sup>14</sup>

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9. See IAN BECKETT ET AL., *THE MIDDLE EAST CONFLICTS FROM 1945 TO THE PRESENT* 6 (1983). The term "Middle East" originates from viewing the region in relation to where it stands from Europe. It commonly denotes the countries of Israel, Egypt, Jordan, Syria, Iraq, Lebanon, Iran, Saudi Arabia, and the Gulf states.

10. For an excellent overview of the legal and military issues encountered in the Gulf War, see *Gulf War*, MIL. REV., Sept. 1991.

11. *Id.* at 10. Since the end of the Second World War, the Middle East has been in a constant state of war. Just in the context of the Arab Israeli conflict, Arab states have initiated war with Israel five times since 1948.

12. See *infra* notes 33-69 and accompanying texts.

13. See *infra* note 29.

14. Thomas M. Franck, *United Nations Based Prospects for a New Global Order*, 22 N.Y.U. J. INT'L L. & POL. 601 (1990) [hereinafter *New Global Order*].

## II. THE NEW WORLD ORDER

### A. “[N]othing is [N]ew [U]nder the [S]un”<sup>15</sup>

It has been remarked on many occasions that we learn from history that we learn nothing from history. This truism has been attributed to the German philosopher George Hegel (1770-1831), but this principle is nothing new. More often than not, as inscribed over the front of the National Archives building in Washington, D.C., “the past is prologue.” In any event, the collective memory of the world has traditionally proved to be very short.

To the serious student of history, the concept of the New World Order is neither new in its origin nor, as the concept might imply, universal in its interpretation; it has existed in many forms. From the *pax romana*<sup>16</sup> of ancient Rome to the *novus ordo seclorum* printed on the reserve side of the U.S. one-dollar bill, the concept of the New World Order has been used by public figures to represent a variety of agendas associated, of course, with a vision for the order of the world.

In this century alone, both the Germans under Adolph Hitler and the British under Winston Churchill used the concept to describe their respective notions about the world’s future.<sup>17</sup> Although both were seeking to rally public opinion to support a particular objective, they were

15. *Ecclesiastes* 1:9-10. “What has been, that will be; what has been done, that will be done. Nothing is new under the sun. Even the thing which we say, ‘See, this is new!’ has already existed in the ages that preceded us.”

16. Literally, the “peace of Rome.” See ARTHUR FERRILL, *THE FALL OF THE ROMAN EMPIRE* 11 (1986). *Pax romana* refers to the peace and prosperity in the known world, i.e., the Mediterranean, brought about by Roman rule from 27 B.C. to 180 A.D. *But see* EDWARD GIBBON, *THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE* VOL. I, 85-86 (1914). Gibbon, widely recognized as the foremost modern scholar of the Roman empire, places the high point of *pax romana* at 96-180 A.D., the period of the Antonine Caesars:

If a man were called to fix the period in the history of the world during which the condition of the human race was most happy and prosperous, he would without hesitation, name that which elapsed from the death of Domitian [A.D. 96] to the accession of Commodus [A.D. 180]. The vast extent of the Roman Empire was governed by absolute power, under the guidance of virtue and wisdom. The armies were restrained by the firm but gentle hand of four successive emperors, whose characters and authority commanded involuntary respect. The forms of the civil administration were carefully preserved by Nerva, Trajan, Hadrian, and the Antonines [Pius], who delighted in the image of liberty, and were pleased with considering themselves as the accountable ministers of the laws.

WEBSTER’S NEW WORLD DICTIONARY 992 (3rd ed. 1988) defines *pax romana* as “any such relatively peaceful condition resulting from the dominance of a large power.”

17. The term was also popular following World War I. See LOUIS HENKIN ET AL., *RIGHT V. MIGHT* 153 (2nd ed. 1991).

diametrically opposed in their meaning and application of the concept. Hitler envisioned *Die neue Ordnung* (the New Order)<sup>18</sup> as a world ruled by the master German race, while Churchill wielded it as a sword of international force against Nazi<sup>19</sup> expansionism.

Addressing the League of Nations in 1936, Churchill warned of Hitler's continued pattern of aggression and announced that the "fateful moment [had] arrived for choice between the New Age and the Old."<sup>20</sup> For Churchill, the *new age for the world* was squarely based on establishing a defensive alliance to defeat the Nazi's quest of conquering Europe.

Adolph Hitler employed the concept in its most aggressive connotation and irrationally believed that he had a sacred mission to establish a New Order through terror, violence and warfare.<sup>21</sup> The Axis<sup>22</sup> powers set out the parameters of their New Order for the world by signing a joint agreement in Berlin in January of 1942.<sup>23</sup> Linking their New Order to economic prosperity, the Germans envisioned the world divided into four *Grossraumwirtschaften* (Great Economies), each led by an authoritarian leader under the ultimate control of Germany.<sup>24</sup> Once the Axis forces had won World War II, "a conclave was to be held in Vienna to legalize Nazi Germany's hegemony within the New Order."<sup>25</sup> Hitler's New Order would initially be made up of a German dominated Europe, Africa and Near East, but ultimately it would encompass the entire world.

In the end, Hitler's New Order for the World collapsed in a bloody inferno while Churchill's New Age for the World silently slipped into

18. See NORMAN RICH, *HITLER'S WAR AIMS: IDEOLOGY, THE NAZI STATE, AND THE COURSE OF EXPANSIONISM* (1973).

19. The term Nazi is a shortened version of the German word "Nationalsozialist" meaning the National Socialist Worker's Party. Its common meaning, however, is associated with Hitler's militarism. See WILFRED FUNK, *WORD ORIGINS* 220 (1978).

20. Objectives in the Persian Gulf, *supra* note 6, at 312.

21. See RICH, *supra* note 18.

22. See WILLIAM M. FLETCHER, *THE SEARCH FOR A NEW WORLD ORDER: INTELLECTUALS AND FASCISM IN PRE-WAR JAPAN* (1982). Japan limited its vision of the order of the world to the Pacific, using the phrase, "The Greater East Asia Co-Prosperity Sphere." In the early stages of World War II, Germany and Japan agreed to designate longitude 70 degrees East as the dividing line between their spheres of influence.

23. *Id.*

24. See Robert F. Burke, *A World in Chains: The New World Order of the Axis Powers*, *COMMAND*, Nov.-Dec. 1991, at 62.

25. *Id.* at 64. To further legitimize Nazi control in the New World Order, Hitler anticipated the creation of a "European Manifesto." Understanding the impact of history, Hitler chose Osnabruck & Munster, the site of the signing of the 1648 Peace of Westphalia which ended the Thirty Years' War. The German occupied territories already had a pseudo European Congress established by 1941.

the bookshelves of history after it helped to inspire the formation of the United Nations. Although the concepts were similar, the meanings were not.

### B. *President Bush's New World Order*

The New World Order witnessed its latest reincarnation during the Iraqi invasion of Kuwait in August of 1990.<sup>26</sup> In a brilliant and unprecedented use of the United Nations,<sup>27</sup> President Bush used the concept, the New World Order, as the focal point for gathering world opinion against the Iraqi occupation of Kuwait.<sup>28</sup> In an effort to consolidate support for the possible use of military force against Iraq, President Bush not only followed Churchill's example *vis-à-vis* Hitler, but simultaneously offered this old term to describe American foreign policy in the post-Cold War era.

Just a month after the invasion, President Bush proclaimed that the New World Order "would be a world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the

26. On August 2, 1990, with absolutely no basis in international law and in complete disregard of the principles embodied in the United Nations Charter, massive Iraqi armored forces unlawfully invaded and occupied the sovereign nation of Kuwait. See *The Iraqi Invasion; Invading Iraqis Seize Kuwait and Its Oil; U.S. Condemns Attack, Urges United Action*, N.Y. TIMES, Aug. 3, 1990, at A1, col. 6. On August 8, 1990, Iraq annexed Kuwait. See *Confrontation in the Gulf: U.S. May Send Saudis a Force of 50,000; Iraq Proclaims Kuwait's Annexation; Bush Draws 'Line'*, N.Y. TIMES, Aug. 9, 1990, at A1, col. 6.

27. The only parallel to the Security Council's authorization for the use of force was in the Korean War. On July 7, 1950, responding to North Korea's aggression into South Korea, the Security Council authorized the creation of a unified command under the authority of the United States. The resolution was passed, however, only due to the temporary absence of the Soviet Union. See Bruce Russett & James S. Sutterlin, *The U.N. in a New World Order*, 70 FOREIGN AFFAIRS 69, 73 [hereinafter *U.N. in New World Order*]. See *infra* note 137 and accompanying text.

28. The United Nations Security Council immediately condemned the Iraqi invasion of Kuwait, calling on Iraq to withdraw. See S.C. Res. 660 (Aug. 2, 1990), *reprinted in* 29 I.L.M. 1325 (1990). After a series of subsequent Security Council resolutions authorizing the use of force, on November 29, 1990, the Security Council invoked its authority under Chapter VII of the U.N. Charter and passed a use of force resolution. See S.C. Res. 678 (Nov. 29, 1990), *reprinted in* 29 I.L.M. 1565 (1990). Resolution 678 reads in relevant part:

The Security Council . . .

2. AUTHORIZES member states cooperating with the government of Kuwait, unless Iraq on or before January 15, 1991 fully implements . . . the foregoing Resolutions, to use all necessary means to uphold and implement the Security Council Resolution 660 and all subsequent relevant Resolutions and to restore international peace and security in the area . . . .



strong respect the rights of the weak.”<sup>29</sup> As the months passed and Iraq became more entrenched in Kuwait, the Bush Administration increased the usage of the concept. In a statement delivered on December 5, 1990 before the Senate Relations Committee, Secretary of State James Baker said: “Historically, we must stand with the people of Kuwait so that the annexation of Kuwait does not become the first reality that mars our vision of the *new world order*.”<sup>30</sup>

Without a doubt, America’s vision of the New World Order was to be firmly rooted in the new founded efficacy of the United Nations to function as the primary legal instrument for maintaining peace in the world, the assumption being that Gorbachev’s Soviet Union would no longer use its veto power to hinder the effectiveness of the Security Council.<sup>31</sup> By the close of the Gulf War, the tenants of the New World Order were set: “Peaceful settlements of disputes, solidarity against aggression, reduced and controlled arsenals and just treatment of all peoples.”<sup>32</sup>

### III. RULE OF LAW

The concept “Rule of Law” was first coined by Western legal scholars in the late sixteenth century.<sup>33</sup> The term was initially used to refer to the common law system of jurisprudence with particular emphasis on equality before the courts.<sup>34</sup> However, the more modern

29. President George Bush, The Persian Gulf Crisis and the Federal Budget Deficit, Address Before a Joint Session of Congress (Sept. 11, 1990), in WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Sept. 17, 1990, at 1359.

