

INTERNATIONAL LAW & INTERNATIONAL RELATIONS: INTERSECTION

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ABSTRACT

Is there an intersection between the application of Public International Law with the political conduction of international relations? Should International Law, International Order and International Rules be redefined? How can such an intersection be found? The investigation seeks to extrapolate new definitions and an International Law axiom by utilizing sundry approaches to the state of the question which is properly laid out as well as some terms defined previous to the discussion by utilizing “approaches.” The investigation is carried out by using the Cartesian method or that of Descartes and followers and the formal and material logical structures. Eventually new definitions and an axiom by extrapolating analyses categories are laid out. Hence, approaches such as the “legalistic” one, the “natural law” one, the “religious,” the “extra-legal” one, the “eclectic” one, the “effective” one and the “UN proposed” one are

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analyzed in-depth upon observing the experience and current factual situation even though noting that those approaches are neither mutually exclusive nor “pure,” but representative as the examples supporting them show. The paper’s bottom line is no other than zeroing in on one of the oldest of International Law’s wounds: That of its effectiveness. But by pointing out various moot points and by reflecting on the different reality stages, one can conclude that the material mission of the law as well as the aims of international order are eventually attained. Nonetheless in concluding and setting out the axioms and new definitions, the existing political power within a democratic framework should not be overlooked as the praxis of International Law meets that of international power to form then a juxtaposition. So, regardless of some international instruments being deemed as substantial law, one has to ask whether what the international community calls “breaking of law,” is rather a breaking of procedures or adjective mandates.

KEY WORDS

International Law. International. Order. International Order. National Security Law. Empire. Democracy. International Rules. Effectiveness. Natural Law. Approach. Definition. Division. Cartesian. Logic. Reality. Axiom. Redefinition. Extra-legal. Ultra-legal. Eclectic. Felicity. Material. Mission. International Law’s mission. Juridical. Form. Adjective. Substantial. Conclusions. Treaties. Agreements. Power. Economies. United Nations. United States of America.

RESUMEN

¿Existe un punto de equilibrio o balance entre lo que es la aplicación del derecho internacional público y el manejo político de las relaciones internacionales? ¿Deben los conceptos de Derecho Internacional, Orden Internacional y Reglas Internacionales ser redefinidos? ¿Cómo se puede encontrar un punto de equilibrio? Esta investigación busca la extrapolación

de nuevas definiciones y de un axioma de Derecho Internacional utilizando para ello varias aproximaciones al estado de la cuestión que es presentada así como términos previamente definidos en forma anterior al inicio de la discusión que utiliza las denominadas “aproximaciones.” La investigación se lleva a cabo usando el método cartesiano y las estructuras de la lógica formal y material. Al final, nuevas definiciones y un axioma son presentadas usando para ello distintas categorías de análisis. Así, “aproximaciones” como la “religiosa o teocrática,” o la “extra-legal,” o la “legalista,” o la “efectiva,” o la del “derecho natural,” la “ecclética,” la del “deber ser” y finalmente la “efectiva” son analizadas en profundidad a través de la observación de la experiencia y la situación actual, aun cuando haciendo notar que dichas aproximaciones no son mutuamente excluyentes, no tampoco “puras,” pero sí representativas como los ejemplos que las soportan muestran. La idea subyacente de la investigación no es otra que centrarse en uno de los temas más importantes del derecho internacional: su efectividad. Pero al señalar varios puntos de discusión y a través de la reflexión de los diferentes escenarios reales, se puede concluir que la misión material del derecho internacional al final se cumple. No obstante, al concluir y al trazar el axioma y nuevas definiciones, no puede olvidarse el poder político existente dentro de un marco democrático por cuanto la praxis del derecho internacional se encuentra con la del poder internacional para formar una intersección. De tal manera, que independientemente de que algunos instrumentos internacionales se tengan como norma sustantiva, debe preguntarse uno si lo que la comunidad internacional llama “violación del derecho” no es una pero de meras reglas adjetivas.

PALABRAS CLAVE:

Derecho Internacional, Internacional. Orden. Orden Internacional. Seguridad Nacional. Imperio. Democracia. Reglas Internacionales. Efectividad. Derecho Natural. Aproximación. Definición. División. Cartesiano. Lógica.

Realidad. Axioma. Redefinición. Extra-Legal. Ultra-Legal. Ecléctico. Felicidad. Material. Misión. Misión del derecho internacional. Jurídico. Forma. Adjetivo. Sustancial. Conclusiones. Tratados. Acuerdos. Poder. Economías. Naciones Unidas. Estados Unidos de América.

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"Lo inaceptable en los 'derechos del hombre'
es el nombre."

NICOLÁS GÓMEZ DÁVILA¹

INTRODUCTION

International law compliance's intersection with the political management of international relations and international affairs is a topic that has become important in the last years, above all inside the academic spectrum².

1 See GÓMEZ DÁVILA, NICOLÁS, *Sucesivos escolios a un texto implícito*, Ediciones del Instituto Caro y Cuervo, 1992. An Unofficial Translation into English of this Phrase could be: "What is Unacceptable of Human Rights is its name."

2 Across universities in the U.S., the introduction of seminars and courses on the intersection between International Law and International Relations has been introduced.

The sundry entities' management of international relations is not easy³ and falls under the orbit of what is known either as international policy or as "exterior policy."⁴ And as reflection of policy, is both a topic and praxis essentially, dynamic, whereas Public International Law that contains structures and institutions if you will, "static," shall be useful in regulating "dynamic situations."⁵

Hence, the ideal is that international relations are adjusted to the mandates of Public International Law, but, as reality shows⁶, on most of the occasions that does not occur.

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- 3 This is certainly more difficult for the "Developed World." In light of politic and legal commitments and given that reality, corresponds to the "developed world" the leading of actions aimed at achieving the purposes and mission of International Law. After the Second World War and upon the creation of the United Nations Organization, on the denominated Security Council of the United Nations countries such as the U.S., the U.K. and France have a permanent seat. These States, in light of that situation and of being parties to instruments such as NATO are the ones that shall lead. Now, in the first half of the XXI century, other politic and economic powers such as that of Germany and others demand their wanting to participate too.
 - 4 See definitions. Traditionally, international legal scholars have drawn a difference between what is inside the orbit of Law vs. what is inside the orbit of policy. For the purposes of this paper, "exterior" will make reference to what is adopted by an entity or state for international purposes and "international" will make reference to the set of everything that is "exterior."
 - 5 Is the difference between what is dynamic and what is static. See Definitions. It is clear that one of the most striking differences between what is law reaching and what is policy reaching, lies in that the first is kind of static as its institutions are rationally "normalized" on texts and they change not very often as to its application and interpretation regardless of their being referred to sundry inter subject relations; whereas policy issues, due to the human ever changing events, movement of ideas and facts is obvious and demand the drawing up of just solutions. It might be said that politics and policy are the seed of Law.
 - 6 The term "Reality" is one defined in this paper. Nonetheless, it is worth recalling the definition of Reality in Latin of Saint THOMAS AQUINAS: "adequatio rei et intellectus (Cfr. De veritate. q. 1, a. 1, 3, 5, 8 y 10; I, q. 16, a.1) De veritate, q.1, a.1: '*Prima comparatio entis ad intellectum est ut ens intellectui correspondeat: quae quidem correspondentia adaequatio rei et intellectus dicitur, et in hoc formaliter ratio veri percipitur. Hoc et ergo quod addit verum supra ens; scilicet conformitatem sive adaequationem rei et intellectus*'. »

Nonetheless, as to the range of situations regulated by virtue of conventions or treaties, it might be the case that the management of international relations is more adjusted to the mandates of Public International Law, which would be concentered on what is contained, either on an specific treaty or in a convention subscribed by several entities; but, when it comes to make the International Law existing to protect and reflect universal principles and values related, above all, to the protection of human rights⁷, global security, environmental protection, etc., formal or adjective compliance is not verified, or ends up being very limited.

Thus, questions that might immediately arise are the following: Why if there are principles and values contained in international instruments of such and great importance as that of the Charter of the United Nations, we still continue seeing that Entities, Nations and States go on managing their international relations in a way estranged from the mandates of Public International Law? How much *de facto* and *de jure*, can the real power of States be limited for them to conduct its international relations in accordance with International Law? Thus, what is International Law and what are International Relations? What does the praxis of International Law show? Should institutions be changed? How? Why?

This investigation⁸ seeks to adequately respond all of those questions by laying out two sections: First: Identification of the international stage current, actual and real situation; in other words, identifying what is that reality and experience show. Second: Identification of a series of previously author's identified and extrapolated approaches that several entities have taken since

7 The expression "Human Rights" in some way is tautological as seems to be well implied by NICOLÁS GÓMEZ DÁVILA. And it's that the violation of human dignity was so dreadful that mankind itself had to come to lay out and label a catalogue of basic rights as "Human Rights."

8 The term "Investigation" for purposes of this paper, is the process by which some facts and conclusions supporting the extrapolation and identification of "approaches" is carried out.

the beginnings of the second half of the XX Century and the first five years of the XXI Century.

Above all, the investigation is about an academic exercise that in addition to be semantic—as I use throughout the paper previously defined terms—is an objective one, as the source of analysis is what is real and material, conducting at the same time an analysis and a synthesis⁹ reflected in a final thesis and conclusion.

Before starting with the presentation of the first section, a previous brief sub-section is laid out: There, in a synthetic fashion, the state of the question is presented, and a series of term definitions as well as term distinctions are proposed—some of them having been taken of a Philosophy vocabulary, others having been built out by the author himself—that of course are understood more easily, once one arrives at the second section of this investigation, when its conclusion can be outlined clearly and distinctively, investigation which purpose is no other than finding the point of intersection of Public International Law with the management of international relations, if there is any, and trying to conclude whether from a juridical and moral point of view, it results in being good or bad for the international community.

It is worth noting that the present investigation's analyses structures correspond to those of the Formal Logic, and that the method of investigation might fall under what is labeled as Cartesian, as it utilizes parameters set out by RENE DESCARTES¹⁰.

Likewise, within the approaches, that are neither mutually excluding nor “pure” in praxis, it is worth noting also that the reader will find, not only its explication per se, but also, two or more real examples with its specifics and a brief description.

Extrapolating approaches is essentially conducting and carrying out the eternal work of a jurist, which is dividing reality into categories and stages that in turn facilitates the adequate discerning

9 See BALMES, JAIME, in *Criterio* as to the usage of analysis and synthesis categories.

10 See DESCARTES, RENÉ, *Discourse on the Method of Rightly Conducting One's Reason and Of Seeking Truth in the Sciences*, 1637.

of just solutions. Reality observation by using approaches is nothing new¹¹, and it is worth pointing out, comes to be a very practical and useful exercise.

Finally: The process of identifying International Law realities, approaches and axioms as well as those realities, approaches, and axioms per se, is one regardless and irrespective of the author's accepting those or being in agreement with them from a moral or juridical point of view.

THE AUTHOR

STATE OF THE QUESTION

The state of the question is about laying out and establishing whether there is —not whether there shall be— a point of balance or an intersection between the application of Public International Law and the management of international relations, this by observing the first five years of the XXI Century facts and reality.

Once whether a point of balance exists or not has been identified and established, or better put, an “intersection” (and in achieving this aim, sundry reality categories¹² analyses are used and are denominated “approaches”) an analysis of how that intersection exists will be conducted.

DEFINITION OF TERMS

*Actual*¹³: What is in act (determined and perfect). *Contra*: Potential or virtual. The being terminated in its order.

11 See *Approaches* outlined by CLAUDE INIS in Moore's National Security Law (Carolina Academic Press).

12 Human beings normally make use of divisions to better understand reality. To this respect JAIME BALMES makes a thorough study of this approach of Formal Logic. But even when dividing a thing in many parts, one cannot forget that the “macro thing” continues to be the thing.

13 See JOLIVET, RÉGIS, *Vocabulary of Philosophy*, Desclée.

*Analysis*¹⁴: Operation consisting of dividing the whole on its parts.

Contra: Synthesis.

*Approach*¹⁵: Action and effect of approaching which is obtaining a result as close to the exact as needed for a determined purpose.

*Cartesian*¹⁶: What is referred to the Philosophy of René Descartes and its followers.

*Cause*¹⁷: That for which something follows.

*Clear*¹⁸: Idea that needs only to recognize its object among all others.

*Compliance*¹⁹: Fulfillment, execution, in this case of adjective and substantial norms having been or not previous non-compliance of adjective or substantial norms.

*Conclusion*²⁰: Proposition ending in a reason construction and deducted from it.

*Correct*²¹: Free from errors and in accordance with rules.

*Democratic Empire*²²: General Definition: Entity governing and mandating with authority within an authentic democratic framework. Specific definition: In the XXI Century, the United States of America.

*Dynamic*²³: Pertaining or relative to strength when producing movement.

*Distinct*²⁴: Idea to which is knowledge is given as to the elements composing its own object.

14 Ob. cit.

15 See Royal Spanish Idiom Academy Dictionary.

16 See JOLIVET, REGIS *Philosophy Vocabulary*, Desclée.

17 Ob. cit.

18 Ibid.

19 Ibid.

20 Ibid.

21 See Royal Spanish Idiom Academy Dictionary.

22 Personal. Definition of my own.

23 See Royal Spanish Idiom Academy Dictionary.

24 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

*Eclectic*²⁵: Related to Eclecticism, that is, a philosophical method by virtue of which different systems of thought are gathered as convenient it results to do so in a doctrine.

*Entities*²⁶: The essence considered on its formal reality.

*Evil*²⁷: Referred to evilness, which in Moral is the privation of a good that is good for one nature. Contra Good.

*Exterior Policy*²⁸: That specific of a State vis-à-vis other States or entities.

*International Policy*²⁹: Set of elements composing that specific of States and Nations.

*Exterior Relations*³⁰: Those held by a State with other entities different to it or outside its own frontiers.

*Extra-legal*³¹: Outside of the scope of what is legal. For the purposes of this paper, it will be a synonym of ultra-legal which means “beyond the law.”

*Felicity*³²: State in which there is a satisfaction of a rational inclination.

*Formal Logic*³³: That defines the conditions or form of the coherent thought process with itself independently of any considered area of knowledge.

*Material Logic*³⁴: That defines the form that shall be adopted by knowledge taking into account the object it can be applied to.

25 Ob. cit.

26 Ibid.

27 Ibid.

28 Personal. Definition of my own.

29 Ob. Cit.

30 Ibid.

31 Personal.

32 See Royal Spanish Idiom Academy Dictionary.

33 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

34 Ob. Cit.

*Formal*³⁵: What is derived from or proceeds in form.

*Good*³⁶: Referred to goodness that in Moral is the character of a sensible being before the bad actions of other and bowed to provide all goods that being deserves. Contra: Evil.

*Ideal*³⁷: Referred to a kind of exemplary idea.

*Incorrect*³⁸: Opposed to what is correct.

*Institution*³⁹: Each of the fundamental organizations of a State, Nation or Society.

*International Law*⁴⁰: (VITTORIA) What natural reasoning instituted among peoples.

*International Relations*⁴¹: Set of those held by States outside their frontiers. Intersection⁴²: Common point between two lines cutting each other.

*Judgment of Value*⁴³: In Logic, that which lays out the value of a thing or subject.

*Juridical Principles*⁴⁴: The fundamentals of what is juridical.

*Juridical Values*⁴⁵: Qualities or objective notes, *a priori* found in objectives and that are independent of our particular subjective vision and that are present in the reality of Law.

*Juridical*⁴⁶: What is referred directly or indirectly with what is Just in accordance with the precepts of Natural Law.

35 Ibid.

36 Ibid.

37 Ibid.

38 See Royal Spanish Idiom Academy Dictionary.

39 Ibid.

40 NIETO, RAFAEL, *Notes on International Law*.

41 Personal. Definition of my own.

42 See Royal Spanish Idiom Academy Dictionary.

43 Personal. Definition of my own.

44 Ob. cit.

45 TORRÉ, ABELARDO, *Axiología Jurídica. Apuntes de introducción al derecho*.

46 Personal. Definition of my Own.

*Justice*⁴⁷: Virtue that gives each being what it deserves.

*Legalistic*⁴⁸: Stuck to the law.

*Material*⁴⁹: Related to the matter. In Logic, is the property of an assertion that is understood not of the pure essence of the thing it is referred to but of that thing taken with all its contingent determinations.

*Nation*⁵⁰: Human element of the State or the group of its inhabitants.

*Natural Law*⁵¹: (GAYO) What natural reasoning instituted among mankind.

*Human rights*⁵²: The most fundamental and basic of any human being.

*Negative*⁵³: What comes from a negation.

*Occasion*⁵⁴: Accidental circumstance that create favorable conditions for action.

*Power*⁵⁵: Dominion, empire, faculty and jurisdiction that an entity has to mandate or executing something.

*Politics*⁵⁶: Art, doctrine and opinion referred to the governance of States.

*Positive*⁵⁷: What is founded upon sensible facts or might be reduced to them.

47 ARISTOTELES.

48 Personal.

49 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

50 See NARANJO, VLADIMIRO, *Teoría constitucional e instituciones políticas*, 5 ed., Temis, 1994,

51 NIETO, RAFAEL, *Notes on International Law*.

52 Common Definition.

53 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

54 Ob. cit.

55 See Royal Spanish Idiom Academy Dictionary.

56 Ob. cit.

57 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

*Principles*⁵⁸: In Logic, that from which a deduction is dependent upon.

*Public International Law*⁵⁹: Set of norms emanating from natural reasoning set forth by customary practice or by treaties, generally accepted by civilized nations (those in which law is effective) that govern the relations among States or entities with juridical status and that has as purpose, the natural and public good.

*Reality*⁶⁰: What is real. Real = In Logic, what is referred to things.

*Religion*⁶¹: From a subjective point of view, is an interior praise that man is obligated to have in front of God, his sole Principle and End.

*States*⁶²: In an ample sense, is a social, political, and juridical constituted body, settled on a determined territory, subjected to an authority that is exerted by means of its own organs, and which sovereignty is recognized by other States.