30. James A. Baker, America’s Strategy in the Persian Gulf Crisis, Address Before the Senate Foreign Relations Committee (Dec. 5, 1990), in U.S. DEPT OF ST. DISPATCH, Dec. 10, 1990, at 307, 309 (emphasis added).

31. See JOHN NORTON MOORE, FREDERICK S. TIPSON & ROBERT F. TURNER, NATIONAL SECURITY LAW 195-213 (1990) [hereinafter NATIONAL SECURITY LAW]; U.N. CHARTER art. 23, ¶ 1; U.N. CHARTER art. 24, ¶ 1; U.N. CHARTER art. 27, ¶ 3. Article 24 of the Charter gives the Security Council the “primary responsibility for the maintenance of international peace and security.” However, in accordance with Article 27, in the authorization of the enforcement provisions, all permanent members must agree. The permanent members listed at Article 23 of the Charter are the Republic of China, France, the U.S.S.R., Britain, and the U.S. With the abolishment of the U.S.S.R., Russia holds the seat.

32. President George Bush, Remarks at Maxwell Air Force Base War College in Montgomery, Alabama (Apr. 13, 1991), in 27:16 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 431 (Apr. 22, 1991); *After the War; Bush Stands Firm on Military Policy in Iraqi Civil War*, N.Y. TIMES, Apr. 14, 1991, at A1, col. 6.

33. LORD LLOYD OF HAMPSTEAD & M.D.A. FREEMAN, LLOYD’S INTRODUCTION TO JURISPRUDENCE 1054-60 (1985) [hereinafter LLOYD’S JURISPRUDENCE].

34. See ALBERT V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 188-96 (1968).

and most common meaning is directly associated with all of those rules and legal standards of behavior recognized and practiced between states in the context of the community of nations.<sup>35</sup>

In this setting, one can logically trace the origins of the Rule of Law back to the 1648 Peace of Westphalia,<sup>36</sup> which concluded the Thirty Years' War in Europe. At that time a number of Christian European states officially recognized themselves as being in a community of sovereign nation-states and guided by certain rules of international and social intercourse.<sup>37</sup> The utility of the concept of the nation-state soon spread throughout Europe, typified by the colonial powers of Europe holding themselves out as the "self-appointed executive committee of the family of nations."<sup>38</sup> With the Treaty of Paris in 1856, non-Christian nations were also admitted and periodic international conferences were held in such international cities as Vienna and Geneva.<sup>39</sup>

However, this community of nations was not deemed to be anything other than a loose association bound together by only a few international agreements and the thinnest of diplomatic threads. Although the primary purpose of this association was to promote world peace and to mitigate, when necessary, "the miseries of war,"<sup>40</sup> independent sovereignty reigned supreme since the association lacked any legal character or corporate personality. Thus, the Rule of Law remained a concept with little viability behind it.

After World War I reflected the total impotence of the association to deter those nations bent on aggression, the victorious European nations created the first international organization with legal parameters, the League of Nations.<sup>41</sup> Formed in large part with the direct

35. For an excellent application and discussion of the rule of law, see JOHN NORTON MOORE, *LAW AND THE GRENADA MISSION* 1 (1984). Professor Moore states: "Law, however, is vitally important. Even in the short run, law serves as a standard of appraisal for national actions and as a means of communicating intentions to both friend and foe, and perceptions about lawfulness can profoundly influence both national and international support for particular actions."

36. See *supra* note 25 and accompanying text.

37. See generally WILLIAM H. MCNEILL, *THE PURSUIT OF POWER* 120-25 (1982). The works of the famous Dutch scholar Hugo Grotius, known as the father of international law, greatly influenced the legal international relations of the newly formed autonomous entities.

38. CHARLES G. FENWICK, *INTERNATIONAL LAW* 122 (1965).

39. *Id.*

40. *Id.* at 123.

41. League of Nations Covenant, Treaty of Versailles, 2 U.S.B.S. 43 [hereinafter League of Nations Covenant].

assistance of Woodrow Wilson,<sup>42</sup> the much heralded League of Nations was the first truly international organization specifically directed towards the curtailment of war. As laudable as that goal might be, the League of Nations's efforts to maintain the peace were totally ineffective. In fact, they were actually counterproductive.

First, accepting the false premise that World War I had somehow been caused by a combination of misunderstandings and entangling collective security alliances,<sup>43</sup> the League of Nations naively adopted a series of procedural requirements focused on third party dispute settlement processes.<sup>44</sup> The framers assumed that wars, like all disputes, could be settled through negotiation and arbitration. This approach is best reflected in Article 12 of the Covenant of the League of Nations.

The members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report of the Council.<sup>45</sup>

Second, the League of Nations concentrated on disarmament. Somehow the founders of the League of Nations believed that there existed a direct correlation between the number of weapons in exist-

42. See WOODROW WILSON, WOODROW WILSON'S CASE FOR THE LEAGUE OF NATIONS (Hamilton Foley ed., 1967). Although President Wilson was the major proponent of the League, the U.S. Senate refused to approve U.S. membership.

43. See, e.g., HARRY ELMER BARNES, GENESIS OF THE WORLD WAR (1926); C. HARTLEY GRATTAN, WHY WE FOUGHT 1929; WALTER MILLS, THE ROAD TO WAR: AMERICA, 1914-1917 (1935); BARBARA W. TUCHMAN, THE GUNS OF AUGUST (4th ed. 1989); LEFTENS STAVRIANOS ET AL., A GLOBAL HISTORY OF MAN 189-91 (1962) [hereinafter HISTORY OF MAN] (listing the causes as: 1) economic rivalry between the Great Powers; 2) the rise of nationalism in Europe.) But see CHARLES SEYMOUR, AMERICAN DIPLOMACY DURING THE WORLD WAR (1934) (fully placing the blame on an aggressive Germany, determined to win the war at all risks); *id.* at 6-7. President Wilson noted:

That war did not just happen. There was not a sudden occasion which brought on a conflagration. On the contrary Germany had been preparing for that war for generations. Germany had been preparing every resource, perfecting every skill, developing every invention, which would enable her to master the European world; and after mastering the European world, to dominate the rest of the world.

For an overview of authors on World War I, see also JOHN E. JESSUP, JR. & ROBERT W. COAKLEY, A GUIDE TO THE STUDY AND USE OF MILITARY HISTORY 225-230 (1979).

44. See NATIONAL SECURITY LAW, *supra* note 31, at 65.

45. League of Nations Covenant, *supra* note 41, at Part I, art. 12. See also LEON FREIDMAN, THE LAW OF WAR, A DOCUMENTARY HISTORY 424-25 (1972).

tence and the probability of armed conflict. In short, the threat of war could be reduced if the League of Nations implemented international agreements which called for the destruction of weapons and the reduction of military forces.<sup>46</sup> In the next two decades, disarmament treaties such as the London Naval Conferences (1930)<sup>47</sup> saw England, France and the United States completely emasculate their military while Germany and her allies embarked on a massive build-up of their armies, navies and air forces.<sup>48</sup>

During this rush to disarm, other international agreements which related to armed conflict were drafted and adopted by the world community, of which the Geneva Conventions of 1929 were the most prominent.<sup>49</sup> The most controversial document that came out of the post-World War I era was the Kellogg-Briand Pact (1930).<sup>50</sup> Signed by almost all of the major world powers, the Pact prohibited war for the solution of international disputes or as an instrument of national policy.<sup>51</sup>

Although the Kellogg-Briand Pact was viewed by many as an idealistic proscription against war, the "abolition" of war did not mean that states gave up the inherent right of self-defense; all signatories strongly asserted that the defensive use of military force was absolutely legitimate under the Pact.<sup>52</sup> The Pact, spawned by a sincere desire to rid mankind of the scourge of war, was actually a fundamental and dramatic shift in the focus of the Rule of Law.

46. *Id.* at 423-24. "The members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations."

47. See NATALINO RONZITTI, *THE LAW OF NAVAL WARFARE, A COLLECTION OF AGREEMENTS AND DOCUMENTS WITH COMMENTARIES* 347 (1988).

48. See generally NATIONAL SECURITY LAW, *supra* note 31, at 555. There is no data to suggest that arms control *per se* reduces the likelihood of war.

49. Geneva Convention Relative to the Treatment of Prisoners of War of 27 July 1929, 47 Stat. 2021; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field of 27 July 1929, 47 Stat. 2074; 27 AM. J. INT'L L. Supp. 59. See also DIETRICH SCHINDLER & JIRI TOMAN, *THE LAWS OF ARMED CONFLICT* 325, 339 (1988) [hereinafter LAWS OF ARMED CONFLICT].

50. Kellogg-Briand Pact of Aug. 27, 1928, 2 U.S.B.S. 732 [hereinafter Kellogg-Briand Pact]; see also FREIDMAN, *supra* note 45, at 467-70. Properly named the Kellogg-Briand Pact, the Treaty of Paris was signed by Germany, Japan, Italy, America, Belgium, France, Britain, India, Poland and Czechoslovakia.

51. See Kellogg-Briand Pact, *supra* note 50, art. I: "The High Contracting Parties solemnly declare . . . that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another."