*Static*⁶³: That stays in the same state, without moving from it.

*Synthesis*⁶⁴: Operation that re-compose or compose a whole upon its composing elements.

*Technical*⁶⁵: For purposes of this paper, is that related to matters as diverse as the definition of boundaries, definition of aeronautic rights, free trade, etc.

*Values*⁶⁶: Attributes of a thing.

58 Ob. cit.

59 See NIETO, RAFAEL, *International Law Notes*.

60 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

61 Ob. cit.

62 See NARANJO, VLADIMIRO, *Teoría constitucional e instituciones políticas*, 5 ed., Temis, 1994.

63 See *Royal Spanish Idiom Academy Dictionary*.

64 See JOLIVET, RÉGIS, *Philosophy Vocabulary*, Desclée.

65 Personal. Definition of my own.

66 See *Royal Spanish Idiom Academy Dictionary*.

APPROACHES

PREVIOUS DISTINCTIONS:

_____ means “from what is.”

International Law	_____	International Rules
International Legality	_____	International Legitimacy
Legal ⁶⁷ Form	_____	Legal Substance
Juridical Form	_____	Juridical Substance
International Technical Rule	_____	International Juridical Rule
International Technical Law	_____	International Non-Technical Law
Legal or Illegal Means	_____	Legal or Illegal Ends
Just or Unjust Means	_____	Just or Unjust Ends

1. THE LEGALISTIC APPROACH

International Law's compliance and observance on what is adjective and substantial. International Law contained on bilateral or multilateral treaties referred to technical⁶⁸ subjects. Compliance of International Law and tangential non-compliance of adjective International Rules dealing with international security and international order.

67 The expression legal as used throughout this paper refers to is that of the discipline and science of Law, not Philosophy.

68 The typical example is that of treaties establishing boundaries to which protection States are particularly jealous. *See* AUST: “A party will not be able to withdraw from a treaty transferring territory or establishing a boundary.” *Cfr. Vienna Convention Art. 62 (2) (a)*. As to the application of *rebus sic stantibus* AUST says “... the principle cannot be invoked if the treaty ‘establishes’ a boundary, that term being used so as to include treaties which cede territory, not merely delimit a boundary.” AUST, ANTHONY, *Modern Treaty Law and Practice*, Cambridge.

This approach takes into account two important legal dimensions: On the one hand, the domestic Constitutional provisions of the entity⁶⁹, and on the other hand, the Public International Law and International Rules. Normally, the legalistic approach is present on democratic States that belong to the so-called “developing world” or “third world,”⁷⁰ this is, particularly Latin America, some African countries and some Asian countries and Nations.

The most important feature of this approach is that those entities have subscribed conventions and treaties that for example guarantee that their boundaries and frontiers are respected and that the rights that they potentially might enjoy are respected too. They usually thoroughly comply with formalities and substance of legal precepts and they make other entities to comply with them, by starting legal actions in several international instances particularly in the Court called, the “World Court.”

The legalistic approach is one that is clear both on its origins and on its development. Being one that is typical of developing nations or countries labeled as “third world countries,” these entities want to make their rights effective on the international stage so they are not “squashed” by the interests and actions of industrialized countries, or countries that belong to the “first world.” Hence, nations that utilize the legalistic approach actively participate in all international conferences aimed at protecting a broad range of far reaching spheres, such as those of prevention and punishment of crime⁷¹,

69 In Colombia, the management and conducting of international relations corresponds to the Executive Branch of Government. With respect to binding international instruments subscribed by duly authorized representatives, the Legislative branch of Government intervenes by approving the law containing the agreement and the Judicial Branch of Government intervenes by revising the constitutionality of such a law.

70 Cfr. Origin of the expression “Third World Countries” which use began once the so-called “Cold War” started to identify those Nations and States that did not belong neither to the Communist bloc led by the former Soviet Union nor to the Capitalist bloc led by the United States. Subsequently that expression began to be used to describe poor and underdeveloped Nations and States.

71 The origins and basic characteristics of the International Criminal Court might be explained as follows: “The International Criminal Court (ICC) is the first ever

environmental protection⁷², fight against terrorism, protection of natural resources, fight against illicit drug trafficking, etc.

Representatives from these entities see that the subscription of international instruments is a powerful and effective tool to dragging their nations and peoples out of a state of poverty and stagnation. As well, they see in clearly land marking their boundaries, the possibility of better exploiting their natural resources, and in the strong and legal defense of their interests (traditionally these States have a civil-law system⁷³) before international courts, a reflection of a precious nationalism⁷⁴ and patriotism⁷⁵.

The preceding is clear within the orbit of what is known as Public International Law. Within the orbit of what is known as Private International Law, the reflection of that nationalism and patriotism

permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished. The ICC will be complementary to national criminal jurisdictions. The ICC was established by the Rome Statute of the International Criminal Court on 17 July 1998, when 120 States participating in the “United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court” adopted the Statute. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished. The Statute sets out the Court’s jurisdiction, structure and functions and it provides for its entry into force 60 days after 60 States have ratified or acceded to it. The 60th instrument of ratification was deposited with the Secretary General on 11 April 2002, when 10 countries simultaneously deposited their instruments of ratification. Accordingly, the Statute entered into force on 1 July 2002. Anyone who commits any of the crimes under the Statute after this date will be liable for prosecution by the Court.” Source: ICC.

- 72 The Kyoto Protocol without the U.S. being a party to it entered into force in 2005 and seeks the reduction of global contamination indexes.
- 73 The Civil-Law system for purposes of this paper is the Continental Roman-Germanic system of law where controversies are adjudicated upon the application of written law, whereas the Common-Law system adjudicates controversies upon cases stating legal precedents.
- 74 Nationalism might be described as the “bad” extreme of the feeling that arises from being a national of any given country.
- 75 Patriotism makes reference to the relationship between people as to certain national, cultural and sociological elements and that demand from the individual the compliance of certain duties.

is materialized in the non-observance of decisions contained in international arbitration tribunal issued arbitral awards by means of annulments and analog domestic mechanisms. This pattern is common in states throughout Latin American, and Asian states such as India.

One cannot ignore that within the legalistic approach several spheres must be distinguished:

One is the creation⁷⁶ and application⁷⁷ of International Law and the concomitant compliance of International Law and International Rules upon creating and applying that very same set of international laws and rules; the other is the application and strict observance of domestic constitutional provisions, strengthened by a system in which the Executive, Legislative and Judicial branches of government intervene, by jealously taking care of the Constitutional provisions' being brought into effect.

In Latin America two clear examples of the legalistic approach as to the management of international relations can be brought: Colombia and Nicaragua. In fact, those two States currently are in the midst of proceedings carried out before the International Court of Justice, as to the definition of geographical limits in the Caribbean⁷⁸.

76 *Creation* of Law for the purposes of this paper embraces the identification of the factual situation, the identification of a solution and its promulgation by means of competent organ established procedures.

77 *Application* of the Law for the purposes of this paper embraces the demanding under the threat of the use of force of a series of mandatory provisions interpreted by a figure denominated Judge. And in its looking for its application the compliance of adjective and substantial rules will be sought having been or not the previous non-compliance on their part and being that the reason of a conflict's arising or not.

78 This legal process might be summed up by revising the summary of Nicaragua's application to the ICJ as follows: "In its Application, Nicaragua *inter alia* claims that 'the islands and keys of San Andrés and Providencia pertain to those groups of islands and keys that in 1821 [date of independence from Spain] became part of the newly formed Federation of Central American States and, after the dissolution of the Federation in 1838 came to be part of the sovereign territory of Nicaragua'. It considers in this connection that the BÁRCENAS - ESGUERRA Treaty of 24 March 1928 'lacks legal validity and consequently cannot provide a basis of Colombian title with

It is worth mentioning, that at least in the case of Colombia, the legalistic approach has been a constant one, maybe due to its only having one brief interruption on its “democratic riverbed” in 1953⁷⁹.

respect to the Archipiélago of San Andres.’ Nicaragua adds that in any case, that treaty was ‘not a treaty of delimitation.’ Nicaragua recalls that its Constitution as early as 1948 affirmed that the national territory included the continental platforms on both the Atlantic and Pacific oceans, and that by decrees of 1958, it made it clear that the resources of the continental shelf belonged to it. In 1965 it moreover declared a national fishing zone of 200 nautical miles. Nicaragua goes on to state that, by claiming sovereignty over the islands of Providencia and San Andres and keys which, according to it, ‘have a total of land area of 44 square kilometers and an overall coastal length that is under 20 kilometers, Colombia claims dominion over more than 50,000 square kilometers of maritime space that appertain to Nicaragua,’ which represents ‘more than half’ the maritime spaces of Nicaragua in the Caribbean Sea. It contends that the current situation is ‘seriously imperiling the livelihood of the Nicaraguan people, particularly those of the Caribbean coast that traditionally have had a great dependence on natural resources of the sea’ and observes that the Colombian navy has been intercepting and capturing a number of fishing vessels ‘in areas as close as 70 miles off the Nicaraguan coast,’ east of the 82 meridian. Nicaragua finally maintains that diplomatic negotiations have failed. Nicaragua therefore requests the Court to adjudge and declare: ‘First, that (...). Nicaragua has sovereignty over the islands of Providencia, San Andres and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation); Second, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary.’ Nicaragua further indicates that it ‘reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andres and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title’. It also ‘reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.’ As a basis for the Court’s jurisdiction, Nicaragua invokes Article XXXI of the American Treaty on Pacific Settlement (officially known as the ‘Pact of Bogotá’), signed on 30 April 1948, to which both Nicaragua and Colombia are parties. Nicaragua also refers to the declarations under Article 36 of the Statute of the Court, by which Nicaragua and Colombia accepted the compulsory jurisdiction of the Court, in 1929 and 1937 respectively.” Source: ICJ.

79 In 1953, Colombia suffered a brief interruption of its democratic process whit GUSTAVO ROJAS PINILLA’s *coup de etat*.

This, without any doubt whatsoever has made Colombia to be recognized and praised as one of the Western Hemisphere oldest and most stable democracies⁸⁰.

Other predominant feature of this legalistic approach is its utilizing as a political arm against the interests of empires and foreign powers. As the legalistic-approach Nations thoroughly observe international laws and rules, whenever there is an international conference or forum, they point finger powers that do not comply or not observe international laws and rules. One can think of States such as Cuba or Venezuela, or even some Asian countries such as Iran.

But, from a strict point of view their statements are far from being false ones. Who can deny the United States acted without permission from the United Nations Security Council when intervening in Kosovo and more recently in going on with the recent Iraq's invasion? And once this occurs, one can see the legalistic approach Nations pointing fingers.

The legalistic approach is a natural result of the socio-political and economic situation of Nations and States using it. It is a strong political arm internally and domestically as it allows identifying oppression and poverty causes in external agents. At the same time, it allows these Nations to be recognized by the international community and from that, some economic and financial benefits might be derived. From its non-compliance, sanctions might be derived.

One has to look to support this, the compliance and non-compliance human rights records that entities such as the United Nations or the United States Department of State have. In many occasions, such records make and strongly influence whether a Nation or State receives or not economic aid.

80 In the Western Hemisphere, Colombia's democracy is the oldest one after the American.

2. THE NATURAL LAW APPROACH

International Law and International Rules compliance both in adjective and substantial issues and matters. The ideal compliance of International Law.

The natural law approach is the ideal of International Law⁸¹. And it is “ideal” because such does not transcend into Reality. Nevertheless, it is reflected in several international instruments but praxis does not back it. The typical approach of natural law is found in the Catholic Church⁸² teachings, it being perhaps the only entity practicing it and seeking its compliance.

The main effect of the natural law approach is making any given Entity “being conscious of the Law” or better put, having a “symbolic effectiveness”⁸³ with a profound impact upon minds, not in practical actions, as the features and provisions are informed widely, but those are neither enforceable nor practiced. Thus, justice is praised but justice is not fully practiced or lived; genocide⁸⁴ is condemned but such is not totally avoided or prevented; hunger is identified, but it continues to exist; etc. This is due to the law power exercise is in practice impossible as there are no coercive and from time to time coactive means readily available at hand.

This “symbolic” feature might unfurl all of its practical implications when people reflect on its domestic Constitutional and legal provisions as well on its international actions, everything that is set forth by natural law. This would tend to occur only in

81 Possibly, distinguishing between International Law and Natural Law is a contradiction as in the ideal world of the “Must-Be” a total identification between the Natural Law provisions and the International Law provisions shall exist.

82 Catholic Church doctrine as to the conduction of international relations is stated in several parts of the Catechism: See *Especialy* Clauses 2241& 2308-2317.

83 I saw this expression first used in a Colombian Lawyer named MAURICIO GARCIA VILLEGAS in an article entitled “De qué manera la Constitución es importante” read by me in 1996 as reading material of Constitutional Law at Universidad Javeriana.

84 Genocide for the purposes of this paper is the extermination of people, Nation, Minorities or Ethnic Groups.

democratic regimes and in those in which a religious tendency is reflected, perhaps due and given pure historical factors.

Hence, the origins of modern democracies, such as the United Kingdom, the Republic of France, or the United States of America that radiate and continue to radiate other people's convictions, and due to their own historic processes and the concomitant identification of a series of supernatural values, reflect on their own intern and domestic Constitutional provisions eternal and natural ideas such as freedom, liberty, equality, private property protection, legitimate defense protection, and within their acting in international affairs, they seek the rest of the international community to be in sync with those rationally "normalized" discoveries.

This approach has a practical difficulty when it comes to trying to understand its basis and fundamentals: One has to enter into the orbit of Metaphysics⁸⁵ and maybe too, into the orbit of Religion and Moral. But here, is worth warning, the natural law approach is not a religious approach which might give it a different flavor.

The natural law approach although well reflected by the Catholic Church is not its as it is not anyone's monopoly, and it cannot be when natural law principles and values are objective and independent from the specific catalogue or labeling either of a democratic or a theocratic political regime.

Hence, one can say that even though there might be a coincidence with the religious approach, there is no identity.

There may be the risk of having the natural law approach as one equivalent to the moral approach towards Law⁸⁶. This maybe due to their having coincidence in most of the aspects.

85 For those interested in studying its fundamentals, that is, its source, a brief explication of what Metaphysics is needed. An interesting and easy to understand explication of the scope of Metaphysics is found on BALMES, JAIME, *Criterio*.

86 See MOORE, JOHN, "The Role of Morality and Law in Foreign Policy:" "Before examining this thesis, it may be instructive to recall and discard some earlier common myopia as to the role of morality and law in foreign policy. In this connection, it should be recalled that an early generation of realpolitik foreign affairs experts focused almost exclusively on power, or the balance of power, as the determinant in foreign policy. In this view, as illustrated by the work of professor HANS MORGENTHAU,

3. THE DEMOCRATIC EXTRA-LEGAL APPROACH

International Law compliance as to that contained in bilateral and multilateral treaties referred to technical subjects. Formal non-compliance of International Law as to its substantial and adjective

morality and law were simply incidental factors in foreign policy. (See H. MORGENTHAU, *Politics Among Nations: The Struggle for Power and Peace* 230-31). GEORGE KENNAN's now infamous phrase also reflects this view: 'Morality, then, as the channel to individual self-fulfillment-yes. Morality as the foundation of civic virtue, and accordingly as a condition precedent to successful democracy-yes. Morality in governmental method, as a matter of conscience and preference on the part of our people-yes. But morality as a general criterion for the determination of the behavior of states and above all as a criterion for measuring and comparing the behavior of different states-no. Here other criteria, sadder, more limited, more practical, must be allowed to prevail.' G.F. KENNAN, *Realities of American Foreign Policy* 49 [1954]. Today we know that this view was wrong in many different ways. First, as professors MYERS McDUGAL and DAVID LITTLE, and many others, have previously shown, for foreign affairs—of all mankind's activities—to be freed from moral or legal appraisal has never been remotely sensible (...) Second, this view neglected the critical role that ideas, including morality and law, played in influencing the behavior of nations as well as that of people forming these nations. It is a common philosophical error to believe subjectivities have no reality or real world effect. But a moment's reflection indicates that the history of ideas and political movements, including liberal democracy, communism, Nazism, fascism, nationalism, religion, human rights, and many other "subjectivities" have profoundly influenced this world and its international relations." Ahead when talking about the role of the rule of law in the conduction of international relations he says: "Just as the role of law is an essential component in national life, so, too, it is an essential component in international life. As John Jay wrote in *The Federalist*: 'It is of high importance to the peace of America that she observes the law of Nations...' And as THOMAS JEFFERSON wrote in 1790: 'I think with others, that nations are to be governed with regard to their own interests, but I am convinced that it is their interest, in the long run, to be...faithful to their engagements, even in the worst of circumstances, and honorable and generous always...' One fundamental principle in international affairs is, of course, that nations should follow the rules of treaty and customary international law binding on them. Perhaps the essential principle of world order, however, is that nations must adhere to the United Nations Charter obligation not to force aggressively in international relations (...) Perhaps one area for future discussion might be an approach to 'world peace accountability' that would highlight the critical importance of strict adherence to the Charter prohibition against aggressive use of force in international relations and would seek to raise public awareness of these issues (...)"

aspects. Material compliance of International Law's aims and goals as to global order and security⁸⁷. Democratic, free and correct exercise of power. What is good for most of the good people, this is the United States of America, is good for the world. It might be argued that the preemptive action doctrine is contrary to International Law. But no: It might be contrary to International Rules but not against International Law⁸⁸.