52. NATIONAL SECURITY LAW, *supra* note 31, at 69-70.

The Kellogg-Briand Pact shifted the emphasis from procedural and moral issues<sup>53</sup> related to the legitimacy of war to simply prohibiting all aggression under "any circumstances." The red line of distinction was made between the aggressive use of force, which was always prohibited, and the defensive use of force in response to aggression which was always lawful. Unfortunately, the Pact did not specifically spell out what it so strongly implied. The Kellogg-Briand Pact did not devote a single word to the inherent right of self-defense. In summation, all the League of Nation activities were rooted in the sincere but naive assumption that war was intrinsically irrational and that rational man could solve his differences simply through negotiation and reason. Many nations thought this philosophy, coupled with a massive disarming effort, would lead to the abolition of war.

In the first major application of this philosophy of negotiation and reason, Neville Chamberlain, Prime Minister of England, tried to appease Hitler by travelling to Munich in October of 1938. The resulting Munich Agreement prompted Chamberlain to foolishly remark: "I believe it is peace for our time . . . peace with honor."<sup>54</sup> Of course, the fruits of appeasement produced the exact opposite. The clear signal given to the aggressor — peace at any price — prompted the Axis powers to launch the most destructive war in the history of mankind.

Once World War II ended in 1945, the international community once again sought to create a new methodology to reduce or to eliminate conflict, just as they had done following World War I. Work quickly began on a series of international agreements and instruments designed to accomplish this ideal. Many of the efforts produced widespread and immediate acceptance throughout the world,<sup>55</sup> which ranged

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53. Originating from ancient Rome and the early period of Christianity, there developed a body of thought that held that wars could only be lawful if they were related to a just cause, *jus ad bellum*. This body of thought reached its peak through the writings of Hugo Grotius in the early seventeenth century. See HUGO GROTIUS, *PROLEGOMENA TO THE LAW OF WAR AND PEACE* (Francis W. Kelsey trans., 1957).

54. WAR QUOTATIONS, *supra* note 1, at 108. Chamberlain repeatedly signaled his lack of stomach for war. He remarked in a speech at Kettering, July 3, 1938: "In war, whichever side may call itself the victor, there are no winners, but all are losers."

55. A state may express its consent to be bound by a treaty in a number of fashions: 1) ratification; 2) accession; or 3) a declaration of succession. Even absent consent, however, when a norm or standard has reached widespread acceptance in the international community, it is said to have passed into the realm of customary international law. The derivation of customary principles of international law comes from observing past uniformities among nations. Evidences of customary international law may be found in "judicial decisions, the writings of jurists, diplomatic correspondence, and other documentary material concerning the practice of States." Department of Army, Field Manual 27-10, *The Law of Land Warfare*, at 6 (July 1956). In respect to the U.N. Charter, even those few nations who are not members of the United

from the creation of the United Nations in 1945<sup>56</sup> to the 1949 Geneva Conventions.<sup>57</sup>

With the emergence of the United Nations and the principles of international behavior embodied in the Charter of the United Nations (U.N. Charter), the deficiencies in the Kellogg-Briand Pact were corrected. Along with the prohibition of all forms of aggression, the U.N. Charter clearly recognized a nation-state's inherent right of self-defense.<sup>58</sup> Indeed, in the search for a workable model to address conflict management, the U.N. Charter is considered synonymous with the international Rule of Law.

As embodied in Articles 2(3)<sup>59</sup> and 2(4)<sup>60</sup> of the U.N. Charter, the maintenance of "international peace and security"<sup>61</sup> is, in fact, the very purpose of the United Nations. Since all members of the United Nations are recognized as sovereign equals,<sup>62</sup> no nation may resort to "threat or [the] use of force against the territorial integrity or political independence of any state"<sup>63</sup> to settle any form of dispute. This, and the clear prohibition in Article 1 against any nation committing "acts of aggression or other breaches of the peace,"<sup>64</sup> resulted in a workable, legal framework dedicated to curtailing unlawful aggression.

Nations, are bound by the provisions of the Charter under the concept of customary international law. See generally NATIONAL SECURITY LAW, *supra* note 31, at 71-81.

56. The primary source for the management of conflict is set out in the U.N. Charter, signed on June 26, 1945. 59 Stat. 1031, 3 Bevans 1153.

57. See LAWS OF ARMED CONFLICT, *supra* note 49, at 373-594. The 1949 Geneva Convention covered four categories: 1) Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 U.S.T. 3114; 2) Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 6 U.S.T. 3217; 3) Geneva Convention of August 12, 1949, Relative to the Treatment of Prisoners of War, 6 U.S.T. 3316; and 4) Geneva Convention of August 12, 1949, Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3316.

58. The customary right of self-defense is recognized by every legal system in the world. A more recent development in the concept requires that the force employed must be "reasonably proportionate to the danger that is to be averted." See GERHARD VON GLAHN, LAW AMONG NATIONS 130 (6th ed. 1992).

59. U.N. CHARTER art. 2, ¶ 3. "All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

60. U.N. CHARTER art. 2, ¶ 4. "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

61. U.N. CHARTER art. 1, ¶ 1.

62. U.N. CHARTER art. 2, ¶ 1. "The Organization is based on the principle of the sovereign equality of all its Members."

63. U.N. CHARTER art. 2, ¶ 4.

64. U.N. CHARTER art. 1, ¶ 1.

Finally, recognizing the utopian absurdity of *outlawing war*, but building upon the framework of the Kellogg-Briand Pact, the U.N. Charter does not restrict all uses of force; it only restricts the *unlawful* use of force (i.e., aggression).<sup>65</sup> Thus, the final element in this legal structure, and the one that is of immeasurable value in the real world, rests upon the U.N. Charter's recognition of the lawful use of force to deter aggression.

Explicitly acknowledging the longstanding customary right of self-defense, Article 51 states that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . . ."<sup>66</sup>

65. *Definition of Aggression*, G.A. Res. 3314, 29 U.N. GAOR, Supp. No. 31, U.N. Doc. A/9631, at 142. The U.N. Definition of Aggression Resolution states in part:

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations . . . .

Article 2

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression . . . .

Article 3

Any of the following acts, regardless of a declaration of war, shall . . . qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State . . . of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State . . . ;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and airfleets of another State;
- (e) The use of armed forces of one State . . . in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

66. U.N. CHARTER art. 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and

While there still exists considerable controversy over such matters as what constitutes an *armed attack*<sup>67</sup> and the utility of the term *inherent*,<sup>68</sup> the modern Rule of Law specifically recognizes the fundamental distinction between unlawful aggression and lawful self-defense. Thus, the Rule of Law has evolved from a vision "in the minds of some men, of an ideal aspiration towards universal values of law,"<sup>69</sup> to the reality of a world that acknowledges the existence and validity of established legal norms.

#### IV. ELEMENTS OF COMPARISON

The primary criterion for contrasting the Rule of Law and the New World Order must turn to an examination of their meaning and application as it relates to the enhancement of United States' interests, with particular concern on the curtailment of the aggressive use of force. Although the foundational element in the comparison of the two concepts must always be predicated upon United States' interests, this does not *per se* pit United States' domestic interests against issues of international concern. Indeed, in the context of deterrence, they are one and the same.

##### A. *The Power of Words*

The argument is sometimes made, rather cynically, that what really matters in achieving a particular goal is the possession of the necessary power to influence the desired outcome. Accordingly, since the overriding goal of both the New World Order and the Rule of Law are essentially identical — the maintenance of global stability by preventing unlawful aggression — one "must depend upon new dispositions of effective power and not upon rearrangements of authoritative words."<sup>70</sup> Concentrating on the use of power and downplaying the necessity or impact of words, this might be termed a *words versus power* argument.

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shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

67. For an excellent discussion on the issue of when a state can respond in self-defense in response to aggression, see John Norton Moore, *The Secret War in Central America and the Future of World Order*, 80 A.J.I.L. 43 (1986); JOHN NORTON MOORE, *THE SECRET WAR IN CENTRAL AMERICA, SANDINISTA ASSAULT ON WORLD ORDER* (1987).

68. VON GLAHN, *supra* note 58, at 131.

69. LLOYD'S JURISPRUDENCE, *supra* note 33, at 1060.

70. MYRES S. MCDUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 63 n.153 (1961) [hereinafter *LAW AND MINIMUM WORLD PUBLIC ORDER*].



Thus, when Iraq invaded and conquered the sovereign nation of Kuwait, no amount of words, treaty obligations or diplomacy halted their exercise of total and brutal aggression against the territory, people or environment of Kuwait. Exercising what was termed *the law of the jungle*, Iraq simply took what it wanted. The fact that Iraq was a member of the United Nations and bound by the principles relating to dispute settlement through means other than the use of force had no effect whatsoever on its activities.<sup>71</sup> In this regard, the words and ideas contained in the U.N Charter deterred neither Iraq's open and brutal aggression of Kuwait, nor Saddam Hussein's lust for power and territory.

In fact, throughout the entire Gulf crisis, Iraq made no real attempt to even conceal, let alone justify, its violations of the U.N. Charter, the Geneva Conventions or other applicable treaties.<sup>72</sup> In the end, it was only the application of power through the superior military might of the allied coalition headed by the United States and acting under the authority of the United Nations, which succeeded in halting Iraq's aggression.

Other examples of the apparent inadequacy of words *vis-à-vis* power can be found in the arena of human rights. The willingness of many states to eagerly endorse numerous human rights covenants that are never put into practice shows that this cynical model finds some basis in fact.<sup>73</sup>

The words versus power analysis revolves around only a portion of the issue at hand. Because words without corresponding force have little effect in the deterrence of unlawful activities, the model incorrectly dismisses the role of words in the process. Of course, aggression can never be halted by words alone, no matter how much those words reflect accepted norms. However, the deficiency of this reasoning rests on misunderstanding the critical role which clearly defined norms play

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71. *Iraq Makes Its Bid to Run the Show in the Middle East*, N. Y. TIMES, Aug. 5, 1990, A4, at 1, col. 1. The only theme that Iraq advanced was related to a general historical claim to the territory of Kuwait with a specific assertion that Kuwait was unfairly siphoning off oil from Iraqi territory.