87 The intervention of the democratic empire has been fundamental in the achievement of the mission of International Law in two identifiable cases: the solution of the Second World War in 1945 and the resolution of the Kosovo crisis back in 1999. As to the antecedents of the first event, FRANCIS WEST JR. cited by JOHN NORTON MOORE says the following: "Because of the deep historical roots of our Manichean fixation with unconditional surrender, the European notions of balance of power and limited wars for limited objectives were alien to the American frame of reference. Beginning in the 17th century, we fought a series of barbarous Indian wars in which the settlements could not be defended but the enemy could be destroyed. The agents provoking the Indians often were Europeans (Spaniards and French), and we fought several wars against one European power or another. Our general lesson was that peace came after the Indian tribes were destroyed and Europe was pushed from the American continent. Ingrained in our history had been the object of fighting to a definite conclusion, destroying either the enemy's social or organizational structure. So when World War II was thrust upon us and the stakes were enormous, we acted to eliminate the threats once and for all, demanding unconditional surrender, occupying the conquered nations, imposing civilian, democratic governments, and withdrawing." West. P. 478. National Security Law. JOHN NORTON MOORE. Carolina Academia Press. As to Kosovo, when a military action leaded by the U.S. and conducted by NATO took place a time line as well as summary might be found in this web page: www.state.gov/regions/eur/kosovo. Professor ROBERT HAYDEN of the University of Pittsburg in an article entitled "Kosovo & Yugoslavia: Law In Crisis" cited by Moore states: "There is literally no question but that NATO's attack on Yugoslavia violates the United Nations Charter: the NATO attacks were never authorized by the Security Council and could not be any stretch of the imagination be considered to have been in self-defense. Interestingly, some commentators who acknowledge this uncomfortable fact then argue that an exception to international law should perhaps be created."

88 The Deterrence doctrine and the Preemption doctrine are summed up in its most important features by JOHN NORTON MOORE and those doctrines might be opposite to each other: As the first seeks to teach a lesson to entities but in responding to an eminent and actual aggression or threat, the second one also seeks to give a lesson, but in an anticipated way previous to the carrying out of an unjust or illegal act.

The extra-legal approach is that commonly utilized/practiced by developed countries, industrialized nations or countries labeled as “first world” countries. But is an approach mostly utilized by the democratic empire.

This approach is basically about seeking —by protecting the empire’s national security⁸⁹— the effective protection of values and juridical goods⁹⁰, above all, security⁹¹. And throughout its reaching, sometimes adjective and substantial rules might not be observed, which might make one draw the conclusion that even though means might be extra-legal, even illegal, ends obtained are juridical and a reflection of the desire of obtaining power, that is explicable and justifiable to properly achieving international order and security⁹².

89 NORTON MOORE, JOHN, outlines what National Security Law is citing FREDERICK TIPSON who as to that regard says the following: “The classical conception of national security is safety from foreign coercion or intimidation. This is the standard enshrined in international law by Article 2 (4) of the United Nations Charter as a prohibition against ‘the threat or use of force against the political independence or territorial integrity of any state.’ Most Americans would undoubtedly agree that the pursuit of national security is the highest responsibility of government. Not all would agree, however, what such security implies (...) the problem of defining national security is a matter of clarifying perceptions of what is to be made secure from whom and how. What is at stake?” Ahead the author identifies as elements at stake: territory, forces, people, resources and ideals. And as to what have to be sought: military self sufficiency, domestic force, world order and global well being.

90 Juridical Good is that protected by all Law orbits and spheres.

91 Security as Juridical Value is according to ABELARDO TORRÉ “[t]he effective protection of those rights and duties, that is, the secure protection of that order [a social just or unjust order] against anyone seeking to violate it, as well as its restoration, in case of its having been violated. On the contrary, when the existing protection is not sufficient, the value is given but in a negative sense, that is, as insecurity (...). Security was carried by individualism to the highest levels of the juridical Axiology.”

92 International order according to INIS CLAUDE cited by JOHN NORTON MOORE and others in “National Security Law” (Carolina Academic Press) is described as follows: “World order may be taken as characterizing the condition of the global multistate system, in contrast to national security’s focus upon circumstances of a particular state. It refers to the dependable absence of war or of intimidation by the threat of coercion. Stated positively, world order is a condition of the system marked by the high probability that international relations will be peacefully managed, it suggests cosmos rather than chaos, settled patterns of behavior rather than unpredictability, and agreed rather than forced decisions. Like national security, world order has to do

Most of the times, reality shows that is the democratic empire the one utilizing this approach that in appearance results as something contradictory as it is the democratic empire the one that more actively has participated in the drafting and drawing up of the most important instruments of International Law. Perhaps, this is a reflection of the exercise of power and an “empire-arris” as it is exercised by an advanced and free democracy⁹³.

Sometimes, the empire is accompanied by sub-empires as to material issues. Sometimes not, but statements demonstrating the non-accompanying attitude are reduced to diplomatic notes and of course, to the absence of material joining but with no aggression between each other.

Albeit on most of the occasions the pursuit of national security coincides with the pursuit and obtainment of global security, this approach is flawed in the sense that it is subjected to the dynamics of the American foreign policy and therefore cases such as those of Rwanda and Darfur might not be dealt with or sufficiently dealt with⁹⁴.

with the future as well as the present; it describes a situation that is stable rather than ephemeral.” Pages 31-32. *National Security Law*, JOHN NORTON MOORE, (Carolina Academic Press).

93 Democracy features are outlined in general by MANUEL OSORIO as follows: “[p]olitical doctrine favorable to the people’s intervention on governmental affairs, and also, the improvement of the people’s conditions. It comes from the Greek word Demos (people) and Kratos (Authority or Strength or Power). In a political sense it is difficult to draw up the contents of democracy, as there is not even consensus among authors as to what should be understood as “People.” In a modern and generalized sense, democracy is the system by which the people holds as a whole the sovereignty and in using it elects its form of government and consequently its leaders. It is, according to the widely known Lincoln’s phrase: The government of the people, by the people and for the people.” Contra: NICOLÁS GÓMEZ DÁVILA (Reactionary): “Rhetoric is the only flower of the Democratic Garden,” in *Sucesivos escolios a un texto implícito*.

94 According to the U.S. Ex-president WILLIAM JEFFERSON CLINTON one of the great frustrations of his administration was not acting in Rwanda earlier: “To that end, I am directing my administration to improve, with the international community, our system for identifying and spotlighting nations in danger of genocidal violence, so that we can assure worldwide awareness of impending threats. It may seem strange to you

Cause: Power. There is Power. The entity accepts the rules but those are broken in the anxious pursuit of higher ends this due to the having of power and the necessity of a rapid action.

It is worth noting that the extra-legal approach is only possible and convenient (in some cases it ends up being more possible than convenient), when is exercised by a democracy in its entire splendor. And for utilizing it, military and financial might is essential. If not, its exercise with “international justice and order effects,” is impossible.

The question that this extra-legal approach poses is the following: Why the entity utilizing this approach has previously agreed on and accepted the adjective and substantial mandates that it itself brake later? Answer can be given by saying that the entity doing that recognize the implicit justice in rules that it accepts and endeavor to follow and observe. But the political changing atmosphere and the exercise of power itself by other entities are superposed to the normal movement of this previously agreed International Law “waters,” and this then ends up being slow and inefficient. Who would want to wait for a million people to get killed while on the Security Council is debated whether action is necessary? Certainly no one. And much less, that who has the power to remediate the situation. It might be argued then that the decision making process inside the Security Council is inefficient per se. Perhaps. But even if it were not, the democratic power, that in some way is attached to the previously agreed International Law directives, in some moment, will not observe such directives. Power demands that from it. Circumstances demand that from it. There will be no one sanctioning it for doing so. It is the world forum’s greatest contributor. It has a veto right. It occupies the most important seats of the most important world multilateral financial institutions. It has at its disposition the most

here, especially the many of you who lost members of your family, but all over the world there were people like me sitting in offices, day after day after day, who did not fully appreciate the depth and the speed with which you were being engulfed by this unimaginable terror.” The White House, March 25th, 1998. Source: Clinton Library.

advanced and powerful army in all human kind history. Its Nation has three hundred and sixty million people, Christian most of them. Its democracy is strong. There are weights and counter-weights. Press is free and is a powerful scandal uncover machine. Who can stop it? No one.

Thus, at the same time that the objective identification of the mandates of natural law for the *ius gentium* has the signal and guide role, it might be argued that everything that is contained in the Charter of the United Nations plays that “signal” or “guide” role as well as a “beacon hill” role:

“I know I can act in an X or Y fashion. Y is outside the scope of what is legally permitted and requires a procedure to be followed. But circumstances are demanding and require fast and rapid action. Even though I do not forget the Charter’s spirit, I act against its provisions.”

I would dare to say that this is the rationale of a United States national security advisor, more when there is a supporting solid and advanced democracy.

4. THE THEOCRATIC AND RELIGIOUS APPROACH

Non-compliance of neither International Rules nor International Law. Isolation from international community.

The religious approach is a variant or kind of that contained in the legal approach. It is similar as it is utilized by entities that fall under the label of “developing nations” or “third world countries.” The difference however is found on its being the reflection of non-democratic States but rather theocratic that understand and find in religious reasons arguments to conduct international relations and affairs both in the technical arena as well and in the juridical itself⁹⁵.

95 The exterior policy of a regime as that of Iran’s is reflected throughout its constitutional provisions. See annex 1.

The religious approach shall be clearly distinguished from that of the natural law as the latter is not subjective but objective, and recognized by the international or universal community⁹⁶.

On its surface, the religious approach in conducting international affairs seems to be just and healthy. But it is not. Experience and reality show that far from achieving the goals of justice that any religion might be aimed at, leaders become fundamentalist guides that do not allow any kind of foreign influence to take place and that safeguard their frontiers, no matter what. One has to think then of regimes such as those of North Korea or Iran. With respect to the first one, there exists a figure that for most of the starving population is kind of a god. With respect to the second one, even though its Constitution might outline a different thing, the reality demonstrates that the religious fundamentalism make it to adopt behaviors that do not stabilize and go against international security and order.

The issue of proliferation and manufacturing of nuclear weapons and arms makes its entrance: Some may ask: Why Western Powers are opposed to certain States' having nuclear arms, e.g. North Korea and Iran having nuclear arsenals? Answer might be drawn up as follows: First, there are existing treaties and conventions that allow only to certain entities and Powers to have nuclear arms and only for certain uses. Second, it is not the same when a nuclear arsenal is in the hands of a transparent and free democracy than when it is in the hands of an autocratic or theocratic regime. Religious fundamentalism may play a dangerous role and then global security in general and that of neighbors' may be at risk.

The theocratic or religious approach in conducting international affairs raise another imminent danger: They do not accept the exercise of power by a foreign power and they see it as an aggression. And they try to make its citizens fight any of that power manifestations. They see it as something made out of evil forces. Their religious

96 International or Universal Community might be defined as that composed of all entities acting in the international arena or stage, that is, outside their own frontiers and physical boundaries.

beliefs make them to fight it. They do not accept it. They see it also as a cultural force and a dominating one and as such is instilled on their own nationals and citizens.

When it is not the State statement per se the one directly attacking the interests of foreign powers, then it does so, but surreptitiously. One has to think then of the Taliban regime in Afghanistan that permitted and condoned terrorist actions against the United States in September of 2001.

5. THE ECLECTIC DEMOCRATIC APPROACH

Normal compliance of International Rules and International Law provisions both in technical and juridical aspects. Occasional breaking of International Rules but not of International Law.

The eclectic approach is normally present in States composing the six world largest and most advanced economies after that of the democratic empire⁹⁷. This is, Japan, Germany, United Kingdom (Australia might be included), Canada and Italy⁹⁸. They normally accompany the democratic empire in its endeavors, but some times they do not especially if the non-compliance of adjective and substantial aspects of international rules and Law is proposed. As they sometimes join the empire and sometimes not, it might be said that these entities manage their international affairs by utilizing an eclectic or combined approach.

The each day international affairs growing acting European Union wants to play the political and economical U.S. counterweight role.

97 European Union's Exterior Policy upon Iraq's invasion but particularly that of Nations such as Germany and France might be summed up as follows: On the one hand reacting against the invasion and on the other hand by outlining their own stance as to the UN's overhaul. See Annex 2.

98 According to the 2003 World Bank's Report the ten world's largest economies are in billions of dollars the following: United States of America: 10,881,6092; Japan: 4,326,4443; Germany: 2,400,6554; United Kingdom: 1,794,8585; France: 1,747,973a6; Italy: 1,465,8957; China: 1,409,8528; Spain: 836,1009; Canada 834,39010 and Mexico: 626,080. Source: The World Bank.

Two of its most important members, Germany and France were absolutely opposed to the deployment of troops in Iraq in 2003. In the German case, chancellor SCHRÖDER was in the middle of a difficult political stump back in 2002 and by adducing the sad experiences Germans had with war in the past along with his having not found profound intelligence reasons to go to war, decided to not support the course of action of the Americans. Time would prove him right at least as to the intelligence findings as today the weapons of mass destruction President Bush laid out as the main reason to go to war have not been found. As to France, always proud of its predominant role in the conduction of international affairs, it believed the diplomatic course had not been adequately exhausted.

And here, a very important moot point has to be outlined: As to the French argument, particularly that of its Foreign Affairs Ministry, Mr. VILLEPAIN, President GEORGE W. BUSH responded something intelligent and smart that has to be analyzed: President BUSH said back in January of 2003 that twelve years of diplomacy had not been enough for the Iraqi regime to collaborate and that the regime had violated approximately twelve resolutions issued by the United Nations Security Council: That someone had to enforce them. Cfr. Declaration of President GEORGE W. BUSH before the Iraq's invasion took place in March of 2003⁹⁹.

99 "March 18, 2003: Dear Mr. Speaker: (Dear Mr. President) Consistent with section 3(b) of the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Public Law 107-243), and based on information available to me, including that in the enclosed document, I determine that: (1) reliance by the United States on further diplomatic and other peaceful means alone will neither (A) adequately protect the national security of the United States against the continuing threat posed by Iraq nor (B) likely lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and (2) acting pursuant to the Constitution and Public Law 107-243 is consistent with the United States and other countries continuing to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001. Sincerely, GEORGE W. BUSH." Source: The White House.

And the topic is interesting because it opens the oldest of International Law wounds: Regardless of being mandatory, there is no entity that can make it effective. And by entity I mean a United Nations institution. Could the world continue waiting the Iraqi regime to comply with the UN issued resolutions? Was it prudent to continue waiting, above all after what occurred in New York City and Washington back in September of 2001? President Bush presented a sophism that is attractive and good looking. In fact, upon that moment no UN issued resolution had been observed by the Iraqi regime. And after the first Gulf war took place (Kuwait invasion by Iraq) there had not been a big scale aggression against Iraq in light of its continuous violations of resolutions mandates. France wanted to exhaust all diplomatic avenues within the institutional framework of the United Nations. Its policy's bottom line was: More time.

On the other hand, the United States was not willing to wait: Action had to be initiated and rapidly. What is that? Two cultural and political approaches as to how to tackle on situations in the international sphere? Maybe. But everything was reduced to a “time” factor. No waiting was possible. Action had to be initiated fast. And as written in history books already, by mid-March of 2003 invasion of Iraq began by a coalition leaded by the United States of America and the United Kingdom and without the backing and support neither of France nor of Germany (casually Spain did participate and was part of the coalition).

Subsequently some argued that France and Germany had not supported the Bush's course of action due to their having some commercial interests in the region with some contractors and sub-contractors.

6. THE EFFECTIVE APPROACH: A COMBINATION OF THE NATURAL LAW APPROACH AND THE EXTRA-LEGAL APPROACH

A democratic empire, that is, the entity that inside of it contains structures that reflect democratic ideas and that has more power than others, will not observe procedures previously accepted by

them, and it will act extra-legally, but the International Law mission will be accomplished as a greater approach to universal justice and solidarity will be definitely verified.

The effective and ideal approach to conducting international relations paradoxically coincide with that that is real, at least partially. We have got an empire, that is a transparent democracy with the flaws and defects proper of the human kind, with weights and counterweights systems as to the acting of the different branches of its government and that seeks to protect the interests of a “fundamentally good” Nation, that in fact coincide with those of the “civilized world.”

Adjective and substantive parameters of International Rules are from time to time not observed, but the achievement of international security and order mission is verified as well as that of felicity, which is the ultimate goal of International Law as a natural law’s reflection.

One can arrive at this statement by observing facts of the last fifty five years. Even though poverty is still out there, dictatorships around the world have not disappeared, natural catastrophes have not ceased; genocides take place, etc., a shining democracy rises up in the horizon: the United States of America.

Regardless of its flaws and omissions in acting (mistakes and strategic errors cannot be overlooked nevertheless¹⁰⁰), and that surreptitiously some egoistic interests might have been pursued, the reconstruction of Western Europe after the Second World War; the fall of the “iron curtain” in 1989, the constant and ongoing humanitarian aid (the world’s largest and greatest) and the effective participation in the development of poor nations, is a reflection of the ideal approach in conducting and managing international relations¹⁰¹.

100 In my opinion, strategic mistakes were: the Vietnam incursion; not having chastised and brought into public light abuses committed by a dictator in Chile since 1973, and the slow response to the genocide that took place in Rwanda.

101 The U.S. State Department Mission Statement is a perfect example. See annex 3.

7. THE PROPOSED APPROACH OR THAT OF THE “MUST-BE”: UNITED NATIONS ORGANIZATION OVERHAUL

From more than a decade ago the most important world’s forum initiated a process of identifying those areas that need to be reformed. As clearly predicted, it was concluded that Security Council needed the most of reforms. Those reforms would give the institution more representation as Nations from Latin America such as Brazil, Africa and some Western European powers such as Germany would obtain a permanent seat. Irrespective of those reforms being passed and voted favorably and the democratic empire’s accepting the reforms, adjective and substantial parameters of International Rules will continue to be not observed.

The United Nations Organization has initiated from more than a decade ago a process of inner reflection tending to have its institutions reformed¹⁰². Facts have demonstrated that institutions created after the Second World War are not adequately responding to the challenges brought by the XXI Century. Maybe, the Iraq’s invasion in 2003 demonstrated even more the need of the UN institutions in charge of keeping international security and order to be reformed, above all, as its Security Council decision making processes proved to be totally ineffective.