72. As one Pentagon official noted, "it was as if Saddam Hussein awoke every morning and asked, 'What international law shall I violate today?'" HENKIN, *supra* note 17, at 126.

73. See ROBERT B. LILLICH & FRANK C. NEWMAN, INTERNATIONAL HUMAN RIGHTS 201-13 (1979) (1991) [hereinafter INTERNATIONAL HUMAN RIGHTS]. The case of the African nation of Suriname, in regard to the sanctioned torture and murder of 15 of its citizens, reflects the all too common practice of a country acceding, even without reservation, to human rights instruments, but totally failing to abide by those same documents in practice. See also John Baboeram v. Suriname, 40 U.N. GAOR, Supp. No. 40, Annex X, at 187-94, U.N. Doc. A/40/40 (1985).

in the process of deterrence. Clearly defined norms actually provide stimulus and sinew for subsequent action. Such norms are the very building blocks necessary to generate the support to defeat unlawful activities.

One of the lessons of contemporary science about human behavior is that it helps in creating the conditions necessary for the achievement of a goal to have the goal more sharply delineated. The clarification in detail of distinctions between lawful and unlawful coercion will not, of course, of itself establish all the necessary conditions for restraint of unlawful coercion. But it may perform the very necessary task of outlining the major contours of the effects sought — in terms of which alternative choices in the rearrangement of effective power and in the adoption of new modalities in practice must be appraised.<sup>74</sup>

When President Bush formed the allied coalition against Iraq, he firmly rooted the campaign in the norms of the U.N. Charter. The subsequent force applied by the United States and its allies had the full backing of a universally recognized set of lawful standards contained in Article 51 of the U.N. Charter.<sup>75</sup> Similarly, all Security Council resolutions dealing with Iraq were based upon the lawful authority of the U.N. Charter. Conversely, Iraq had no legal basis in which to frame its aggression and, apart from a few radical Islamic states, almost no supporters within the community of nations.

As the Gulf War demonstrated, power applied without the framework of words is almost as counterproductive as words issued without the necessary power to enforce them. Thus, the simplistic words versus power analysis completely fails because words are the very basis for establishing acceptable norms of agreed behavior which, in turn, distinguish lawful actions from unlawful actions.

### B. *Problems in Meaning*

If words are the basis for viable action, *a fortiori*, words must impart unambiguous understanding. A basic tenet in providing instruction is simplicity, appropriately known in the vernacular of the military as *KISS* (keep it simple stupid). To be efficacious to a wide audience, concepts should be kept as simple as possible. Additionally, since each discipline of study has its own unique system of terminology, effective

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74. LAW AND MINIMUM WORLD PUBLIC ORDER, *supra* note 70, at 63 n.153.

75. See *supra* note 66.

communication mandates that the more complex the body of material to be learned, the greater one must rely on shorter concepts which take the place of longer chains of thought.

Along with simplicity, new concepts must be thoroughly inculcated to be retained. Repetition, then, is the key to all learning; it alone can ensure comprehension and, hence, meaningful communication. Thus, the more complex the body of learning, the greater the need for repetition.

Unfortunately, the Bush Administration has disregarded these basic mechanics for teaching new information. From the viewpoint of epistemology, the concept New World Order has not been very successful. First, although the New World Order is undeniably catchy, the concept is not really a simple phrase to understand. In reality, the New World Order stands for a whole regime of complex ideas and policies, ranging all the way from universal human rights issues to the peaceful settlement of international disputes.<sup>76</sup> Apart from a handful of scholars devoted to those topics, the hope that a wider audience will understand the concept, without fully grasping the categories behind it, has been the primary failure of its proponents.

Second, because President Bush chose as his rallying cry a phrase that, throughout the past hundred years, has been used to stand for various propositions, he must necessarily exert an even greater amount of time and effort to achieve a minimum amount of association to *his* meaning. To paraphrase the novelist Rebecca West: The trouble with man is twofold, he cannot learn those truths that are too complicated, and he forgets those truths that are too simple. In other words, if the concept is to gain acceptance, the rate of forgetting must not exceed the rate of learning. This, too, has not been accomplished, reflected in part by a remarkable lack of attention given to the phrase by the public media.

In his September 1991 address to the United Nations, President Bush specifically stressed the concept New World Order several times,<sup>77</sup> even deliberately choosing the theme of the New World Order to close out his final remarks to the world body. Seeking to establish a straightforward definition, the President dramatically spelled out the elements of the New World Order.

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76. See *supra* note 32.

77. President George Bush, The United Nations in a New Era, Address Before the U.N. General Assembly (Sept. 23, 1991), in 2:39 U.S. DEPT OF ST. DISPATCH, Sept. 30, 1991, at 718-21 [hereinafter U.N. in a New Era].

[The] new world order [is] an order in which no nation must surrender one iota of its own sovereignty; an order characterized by the rule of law rather than the resort to force; the cooperative settlement of disputes, rather than anarchy and bloodshed; and an unstinting belief in human rights.<sup>78</sup>

Unfortunately, this definition was not really the same given at the close of the Gulf War; then it was “peaceful settlements of disputes, solidarity against aggression, reduced and controlled arsenals and just treatment of all peoples.”<sup>79</sup> In addition, despite a conscious effort by President Bush to fully sponsor the phrase, the domestic media concentrated on the President’s condemnation of Iraqi interference with United Nations inspection teams and the *Zionism is racism* General Assembly resolution.<sup>80</sup> The news reports that followed failed to mention the New World Order even once!<sup>81</sup> While one might criticize the news media for exhibiting a total failure to publicize the concept, judged by the standards of keeping it simple and promoting repetition, the blame actually rests with the Bush Administration.

As to simplicity, the President expanded his initial meaning of the New World Order, which most associated with the enforcement of the international Rule of Law against the raw aggression of Iraq,<sup>82</sup> to a definition which equated the New World Order with entire categories of international principles — each requiring a sophisticated level of comprehension. By lumping other concepts ranging from nuclear disarmament to human rights with the concept of the New World Order, the vast majority of the public has no idea what the New World Order “really” entails. In the words of Harvard’s Joseph S. Nye Jr., “No one really knows what it means.”<sup>83</sup>

Most of the world can quickly grasp the idea of halting an aggressor who has broken the law (e.g., Iraq broke the most critical provision of the Rule of Law, the prohibition of aggression, in its use of force

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78. *Id.* at 720.

79. See *supra* note 32 and accompanying text.

80. See *U.N., Iraq near Showdown; Bush Calls for Firmness*, WASH. POST, Sept. 24, 1991, at A1; *What’s News*, WALL ST. J., Sept. 24, 1991, at A1. Both articles concentrated on the President’s remarks concerning continuing Iraqi hinderance of U.N. weapons inspectors. See also Fouad Ajami, *Where the Warrior Comes to Rest*, U.S. NEWS AND WORLD REP., Oct. 7, 1991, at 10.

81. *Id.*

82. See Carpenter, *supra* note 3, at 25.f

83. Carla Anne Robbins, *Is There a New World Order?*, U.S. NEWS & WORLD REP., Mar. 11, 1991, at 50 (quoting Joseph S. Nye, Jr.).

against Kuwait). But, when one adds, for example, the concept of creating norms for international human rights to the concept of the New World Order, the audience is lost. A brief survey of the concept of humanitarian law reveals that it is, at best, an evolving idea;<sup>84</sup> and an idea not very well understood.<sup>85</sup>

As to repetition, when the public was told that President Bush was going to issue a major address to the nation on sweeping nuclear arms initiatives, many "New World Order watchers" anticipated that the concept would be woven throughout the speech.<sup>86</sup> Set for September 27, 1991, the address would follow soon after the United Nations address, which provided President Bush with the perfect opportunity to promote the concept, but this time at the domestic level. Indeed, in President Bush's September 1990 address to the United Nations, he had already set the precedent and employed the concept New World Order to urge a worldwide ban on chemical weapons and to continue the efforts to stop the proliferation of nuclear and biological weapons. At that time, President Bush said: "It is in our hands to

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84. See LASSA OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 640-41 (Hersch Lauterpacht ed., 8th ed. 1955). When the framers of the Constitution wrote about the Law of Nations, they were addressing those principles of international law that governed state to state contacts. The individual, at most, was viewed only as an object in the process. As recently as forty years ago, the leading treatise on international law reflected the absence of legal recognition to the issue of individual human rights. Oppenheim stated that: "[A]part from obligations undertaken by treaty, a State is entitled to treat both its own nationals and stateless persons at discretion and that the manner in which it treats them is not a matter with which International Law, as a rule, concerns itself."

In general, the term *human rights* refers to a body of fundamental rights associated with the right to "life, liberty, freedom of religion and conscience, and the like." While general humanitarian concerns for individuals have always been in the marketplace of world ideas, it has only been since the close of the Second World War that legal norms in the context of human rights have emerged. Before this period, humanitarian concerns such as eradicating the evil of slavery were handled to a large degree by each individual state. However, as each of the Western powers eradicated the *peculiar* institution, the abolition of slavery gradually became a principle of customary international law. Thus, fueled by the formation of the U.N., an entire system of legal principles, some by treaty and others by custom, had slowly emerged. See also *INTERNATIONAL HUMAN RIGHTS*, *supra* note 73, at 31.

85. See *INTERNATIONAL HUMAN RIGHTS*, *supra* note 73, at ix. Holding out great hope for its future development, a leading casebook in this area maintains:

Its thesis is that there exists at present a substantial body of substantive and procedural International Human Rights Law, and that lawyers, government officials and concerned citizens should be familiar with the policies underlying this law and its enforcement as well as with the potential it offers for improving the basic lives of individuals throughout the world.