But what needs to be stressed out is that any reform that gets to be adopted inside the world’s forum will continue to have that “sign and guide” role. Therefore, there will be no legal effectiveness. There may be juridical effectiveness. Cfr. *Extra-Legal approach and democratic empire’s rationale*.

In view of that, irrespective of the reforms being approved and passed and of giving more representation to Nations such as Brazil inside the UN Security Council and a permanent seat to the most powerful Western Europe economy, that of Germany’s, the

102 The Summary contained in Report A/59/565 of the Executive Committee entitled “A More Secure World: Our Shared Responsibility” can be found on Annex 4 of this paper. Source: UN.

democratic empire will sometimes observe the mandates of the International Rules but in other cases, it will not, as those in which its national security guidelines indicate to do otherwise. Consequences will arise and will be felt by the democratic empire only in the political and diplomatic field (e.g. how much actual influence it might win or lose; how its bilateral or multilateral relations get to be affected) but not in the legal one.

Therefore, how useful it is that Nations such as Germany or Brazil have permanent seats in the UN Security Council if irrespective of its decisions, the democratic empire will ignore them?

But let us not forget that regardless of the democratic empire's not observing decisions or decision-making schemes of the UN Security Council, the democratic empire has previously accepted its frame and macro legal and juridical contents. And that is important. Very important. Not so much in the sense that afterwards, means are not taken into account or even ignored (e.g. attacking only as legitimate defense and if there is attack is not under legitimate defense, requesting the UN Security Council authorization) but in the sense that the empire recognize in the ends and aims a reflection of international juridical order. And its influence as democratic empire as well as its own internal processes would not be effective if it did not accept that.

Of course, the democratic empire will not observe the adjective and substantial parameters of International Rules not because it intentionally wants to do so or because it intentionally wants to break the rules. No. And never has been like that as it could be the case with a non-democratic empire (e.g. let us think for a minute what would happen if China were the superpower or if the Soviet Union still existed). No. The democratic empire does not intentionally want to break International Rules. No. It just merely intends to protect its national security, that given its being based on a Constitutional order promulgated as reflection of liberty and justice, in the end coincides with the goals and aims of International Law.

Let us examine a *sui generis* case as that of the Iraq's invasion in 2003: Evidently the Republican administration of the moment considered Iraq as a threat against U.S. national security. It sought

to comply with the adjective and substantial mandates of International Rules and International Law. In the Administration criterion, time was running out. Domestic provisions as to national security from a political point of view, as well as the domestic legal and juridical requirements demanded action. It acted by invading another State and removing a tyrant from power. Some adduce that the U.S. interest was not the achievement of global and American security but an economic one and they criticize the amount of civilians and troops killed. They say that the invasion was not needed. That the objectives should have been sought by diplomatic and intelligence means.

I agree with the stance of some in the sense that one can discuss the surreptitious interest. But when it comes to balance between and betwixt what a tyrant can and may do with a WMD vs. what comes with removing him from power and allow the course of political events to be more fluid and smooth in the Middle East, I believe the balance bows in favor of the second, even though the expensive price one has to pay in terms of lives lost. On the long term, removing a problematic factor from the Middle East ends up being more good and positive than having this constant “stone inside the shoe.” Proceeding like that makes the mission of International Law to be eventually achieved.

Can anyone deny that the Iraqi people are better off without the tyrant than with him? I do not think. Even if for some time people do not have water and electricity supply.

Hence, we have that even the democratic empire’s accepting norms¹⁰³ and principles, there will always be extra-legality traces, and there will be no chance of going against the democratic will of a State seeking its own national security that in reality, will coincide at least in the ends with those of global and international security: Today, the

103 Being a lawyer myself, these conclusions not necessarily reflect my being in agreement with them. I do not necessarily agree with an associate that have agreed on norms which subsequently are going to be broken by that very same associate who is actually aware of that situation. But that is an axiom: That is what happens and will continue to happen.

United States being safe and seeking to be safe means that the world will be safe and seeking to be safe too. Then, there will be a synonymy between the field of what is real and juxtaposition between what is International Law, International Rules and the democratic empire's Power¹⁰⁴.

CONCLUSION. DEFINITION, DIVISION OF ANALYSES CATEGORIES AND
EXTRAPOLATION OF AN AXIOM (THESIS)

Intersection does not exist in the field of what is procedural or formal-substantive. It exists on the matter. The sought good is obtained irrespective of the non-observing of formalisms. Good sometimes is not actively pursued which is not the same as saying that bad consequences are actively pursued (there may be an omission in acting), although the omission might cause bad things (typical case is the prevention and punishment of human rights violations in great proportions: Darfur and Rwanda).

The leading material democracy seeks its well being and therefore the universal well being is reached: Public international order. Two spheres exist within what is legal: The juridical and the technical sphere. The juridical contains human rights (with no enforcement or enforceability demanded by means of the use of force) and international security, and the technical contains for example treaties on boundaries, aeronautics, free trade, etc.

Normally, the means are illegal, but the ends are legal and juridical. So the intersection might exist in the field of what is legal-technical and not in what is legal-juridical, but as to ends and not means: E.g.: human rights, global security, environment protection¹⁰⁵.

104 DUVERGER, MAURICE, asks himself in his "Sociology of Politics" the following: "Why a man gets the submission of others if the system of social values and norms do not recognize him power to do so? (...)"

105 See *McDougal, Law and Power*, 46 Am. J. INT'L L. 102, 111 (1952) cited by JOHN NORTON MOORE in Carolina Academic Press' "National Security Law:" "[International] Law is neither a frozen cake of doctrine designed only to protect interests in status

* Even the consequences derived from the non-observation of conventional and legal rules are processed thorough legal schemes.

DEFINITIONS LAYOUT

International Law: Set of rules recognized as mandatory by Nations and States, that reflect natural law principles and values and which efficacy depends always upon the will of a democratic empire.

International Rules: Set of norms accepted as mandatory by Nations and States, that not always reflect principles and values contained in Natural Law and which efficacy might or might not depend upon the will of a democratic empire.

International Order: The well-being, security, and peace state for the democratic empire.

DIVISIONS LAYOUT

(i) *Legal means* (1) and illegal means (2).

Example 1: Haiti's involvement by the U.S.

Example 2: U.S./NATO's lead intervention in Kosovo.

(ii) *Just means* (3) and unjust means (4)

Example 3: Reconstruction of Western Europe after the Second World War.

Example 4: Camp David Accords: Egypt makes the peace with Israel.

quo, nor an artificial judicial proceeding, isolated from power processes... [W]hen understood with all its commitments and procedures, law offers... a continuous formulation and reformulation of policies and constitutes an integral part of the world power process. Legalism versus Anti-legalism: No less than other realms of human interaction, the interplay of national governments and other institutions generates a flow of decisions with both constitutional and instrumental consequences. Yet traditionally international law has suffered from widespread doubts about its influence, relevance, or even existence."

(iii) *Legal ends* (5) and illegal ends (6)

Example 5: First Gulf war when Iraq invaded Kuwait.

Example 6: U.S. involvement in Vietnam.

(iv) *Unjust end* (7) and just end (8)

Example 7: Omission in acting in Rwanda in 1994.

Example 8: First Gulf war when Iraq invaded Kuwait.

(v) *Non-enforcement* (9)

Example 9: UN issued resolutions as to the alleged storage of WMDs by the Iraqi regime.

AXIOM

There will always be an entity that will gather even a slight difference of greater power vis-à-vis others, and as long as that entity-empire is an authentic democracy, where the values of justice, security, order and others, and where equality and freedom are the pivotal structures, the mission of International Law will be verified, even if formal and adjective structures are not observed.

ANALYSES CATEGORIES

Final cause	Tool	Calification	Application
Natural law	International Just Rule	International Just Non-Technical Rule	A or S = c.v.
Reason		International Just Technical Rule	A = c.n.v. */S = c.v.**
International rules	International Unjust Rule	International Unjust Technical Rule	A or S = c.n.v.***
		International Unjust Non-Technical Rule	A or S = c.n.v.

Acronyms:

c.v.: compliance verified.

c.n.v.: compliance not verified.

* *Adjective* for purposes of this paper relates to any previous or concomitant implementing *procedure* when acting in the international arena by any entity. *Substantial* for purposes of this paper relates to norms containing rights that embrace juridical goods different to those merely procedural.

**As long as the empire is a democratic regime. And I point out: It is complied materially, not formally. The approach of the proposed UN's overhaul seeks the formal compliance which will not be verified and observed by any democratic empire whatsoever as long as it does not satisfy expeditiously its interests.

***What is verified are unjust acts. Nonetheless, a moot example of International Unjust Non Technical Rule and eventually also,

Technical, was the Versailles Treaty, at least on the opinion of that time's Germany. See for example criticism made by Germans to the Versailles Treaty. The same might be said of some provisions of bilateral or multilaterals free trade agreements entered into by rich nations with poor ones.