86. *President Orders Sweeping Reductions in Strategic and Tactical Nuclear Arms*, WASH. POST, Sept. 28, 1991, at A1, col. 1 [hereinafter *Reductions in Nuclear Arms*].

leave these dark machines [nuclear, chemical and biological weapons] behind, in the dark ages where they belong . . . to cap a historic movement toward a new world order, and a long era of peace."<sup>87</sup>

When the 1991 address was made, President Bush did not invoke the concept New World Order even once! Instead, in the twenty-five minute speech, President Bush concentrated on an entirely new concept called "the new age."<sup>88</sup> Pointing out that not only had the Cold War ended, but that the Soviet Union was undergoing drastic change, President Bush preferred to justify his unilateral disarmament as in keeping with the *new age*. Once again the press exhibited no interest in reporting unfamiliar terminology; the *new age* was unmentioned.<sup>89</sup>

In summation, after a full year-and-a-half of being in the market place of ideas, the New World Order is still unfamiliar to the American public. Consequently, the general domestic understanding of what the New World Order really means remains inexorably clouded. If the American public cannot understand the New World Order, *a fortiori*, it is certain that the rest of the world is at an even greater disadvantage. This is especially true for those peoples who are only now emerging into the partnership of the world community.

For example, having a vague frame of reference for the notion of a state ruled by law, the vast territories of the old Soviet Empire have only just begun to awaken from a seventy-year nightmare of the most vicious brutality. For now the republics have eagerly renounced the twisted and flawed premise upon which the Communist party had rested for seven decades, but in the wake of the break-up, there has been tremendous confusion. It will be some time before the former Communist states will be able to implement even the most rudimentary components of Western values. It is difficult enough for them to grasp the concept of being ruled by law and not by force.<sup>90</sup>

87. William Safire, *The New New World Order*, N.Y. TIMES, Feb. 17, 1991, § 6, at 14 (quoting President George Bush).

88. *Reductions in Nuclear Arms*, *supra* note 86. President Bush's unilateral reductions in strategic and tactical nuclear weapons are totally unprecedented. They include the following: 1) the withdrawal of all short range nuclear weapons from Europe, to include nuclear artillery; 2) the elimination of all nuclear missiles from all U.S. Navy surface ships and attack submarines, to include nuclear-tipped cruise missiles; 3) the disarming of and taking off of all U.S. bombers from an active alert status; and 4) the entering into negotiations for the elimination of all missiles carrying multiple, independently targeted nuclear warheads.

89. *Id.*

90. See, e.g., Symposium, *The USSR in the New World Order*, Rand/UCLA Center for Soviet Studies (May 1991).

Finally, one must wonder whether the Bush Administration, itself, has an understanding of the New World Order. Perhaps the numerous shortfalls in the process of communicating the meaning of the New World Order to the public-at-large merely demonstrates the Bush Administration's own uncertainty of the concept.

Still, one cannot help but be struck by the versatility of the concept, the New World Order. As such, the phrase seems ideally suited for the politician, for it can mean different things to different people. The range of connotations run the complete gamut of political persuasions, from those who take it to mean that the New World Order will be based on the hegemony of the United States in a *pax americana*<sup>91</sup> to those who believe that it means the total destruction of the weapons of war and the abolition of all uses of the military.

The Rule of Law also has its problems, but those problems are more in the context of application rather than definition; the meaning is simply framed, the application is not. In its strict meaning, the Rule of Law has immediate association. The meaning of the Rule of Law will always refer to that body of accepted and well-recognized principles of international law, the most critical being in the context of the use of force. It is safe to say, in terms of international behavior, that the phrase Rule of Law will always bring to mind the illegality of the use of aggressive force as set out in Article 2(4) of the U.N. Charter. The struggle is not so much in meaning — the primary strength of the Rule of Law — it is whether the Rule of Law will prevail in a given situation. Conversely, if a nation is not bound by treaty or custom, the Rule of Law does not apply.

### C. *Application*

*They allege to solve the problems of my people, [they cry]  
"Peace, peace when there is no peace."<sup>92</sup>*

As noted, the most critical element in the comparison of the concepts must be related to the curtailment of unlawful aggression. The classic McDougal and Feliciano, *Law and Minimum Public Order*, states:

The most difficult problem which today confronts world public order is that of characterizing and preventing unlawful

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91. U.N. in a New Era, *supra* note 77, at 721. America has never attempted to create a multinational empire.

92. *Jeremiah* 6:14.

violence. The history is familiar how over the centuries — through *bellum justum*, the Covenant of the League of Nations, the Pact of Paris, the judgments at Nuremberg and Tokyo, and the U.N. Charter — the public order of the world community has at long last come to a prohibition of certain coercion as a method of international change and to a distinction between permissible and nonpermissible coercion.<sup>93</sup>

Which concept, then, is best suited to serve as a vehicle, on the domestic and the international level, in curtailing the use of aggressive force? In short, how do the concepts enhance deterring those nations or groups who either contemplate the use of unlawful force or who actually engage in such unlawful force?

To date, Article 51 of the U.N. Charter is undeniably the foremost tool in dealing with and deterring aggression; it is an integral component of the Rule of Law. Although history has proven time and again that the curtailment of aggression can only come through the threat of force or the application of force, the authority for those responses must be firmly rooted in law. Despite this truism, the necessity for and legality of Article 51 is, nonetheless, constantly under attack by those groups who intentionally blur the difference between lawful and unlawful uses of force. In their search for the panacea of brotherhood and peace, groups refuse to acknowledge the different uses of force. Left unchallenged, this attitude will only encourage aggression, not forestall it.

Judging by the application of the New World Order to the real world, it is abundantly clear that the concept has not been necessarily helpful in the continuing task of distinguishing between the unlawful use of force by an aggressor and the lawful use of force under the Rule of Law. In fact, to those who blissfully associate the New World Order with the goal of ending war and destroying the *forests of bayonets*,<sup>94</sup> the validity of the Rule of Law has been hindered to that extent.

The desire of numerous organizations to curtail the use of force, regardless of the justification for that force, was shamefully apparent during the Gulf War. Reading the New World Order as a mandate for peace at any price, those groups and organizations totally disre-

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93. LAW AND MINIMUM WORLD PUBLIC ORDER, *supra* note 70, at 59-60.

94. See Frank Przetacznik, *The Catholic Concept of Peace as a Basic Collective Human Right*, 39 REVUE DE DROIT MILITAIRE ET DE DROIT DE LA GUERRE 523, 559 (1990) [hereinafter *Catholic Concept of Peace*].



garded even the most clearly worded rules and norms associated with the Rule of Law as it applies to the lawful use of force. This phenomenon extended all the way from the highest levels of the United Nations to, as to be expected, the far left radicals in major cities of the West.

At the top echelon, this phenomenon was brought out rather dramatically on November 8, 1991, when none other than the Secretary General of the United Nations, Perez de Cuellar, opined "that the passage of three months time had terminated the right of individual states to use force against Iraq under the 'collective self-defense' provisions of Article 51."<sup>95</sup> Certainly, de Cuellar knew that Article 51 did not create the right of self-defense, that such a right was an inherent right which Article 51 simply acknowledged and reinforced.<sup>96</sup> Furthermore, Iraq's aggression did not end on August 2, 1990, but was a continuing offense, since none of the Security Council resolutions had succeeded in "maintaining international peace and security."<sup>97</sup>

The policy implications of the Secretary General's position reveals its total absurdity; a rule that requires nations to respond immediately to an armed attack or else forfeit their rights to take defensive action effectively nullifies the principles embodied in Article 2(3) and 2(4) of the U.N. Charter.<sup>98</sup> By making a mockery of this critical Rule of Law, de Cuellar sent two disastrous signals: one to Saddam Hussein and one to the community of nations. First, the Secretary General's total misreading of Article 51 only encouraged Iraq's continuing occupation of Kuwait and was totally counterproductive to the international movement to force Iraq out of Kuwait short of armed force. Second, the requirement that nations act immediately in self-defense is the anti-thesis of what the United Nation encourages (i.e., the peaceful settlement of disputes through diplomacy and every other peaceful channel for resolution of conflict). Finally, the longer the hesitation in the use of legitimate force, *give peace a chance*, the more probable that the coalition will be viewed as the *aggressor*!

The more common variety of anti-war groups also hoped that the New World Order would be the catalyst for their simplistic notions concerning the abolition of war. Advocating peace, but having no concept of what the concept must necessarily entail — the willingness to fight for peace — anti-war groups demanded appeasement at any

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95. Robert F. Turner, *Councils of Caution Undercut Peace in the Gulf*, CHRISTIAN SCI. MONITOR, Dec. 3, 1990, at 19.

96. See *supra* notes 66-68 and accompanying texts.

97. See *supra* note 66 and accompanying text.

98. See *supra* notes 59-60 and accompanying texts.

cost.<sup>99</sup> Paradoxically, the loud demands for peace during the Iraqi occupation of Kuwait probably ensured that the threat of force as a deterrence would most surely fail, leaving no alternative but the use of military force.

As Saddam Hussein held firm in Kuwait, with no signs of withdrawal, the Catholic hierarchy directly criticized those who contemplated the exercise of lawful force under Article 51. Both the Vatican daily newspaper, *L'osservatore Romano*, and the official publication of the Jesuit order, *La Civiltà Cattolica*, spoke out against using force to expel Iraq from Kuwait.<sup>100</sup> *La Civiltà Cattolica* wrote on November 17, 1990: "The war in the Gulf will be a moral shame and a political disaster."<sup>101</sup>

In his traditional Christmas message, Pope John Paul II gave the following warning to those who contemplated the use of force to expel Saddam Hussein: "May leaders be convinced that war is an adventure with no return. By reasoning, patience and dialogue with respect for the inalienable rights of people and nations, it is possible to identify and travel the paths of understanding and peace."<sup>102</sup> In the final analysis, the Pope's incantation, "[n]o more war, war never again,"<sup>103</sup> was actually counterproductive in the maintenance of world peace. Such signals can do nothing but encourage aggression, for it leaves no room for the use of lawful force to halt aggression *ab initio* or to challenge aggression once it has become entrenched. In fact, of the thirty-eight times that the Pope spoke out against the Gulf War, "[t]here was not an echo of a hint of a suggestion that the United States and its allies (including Italy) were in a battle against a tyrant who had just invaded and occupied and brutally destroyed a small neighbor . . . ."<sup>104</sup>

99. See generally ROBERT B. THIEME, JR., *DIVINE ESTABLISHMENT* (1988).

100. Furio Colombo, *Vatican: the Pope's War Record*, *NEW REPUBLIC*, Apr. 8, 1991, at 12.

101. *Id.*

102. Clyde Haberman, *Pope, in Christmas Message, Warns on a Gulf War*, *N.Y. TIMES*, Dec. 26, 1990, at A19, col. 1 (quoting Pope John Paul II).

103. Peter Steinfels, *War in the Gulf: Religious Leaders; Cardinal Says Iraqi's Acts Prove Bush Right*, *N.Y. TIMES*, Jan. 26, 1991, at A9, col. 1 (quoting Pope John Paul II). Not all Catholics agreed that the collation's use of force in the Gulf was inappropriate. For example, Cardinal James Hickey of Washington related that, "Catholic 'moral tradition clearly does not sustain peace at any price.'" See also GROTIUS, *supra* note 53, at xii (Hugo Grotius believed that the barbarism of war caused many to erroneously conclude "that a Christian must abstain entirely from military activities.").

104. Colombo, *supra* note 100. The article compiled some of the Pope's statements about the use of force by the U.S. and its allies. On January 10: "This war is an adventure with no

Other religious leaders, emotionally obsessed by the fact that large numbers of soldiers were going to be killed in war, irrationally concluded that all war in the modern era was immoral, regardless of the motivation. Fueled by reports that some Iraqi soldiers had been buried alive in their defensive positions by American tanks,<sup>105</sup> a religious publicist concluded that "any discussion of whether Desert Storm was a just war seem[s] to border on the insane. Indeed, practical application of the theory may have ended with the crossbow."<sup>106</sup> Of course, this argument is totally fallacious; long before the crossbow, battle casualties could easily mount into the hundreds of thousands. For example, during the Second Punic War (219-202 B.C.), the Carthaginian forces under Hannibal killed in combat over 60,000 Roman soldiers in a single day!<sup>107</sup>

Claiming to be a spokesperson for morality and justice, the wife of Martin Luther King, Coretta King, attempted to derail the United States-led military coalition to eject Saddam Hussein from Kuwait. She referred to the American actions as a "low [point] since the death of Dr. King."<sup>108</sup> Speaking on January 11, 1991, Mrs. King called on a new anti-war movement to be launched on January 15, 1991, the date of the United Nations' deadline for Iraq to withdraw from Kuwait or face the use of force.<sup>109</sup> "And so I am urging everyone who believes in Martin Luther King Jr.'s dream of peace to use this holiday to launch a new anti-war movement that will not rest until a peaceful resolution of the conflict in the Persian Gulf is secured."<sup>110</sup>

return." On January 16: "International law cannot be seen as a protection for hegemonic interests." On January 21: "The intoxication of war has prevailed over the courage of peace." On January 26: "This war is a threat to humanity." On February 4: "This war is a virus of death."

105. See, e.g., Barton Gellman, *Reaction to Tactic They Invented Baffles 1st Division Members*, WASH. POST, Sept. 13, 1991, at A21. In breaching the entrenched Iraqi defenses, U.S. tanks buried some Iraqi soldiers alive when they continued to engage in combat. This was not a violation of the laws of war.

106. Guy Munger, *Lessons From Desert Death Plow*, NC CATHOLIC, Sept. 22, 1991, at 4. Concurring with the Jesuit magazine *La Civila Cattolica*, Munger, the acting editor, related that all "modern war is always immoral."

107. R. ERNEST DUPUY & TREVOR N. DUPUY, *THE ENCYCLOPEDIA OF MILITARY HISTORY* 65-66 (1986). The battle of Cannae occurred during the Second Punic War, on August 2, 216 B.C. The vastly outnumbered Carthaginian army under Hannibal defeated the Roman army under Varro.

108. Ronald Smothers, *Thousands Recall Quest for Equality*, N.Y. TIMES, Jan. 22, 1991, at A18, col. 1.

109. Richard Walker, *Martin Luther King's Widow Urges New Anti-War Movement*, REUTERS LIBRARY REP., Jan. 11, 1991.

110. *Id.* (quoting Coretta King).

Failing to elaborate on how this peace movement could force a brutal dictator to relinquish his death grip on Kuwait, Mrs. King spitefully placed the blame for the war on her own nation. She called the American participation in the Gulf War "wrong and immoral."<sup>111</sup> Like the Pope, Mrs. King's call for "peace-loving people everywhere to accelerate their efforts to stop it" did nothing except encourage the ruthlessness of the Iraqi occupation.<sup>112</sup>

Similarly, the current President of the Southern Christian Leadership Conference, Reverend Joseph Lowery, denounced the United States military action saying, "Let us call upon the nations to spend our resources on medical supplies, not military supplies; to make tractors, not tanks; to beat missiles into morsels of bread to feed the hungry; to build housing, not foxholes."<sup>113</sup> Again, if history has demonstrated anything, it has demonstrated that utopian rhetoric such as that discussed above is not helpful in deterring people and nations who exhibit aggressive tendencies.

Obviously, the New World Order is not something that is in the here and now. Rather, the New World Order is a goal that might one day be achieved. Those who appropriate the term New World Order as a synonym for a utopian world without war, such as commentator Haynes Johnson of the *Washington Post*, are always quick to point out to the reading public that this "is not the millennium;<sup>114</sup> the [N]ew [W]orld [O]rder has not arrived."<sup>115</sup>

## V. WAR, PEACE AND FREEDOM

*But what a cruel thing is war; to separate and destroy families and friends, and mar the purest joys and happiness God has granted us in this world; to fill our hearts with hatred instead of love for our neighbors, and to devastate the fair face of this beautiful world.*<sup>116</sup>

*General R.E. Lee*

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111. Lynne Duke, *Coretta Scott King Deplores Decision*, WASH. POST, Jan. 17, 1991, at A30 (quoting Rev. Joseph Lowery).

112. *Id.*

113. Smothers, *supra* note 108, at A18, col. 1.

114. See, e.g., NELSON'S ILLUSTRATED BIBLE DICTIONARY 709 (Herbert Lockyer ed., 1986). The term millennium is associated with Judeo-Christian belief about a thousand year period of time when the Messiah or Christ will personally rule the world from the city of Jerusalem, "with an iron rod." It will be a time of perfect environment with the abolition of war being one of the elements.

115. Haynes Johnson, *Renewed Perils to Peace*, WASH. POST, Sept. 27, 1991, at A2.

116. Rod Gragg, *The Quotable Robert E. Lee*, SOUTHERN PARTISAN, IX, 1989, at 25, 31.

### A. War and the Nature of Man

*I don't believe that the big men, the politicians and the capitalists alone, are guilty of war. Oh no, the little man is just as guilty, otherwise the peoples of the world would have risen in revolt long ago. There's in people simply an urge to destroy, an urge to kill, to murder and rage, and until all mankind, without exception, undergoes a great change, wars will be waged, everything that has been built up, cultivated, and grown will be destroyed and disfigured, after which mankind will have to begin all over again.*<sup>117</sup>

Anne Frank (1942)

More thoughtful proponents of the New World Order also associate the concept with the ultimate goal of abolishing war, but only through a deterrence model firmly cemented upon the Rule of Law. "We must not think of war as an inevitable part of the human condition against which mankind is forever helpless. Like slavery before it, aggressive war can and will be ended."<sup>118</sup>

But what causes aggressive war? Can it really be stopped, or only controlled? By looking at the human experience of the last six thousand years, one could list a host of factors related to war, such as: religious issues, ethnic strife, territorial disputes, population pressures, economic interests, and competition for limited resources. While all of these factors may be catalysts to war, any discussion related to these factors that ignores the nature of man can never capture more than a fraction of the truth. Since war is more likely associated with corresponding human lusts for power and approbation, war says much about the basic nature of man.

Moreover, nations are made up of men. The troubles of the world are not beamed onto earth from some hostile alien entity. To a large degree, troubles of the world are simply the natural reflection of the problems that rest inside of each individual, who, according to the basic tenets of every major religion, is morally flawed.<sup>119</sup> Thus, the question of what causes man to commit a *malum in se* crime can be asked collectively of a nation that launches an aggressive war.

Objectively, much of what we know about the nature of man comes from the record of his history; a record written in blood. For example, to observe that various nations have hungered for blood, glory and

117. WAR QUOTATIONS, *supra* note 1, at 341.

118. John Norton Moore, *For More Than One Reason*, WASH. TIMES, Dec. 18, 1990, at G1.

119. See, e.g., ERIC J. SHARPE, *COMPARATIVE RELIGION* (2d ed. 1990).

plunder simply describes their behavior, but only partially explains it. In fact, no one has ever satisfactorily explained why certain societies — Assyria<sup>120</sup> or North Vietnam or Iraq — turned into war machines.

What has been established, rather convincingly, are the characteristics of those nations that have a high propensity for engaging in aggressive war. Professor John Norton Moore, Director of the Center for Law and National Security, found that “totalitarian regimes, as a class, whether of the Right or Left, are considerably more prone to resort to violence than democracies as a class.”<sup>121</sup> Professor Moore calls this phenomenon the *radical regime syndrome*.

A radical totalitarian regime . . . seems to blend together a mixture of a failing centrally planned economy, severe limitations on economic freedom, a one party political system, an absence of an independent judiciary, a police state with minimal human rights and political freedoms at home, denials of the right to emigrate, heavy involvement of the military in political leadership, a large percentage of GNP devoted to the military sector, a high percentage of the population in the military, leaders strongly motivated by an ideology of *true beliefs* including willingness to use force, aggressively anti-Western and antidemocratic in behavior, and selective support for wars of national liberation, terrorism, and disinformation against Western or democratic interests.<sup>122</sup>

Furthermore, recognizing a nexus between the nation that mistreats its own citizens and the nation that mistreats its neighbors,<sup>123</sup> “[b]oth the preamble and Article 1 of the United Nations Charter make crystal clear that the framers were under the impression that

120. For an excellent description of the ancient Assyrian war machine (circa 700 B.C.), see Norman Kotker, *The Assyrians*, 3 MIL. HIST. Q. 9 (1991) [hereinafter *Assyrians*].

121. See NATIONAL SECURITY LAW, *supra* note 31, at 77; *Catholic Concept of Peace*, *supra* note 94, at 559.

122. NATIONAL SECURITY LAW, *supra* note 31, at 77.

123. *Conference Stresses “Rule of Law Engagement in United States Foreign Policy,”* NATL SEC. L. REP., Oct. 1991, at 1. Professor R. J. Rummell is the main advocate for the proposition that democracies are less likely to engage in aggressive war. In his research he has also documented the correlation between totalitarian states and aggression directed against their own citizens:

War is not the most deadly form of violence. Indeed, I have found that while about 37,000,000 people have been killed in battle by all foreign and domestic wars in our century, government democide (genocide and mass murder) have killed over 148,074,000 million more. Plus, I am still counting. Over 85 percent of these people were killed by totalitarian governments.

the unleashing of aggressive war occurred at the hands of those States in which the denial of the value . . . of the individual human being . . . was most evident."<sup>124</sup>

On the individual level, observations about the dark side of some societies strongly reinforce the Judeo-Christian doctrine of the total depravity of man. However, the view that there will always be aggressive warfare in the world, like crime in society, is only partially correct.<sup>125</sup> Crime on the national level and aggressive warfare on the international level can be controlled. The concept of the total depravity of man applies primarily to the question of the mechanics of salvation;<sup>126</sup> the concept does not mean that mankind is in a state of total helplessness and wickedness *vis-à-vis* other people. On the contrary, operating under the principles of freedom and self-determination, civilized societies have come together to form national entities so that they might produce the byproducts of privacy, justice and economic prosperity.<sup>127</sup>

Under such a model, nation-states have prospered and flourished, but only to the extent that they have recognized the collateral need to protect those rights on interior and exterior lines. On interior lines, nation-states must recognize the legitimate functioning of a police and judicial system to punish criminal behavior; on exterior lines, nation-states must recognize the need for a strong military establishment to protect the nation from the aggressive behavior of other societies.

### B. *Peace and Freedom*

It is a fundamental principle that all free states have a common interest in maintaining peace. Peace, like security, however, is a precious commodity rarely attained without great sacrifice. In addition, peace is far more than the absence of war; it is an elusive intangible which only takes on meaning when related to freedom. Although the

124. INTERNATIONAL HUMAN RIGHTS, *supra* note 73, at 776-77.

125. The doctrine asserts in part that because of human sin, mankind is in a state of total hopelessness when compared to the absolute perfect character of God. Accordingly, mankind can only be redeemed through grace and not human merit. For an excellent discussion of the grace mechanics of Christianity, see ROBERT B. THIEME, JR., *THE INTEGRITY OF GOD* 7-71 (1979).

126. *Id.*

127. GROTIUS, *supra* note 53, at 6.

Man is, to be sure, an animal, but an animal of a superior kind, much farther removed from all other animals . . . . But among the traits characteristic of man is an impelling desire for society, that is, for the social life — not of any and every sort, but peaceful, and organized according to the measure of his intelligence . . . .

goal of abolishing war, like eradicating crime, is certainly commendable given the basic nature of man, neither goal is totally feasible. As long as there are demagogues like Sennacherib,<sup>128</sup> Hitler, Stalin or Saddam Hussein,<sup>129</sup> nation-states must have a strong military establishment to protect themselves. Under this truism, the symbol of freedom is not a cracked liberty bell, but the military uniform.

Accepting the premise that human beings are morally flawed creatures, it stands to reason that the best that mankind can ever hope to achieve is to *control* aggression. Like criminals, aggressive nations can only be deterred through the proper functioning of two principles: 1) the threat of lawful force; or 2) the application of lawful force. To the extent that the function of these two principles fails, wars will continue to exist. Paradoxically, those groups who resist this truism, demonstrated by their demands for peace through the continued restriction of all categories of force, blissfully lay the groundwork for the next war.

If peace at any price, with compromise as the means to achieve it, is the major concern of a national entity, then the destruction of that nation will be the inevitable consequence. Freedom, not peace, must always be the issue for free nations; when nations are no longer willing to pay the price of freedom, then they, too, will lose their freedom. As Woodrow Wilson so wisely reflected in May of 1917, "It is not an army that we must train for war; it is a nation."<sup>130</sup>

Tragically, every free nation has within it the very elements which will eventually destroy it, for the choice between freedom or peace must be made by each successive generation. With freedom, war is inevitable, periodically. By choosing peace without maintaining the power to enforce the peace, however, war will come more often and with a greater probability of resulting in the destruction of the nation. Just as crime increases when society gets sentimental about the criminal<sup>131</sup> and forgets about the victim, so to will the probability of war increase as the nation emphasizes peace instead of freedom.

128. *Assyrians*, *supra* note 120. Sennacherib reigned Assyria from 704-681 B.C.

129. Other despots are more sophisticated than Saddam and, hence, harder to portray in a Hitlarian mold. "He's like a guy who kills his parents and then pleads with the judge for mercy because he's an orphan." Jerry Gray, *War in the Gulf: Americans; Many Express Skepticism, But Others See Opportunity*, N.Y. TIMES, Feb. 16, 1991, at A7, col. 5.

130. WAR QUOTATIONS, *supra* note 1, at 315. President Wilson made this remark in an address on May 12, 1917.

131. DR. STANTON E. SAMENOW, JR., *INSIDE THE CRIMINAL MIND* 6 (1984).

Criminals cause crime — not bad neighborhoods, inadequate parents, television, schools, drugs, or unemployment. Crime resides within the minds of human beings and is not caused by social conditions. Once we as a society recognize this simple



Furthermore, the cost of achieving freedom can only be understood by those who paid the price. Indeed, there is no permanent guarantee that the United States will continue to function as a national entity beyond a strong military-industrial complex coupled with the people who have the will to fight if necessary.

For this reason, the use of the concept New World Order is dangerous rhetoric because it confuses the distinction between the need for the legitimate use of force and unlawful aggression. Despite the disclaimers that the concept should not be related to restricting the use of force or disarmament, the connotation is otherwise. No *peace* movement has ever been premised on maintaining a strong and viable military, and no proponent of the New World Order can ever hope to be immune from the wishful thinking of those who demand the dismantling of the very forces that sustain and protect the freedom of the nation — the military establishment.

On the other hand, the concept Rule of Law does not necessarily carry with it the connotation that man is ever capable of achieving such a panacea. For the Rule of Law, it is enough if aggressive war can be controlled via deterrence. As one international law expert noted in the Gulf War: "At the root of United States policy in the Gulf war was the principle of upholding the Rule of Law. Article 2(4) of the U.N. Charter outlaws armed international aggression, and the massive Iraqi invasion of Kuwait was a direct challenge to that principle."<sup>132</sup>

## VI. CONCLUSION

*Let he who desires peace, prepare for war.*<sup>133</sup>

*Flavius Vegetius Renatus (1st Century A.D.)*

### A. *The New World Order in Practice*

To a large degree, history is defined by the workings of spheres of power which are commonly categorized into eras. Within these eras, the trends of history are replete with great wars whose goal was to *end all wars*.<sup>134</sup> While the natural tendency of mankind is to promote

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fact, we shall take measures radically different from current ones. To be sure, we shall continue to remedy intolerable social conditions for this is worthwhile in and of itself. But we shall not expect criminals to change because of such efforts.

132. Robert F. Turner, *The Gulf War — and Its Fallout*, FREEDOM REV., May-June 1991, at 17, 19.

133. WAR QUOTATIONS, *supra* note 1, at 29.

134. HISTORY OF MAN, *supra* note 43, at 194.

and to nourish the resulting periods of peace between war, history gives no encouragement to the notion that *war will be no more* or that peace will be more than a mere handful of years.

With the liberation of Kuwait, the New World Order was to herald a new era in international affairs, an era of collective security sponsored and reinforced by the United Nations. Expectations for the fulfillment of this goal were understandably high and recalled the old Roman proverb: "For he who desires to become rich also wishes that desire to be soon accomplished." In reality, however, the natural desire to enlarge the New World Order quickly met with failure.

The first application of the New World Order was against Iraq, but was only partially successful. The Gulf War drove Saddam Hussein out of Kuwait, but also drove him to ruthlessly turn his military on his own people. In addition, the failure of the international community to press for war crimes trials for Saddam Hussein and his henchmen<sup>135</sup> dealt a major blow to the most central ideal of the New World Order. It is now 1992, and Saddam Hussein is still actively engaged in a totalitarian dictatorship of the most brutal sort.

The second application of the New World Order envisioned the formation of a joint defense force, composed of Arabs and Americans, to deter future aggression in the Middle East. This application of the New World Order never materialized. The Damascus Declaration, hammered out just days after the war ended, called for Syrian and Egyptian participation in the Arab security force. As quickly as the Declaration was adopted, however, the age old problems of distrust and animosity emerged — the Declaration died less than a month after its birth.<sup>136</sup> Similarly, the New World Order visions of a new Kuwait based on more democratic principles and self-reliance have not been fulfilled. Outside of some limited Israeli-Arab peace talks, the region has essentially returned to its pre-war status. Except for a new found respect for the military power of the United States, "[c]enturies-old attitudes have not changed, new alliances have not jelled, and the historic suspicion of Western influence has receded only slightly."<sup>137</sup>

As the failures of the New World Order mount, the phrase loses its power. On the other hand, breaches of the Rule of Law do not necessarily weaken the utility of term Rule of Law; failures only

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135. See Louis R. Beres, *The United States Should Take the Lead in Preparing International Legal Machinery for Prosecution of Iraqi Crimes*, 31 VA. J. INT'L L. 81 (Spring 1991).

136. See Danielle Pletka, *The Saudis in Retreat*, INSIGHT, June 24, 1991, at 12.

137. Michael Kramer, *Kuwait: Back to the Past*, TIME, Aug. 5, 1991, at 32.

reinforce the continued need for deterrence and enforcement. Simply put, the New World Order is the jargon of politicians, the Rule of Law is the tool of nations.

In summation, the belief that the Gulf War set the pattern of a New World Order in which the United Nations would guarantee the security of its members through collective security is incorrect. The response to Saddam Hussein's raw aggression was the application of the Rule of Law in the context of the lessons learned in Munich; it had nothing to do with the New World Order. Considering Saddam Hussein's threats to use chemical weapons, his parading of allied prisoners of war, his scud missile attacks on civilian targets, and, as he faced final defeat, his burning of the Kuwaiti oil fields, one could hardly construct a more hideous villain. The raw aggression exhibited by Saddam Hussein in his unprovoked blitzkrieg of Kuwait was as atypical as his total lack of sophistication in dealing with the world community. The Rule of Law as embodied in the U.N. Charter dictated that Saddam must be stopped.

#### B. *The Role of the United States in the Rule of Law*

*In the long run only a principled policy rooted in law can ensure the international peace and justice so importantly a part of the national interests of the United States and of all nations.*<sup>138</sup>

*John Norton Moore*

The fact that the United States saved Western Europe in two World Wars by the use of its magnificent military establishment, coupled with its even greater industrial complex, does not imply that the military campaign in the Gulf will set the stage for a *pax americana*. Faced with an economic recession at home and a drawdown of its military forces, it is doubtful that another American deployment such as that which occurred in the Gulf will be possible in the near future.<sup>139</sup>

If President Bush's New World Order is based on collective security, then the New World Order requires a sufficient military establishment to deter. Devoid of any military arm of its own,<sup>140</sup> the United

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138. MOORE, *supra* note 35, at 1.

139. See, e.g., Robert V. Bryant, *Challenges Facing an Army in Transition*, *SOLDIERS*, Jan. 1992, at 48.

140. See U.N. CHARTER art. 43-47.

Nations could not halt Saddam Hussein; rather, it was the political genius of President Bush that orchestrated the defeat of Iraq.<sup>141</sup> Consequently, the success of the Gulf War does not ensure that such a coalition will again be formed.

Collective security has always required a dominant leader. In the twentieth century, that has always meant the United States. This is true in every case in which international collective security has functioned. The lesson of the Gulf War was the same as the Korean War, the United Nations does not have the capacity to guarantee the security of its members absent the direct participation of the United States.

In the real world, the question will be the same as it has always been. Will the people of the United States continue to possess the resolve to assist in the struggle to halt major acts of aggression in the future? If one were able to ignore the rhetoric associated with the concept New World Order, it is probable that the New World Order envisions that the people of the United States will continue to possess such resolve. But, the next aggressor probably will not present as clear a case for action as did Saddam Hussein. In fact, the Congressional support for United States participation was qualified; although the people of the United States responded to the call of the President, Congress barely consented. The majority of Democrats voted against the use of force.<sup>142</sup>

If there was a clear consensus to the ends, to get Saddam Hussein out of Kuwait, the consensus on the means was much more partisan. The factors that allowed the use of force in collective security are not likely to reoccur for some time: 1) the aggression was particularly brutal and devoid of any iota of justification; 2) the strong threat to oil supplies threatened the economic well-being of the West; and 3) Saddam Hussein had no allies.

Still, the United States of America does have a continuing responsibility to the world. Judged by any positive standard, be it in the

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141. See Terry L. Deibel, *Bush's Foreign Policy: Mastery and Inaction*, FOREIGN POLICY, Fall 1991, at 4. Most commentators agree that President Bush's use of the power of personal relationships in foreign relations is superb, due in part to his previous positions as 1) the former ambassador to the United Nations, 2) envoy to Communist China, 3) director of the Central Intelligence Agency, and 4) eight years as the vice president. "The consequence of Bush's experience with and attitude toward government is a remarkable presidential activism in the policy process . . ." *Id.*

142. Turner, *supra* note 132. "Ultimately, in the Senate, more than 80 percent of the Senate Democrats voted to deny the president their support, while more than 95 percent of Republicans backed the president." *Id.*

field of human rights, self-determination, economic opportunity, or privacy related to property and person,<sup>143</sup> the United States stands out as the pearl of all that is good and noble about mankind. Furthermore, America, like great nations before it, has related all of these positive values to a strong heritage of law. The founders of the nation established certain democratic<sup>144</sup> values, and subsequent generations have generally exhibited the discipline to maintain those values.

America's most fundamental value does not reside in her military might or industrial complex. Those pillars merely provide support for the United States' most precious commodity — freedom as related to the Rule of Law. Although the United States military most certainly deterred the aggressiveness of the Soviet Empire from 1945 to 1991, it was the beacon of American freedom that ultimately dispelled the darkness of communism. To the world, then, the United States offers a pattern of prosperity and freedom under the Rule of Law. This is the message that the United States must continue to send to the world — not the ambiguous signals associated with a New World Order.

The world is still a very dangerous place; and, as never before, it is time for caution and stability. Coming out of the Cold War, the millions of people in Central Asia and Eastern Europe have no frame of reference for a nation or, for that matter, a world that is ruled by law.<sup>145</sup> These people can hardly be expected to grasp the muddled connotations pertaining to the New World Order. If the world is to have a period of peace, the United States must stick to the basics as embodied in the Rule of Law.

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143. No nation can prosper without an industrial complex based upon free enterprise. In the U.S., that complex emerged following the War Between the States. The Confederacy discovered that no matter how many battles won on the field, as long as the Federals maintained their tenacity, the industrial complex of the North could not be defeated. Hannibal, in the Second Punic War with Rome, also learned this lesson. Even after defeating the Roman military on every battlefield for 17 years, he could not defeat Rome; Roman soldiers were always better equipped, supplied, and armed. In fact, Hannibal helped Rome accelerate its industrial complex by driving the Romans off the farms and into the major cities. See generally BURKE DAVIS, GRAY FOX (1956); GIBBON, *supra* note 16.

144. The term "democracy" does not infer a one man, one vote system of government. "[A] government in which the people hold the ruling power either directly or through elected representatives; rule by the ruled." WEBSTER'S NEW WORLD DICTIONARY 366 (3rd ed. 1988). The United States was founded as a republic.

145. ANTHONY CARTY & GENNADY DANILENKO, PERESTROIKA AND INTERNATIONAL LAW, CURRENT ANGLO-SOVIET APPROACHES TO INTERNATIONAL LAW 1 (1990). Soviet President Gorbachev has been the chief proponent for establishing Soviet respect for the proposition that "every state should be interested in restricting itself by international law."

Much like President Roosevelt's attempt to cloak the participation of the United States in World War II with a far greater purpose than national self interest,<sup>146</sup> President Bush used the New World Order primarily as a battle cry in the Gulf War. Considering the unrealistic expectations generated by the concept and its weakening effect on the Rule of Law, the wisdom of this approach was certainly questionable.

As demonstrated, the New World Order is not a benign tool. The real problem is with those who associate the Rule of Law with the failures of the New World Order. Logically, if the New World Order encompasses the Rule of Law, as it does, then to the degree that the New World Order is a failure, the Rule of Law is also harmed. Accordingly, it is time to return from the emotions of the New World Order to the faithful stability of the Rule of Law. The New World Order might have been a valid battle cry, since all battle cries must be emotional, but it had nothing to offer to the process of building respect and credibility into the Rule of Law.

In conclusion, there were no New World Order lessons learned in the Gulf War, only lessons validated from the logical enforcement of the Rule of Law. When legitimate interests of the United States were at issue in a breach of an internationally recognized Rule of Law, the United States led the enforcement effort. For freedom loving peoples everywhere, the victory in the Gulf ensured that the cost of maintaining freedom was paid by another generation of Americans. To a large degree, this sacrifice not only enforced the Rule of Law, but undoubtedly will serve as a deterrent to other tyrants for at least a decade.

Unfortunately, the sincere but unrealistic belief that war can be curtailed by third-party dispute settlement processes or by massive disarming processes was not buried in the lessons of the Gulf War. Even worse, in the context of the clear Iraqi aggression, the United States passed by a golden opportunity to add even greater credibility to the Rule of Law. Indeed, the aggression of Iraq was a classic example of when the Rule of Law should be applied. Instead, the United States downplayed the term Rule of Law in its choice of the more starry-eyed term New World Order and, thereby, ignored a superb chance to strengthen the Rule of Law as never before.

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146. HISTORY OF MAN, *supra* note 43, at 276-77. As part of his "New Deal," and just before America's participation in World War II, President Roosevelt issued his famous four freedom speech, reflecting values long recognized as legitimate aspirations for all mankind: freedom of speech, freedom of worship, freedom from want, and freedom from fear.

Despite the missed opportunity to promote the concept, the Rule of Law, not the New World Order, emerged from the dust of the Gulf. As in former times, the New World Order quickly faded into history where it will silently await its next master to call it forward; the shallowness of the concept sealed its own fate.

The New World Order has nothing positive to offer those who seek to foster, strengthen and advance the Rule of Law. If the United States is serious about promoting the Rule of Law, then it must stand as the chief champion of the Rule of Law. The challenge must be to abandon all such *new age*<sup>147</sup> and *new world*<sup>148</sup> phrases and to concentrate fully on the never ending business of promoting the Rule of Law in word as well as in deed. In order to move the credibility of the concept forward, the United States must immediately return to a faithful sponsorship of the Rule of Law in every international forum available.

Many of the most fundamental values, particularly those dealing with the illegality of aggressive war, have been translated into well-rooted rules of law at the cost of untold blood and fortune. Hope remains that many more values will be added to that book, and that the attendant sacrifices will not have been in vain. Although there is no need to speak of the United States as the world's policeman, there is a need for the United States to fully sponsor the Rule of Law, which remains the best hope to those nations that wish to exist in a sphere of freedom.

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147. See *supra* note 88 and accompanying text.

148. *We Stand . . . Before a New World of Hope and Possibilities for Our Children*, THE WASH. POST, Dec. 26, 1991, at A35 (President Bush's televised speech on the breakup of the Soviet Union.).