ANNEX 1

IRAN'S FOREIGN AFFAIRS CONSTITUTIONAL PROVISIONS

"Chapter I General Principles Article 1 [Form of Government] The form of government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their longstanding belief in the sovereignty of truth and Koranic justice, in the referendum of 29 and 30 March 1979, through the affirmative vote of a majority of 98.2% of eligible voters, held after the victorious Islamic Revolution led by Imam KHUMAYNI. Article 2 [Foundational Principles] The Islamic Republic is a system based on belief in: 1) the One God (as stated in the phrase "There is no god except Allah"), His exclusive sovereignty and right to legislate, and the necessity of submission to His commands (highlighted); 2) Divine revelation and its fundamental role in setting forth the laws; 3) the return to God in the Hereafter, and the constructive role of this belief in the course of man's ascent towards God; 4) the justice of God in creation and legislation; 5) continuous leadership and perpetual guidance, and its fundamental role in ensuring the uninterrupted process of the revolution of Islam; 6) the exalted dignity and value of man, and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by recourse to: a) continuous leadership of the holy persons, possessing necessary qualifications, exercised on the basis of the *Koran* and the *Sunnah*, upon all of whom be peace; b) sciences and arts and the most advanced results of human experience, together with the effort to advance them further; c) negation of all forms of oppression, both the infliction of and the submission to it, and of dominance, both its imposition and its acceptance. Article 3 [State Goals] In order to attain the objectives specified in Article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals: 1) the creation of a favorable environment for the growth of moral virtues based on faith and piety and the struggle against all forms of vice and corruption; 2) raising the level of public awareness in all areas, through the proper use of the press, mass media, and other means; 3) free education and physical training for everyone at all

levels, and the facilitation and expansion of higher education; 4) strengthening the spirit of inquiry, investigation, and innovation in all areas of science, technology, and culture, as well as Islamic studies, by establishing research centers and encouraging researchers; 5) the complete elimination of imperialism and the prevention of foreign influence; 6) the elimination of all forms of despotism and autocracy and all attempts to monopolize power; 7) ensuring political and social freedoms within the framework of the law; 8) the participation of the entire people in determining their political, economic, social, and cultural destiny; 9) the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and the intellectual spheres; 10) the creation of a correct administrative system and elimination of superfluous government organizations; 11) all round strengthening of the foundations of national defense to the utmost degree by means of universal military training for the sake of safeguarding the independence, territorial integrity, and the Islamic order of the country; 12) the planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all; 13) the attainment of self-sufficiency in scientific, technological, industrial, agricultural, and military domains, and other similar spheres; 14) securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law; 15) the expansion and strengthening of Islamic brotherhood and public cooperation among all the people; 16) framing the foreign policy of the country on the basis of Islamic criteria, fraternal commitment to all Muslims, and unsparing support to the freedom fighters of the world. Article 4 [Islamic Principle] All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter. Article 5 [Office of Religious Leader] During the occultation of the WALI AL-'ASR (may God hasten his reappearance), the leadership of the Ummah devolve upon the just and pious person, who is fully aware of the circumstances of his age, courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107. Article 6 [Administration of Affairs] In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution. Chapter X Foreign Policy Article 152 [Principles] The

foreign policy of the Islamic Republic of Iran is based upon the rejection of all forms of domination, both the exertion of it and submission to it, the preservation of the independence of the country in all respects and its territorial integrity, the defense of the rights of all Muslims, nonalignment with respect to the hegemonic superpowers, and the maintenance of mutually peaceful relations with all non-belligerent States. Article 153 [No Foreign Control] Any form of agreement resulting in foreign control over the natural resources, economy, army, or culture of the country, as well as other aspects of the national life, is forbidden. Article 154 [Independence, Support of Just Struggles] The Islamic Republic of Iran has as its ideal human felicity throughout human society, and considers the attainment of independence, freedom, and rule of justice and truth to be the right of all people of the world. Accordingly, while scrupulously refraining from all forms of interference in the internal affairs of other nations, it supports the just struggles of the freedom fighters against the oppressors in every corner of the globe. Article 155 [Asylum] The government of the Islamic Republic of Iran may grant political asylum to those who seek it unless they are regarded as traitors and saboteurs according to the laws of Iran.” (highlighted). Source: Iranian Embassy to Canada.

ANNEX 2

GERMANY’S PROPOSED UN REFORM STANCE

“When the Charter of the United Nations entered into force in 1945, the Security Council had eleven members, five permanent and six non-permanent members. In 1965, following the emergence of many newly independent countries in the wake of the first wave of decolonization, the Security Council was, for the first and only time to date, enlarged by an additional four non-permanent members, bringing it up to its present membership of fifteen. A renewed surge in United Nations membership and above all the radically changed realities of the post-Cold War world prompted growing demands for a further enlargement of the Security Council. Third World countries were particularly keen to see change and explicitly backed calls for Security Council reform at a conference of the Non-Aligned Movement in Jakarta in 1992. In response, the UN General Assembly established with Resolution 48/26 a so-called Open-Ended Working Group with a remit to consider and put forward proposals on the enlargement of the Security Council and a reform of its procedures, including the power of veto. Since the Group was open to all members that wished to participate and operated on the consensus principle (i.e. decisions could only be taken

unanimously), much discussion took place but nothing was actually decided. The Razali Plan: However, under the guidance of a former President of the General Assembly, Malaysian Ambassador RAZALI ISMAIL, the Group did produce in 1997 some concrete and workable proposals for Security Council reform that came to be known as the Razali Plan. Having been elaborated in lengthy discussions with 165 UN member states, these proposals reflected the views of the majority. The Razali Plan envisaged five new permanent seats on the Council, two for industrialized countries and one for each of the main Third World regions of Africa, Asia and Latin America, including the Caribbean. These three regions would also be allocated an additional non-permanent seat, as would Eastern Europe, while the Western European group would keep its current two non-permanent seats. With nine new seats, this would make for a 24-member Security Council. New permanent members would not initially have the power of veto. On the issue of procedure, the Plan proposed that a vote should be taken first on the creation of new seats and the new permanent members should be elected subsequently. Under the Charter such changes require the support of a two-thirds majority in the General Assembly. However, no vote was ever taken on the Razali Plan. This was mainly because at the time the United States was strongly opposed to a Security Council with more than 21 or at most 22 members. Like other permanent members, the United States would have had no right of veto in any vote taken in the General Assembly. However, since amendments to the Charter (as entailed in Security Council enlargement) require subsequent ratification, permanent members could in effect veto such changes if they so wish. Reform proposals of the High-Level Panel: Following the failure of the Razali Plan, the momentum for reform ground to a halt until, in the wake of the Iraq war, UN Secretary-General KOFI ANNAN appointed a panel of internationally respected politicians and diplomats with a remit to analyze the major threats to global security, identify what needs to be done to combat and prevent these threats and make recommendations on institutional reform. Their report entitled "*A More Secure World - Our Shared Responsibility*" was published in December 2004. It proposes • as did the Razali Plan • enlarging the Security Council by a further nine seats and presented two alternative models (A and B) outlining how this could be done. While similar in many respects to the Razali Plan, Model A provides for six new permanent and three new non-permanent seats. This was in response particularly to African calls for two permanent seats for the region which is at the centre of much of the Council's work. The Federal Government supports Model A's broad thrust, although we see scope for changes in detail. Model B envisages no new permanent and only one new non-permanent seat, but it creates a new category of eight four-year renewable-term seats (currently non-permanent seats are for a non-renewable two-year term), which would rotate among medium-sized states

selected according to specific criteria. No clear two-thirds majority has yet emerged in favour of Model A, since many countries are still in the process of finalizing their position. It is already apparent, however, that there is scant support for Model B. Even prior to the publication of the report, over 100 of the UN's 191 member states indicated their preference for new non-permanent and permanent seats; only a minority were in favour of creating a new category of seats. This is mainly because most states attach great importance to the fundamental equality of world regions and want to see changes that will involve also Third World countries in the deliberations of the Security Council on an ongoing basis. The present constellation, in which the Council's permanent members are all from the North yet its decisions primarily concern the South, is clearly untenable. The report also proposes changes to the current system of regional groups, recommending notably the merger of the present Western and Eastern European groups. Since such a step would significantly reduce their chances of being elected to the Council, these groups are strongly opposed to any such change; the Eastern European countries are especially adamant on this, despite their support for European integration in general. The report also recommends that, unlike the current permanent members, the new permanent members should have no right of veto. The report's recommendations on Security Council reform concern only nine out of its altogether 101 proposals for reshaping the multilateral system to make it more effective. The Federal Government has considered all these proposals with keen interest, supports the great majority and will actively help to implement them. What are the next steps? From December 2004 to February 2005 the General Assembly held a number of debates on the High-Level Panel's report, focusing on the proposals in general as well as on another important aspect of the ongoing reform efforts, which will culminate in a summit of the heads of state and government of UN member states to be held from 14 to 16 September 2005. The purpose of this summit is to review what headway has been made towards implementing the goals enshrined in the Millennium Declaration of 2000 and in particular the Millennium Development Goals. In mid-March the UN Secretary-General will present his own report taking stock of progress on reform to date. Thereafter the main challenge will be to give effect to the proposed changes, including notably Security Council reform." Source: Germany's Ministry of Foreign Affairs.

ANNEX 3

U.S. DEPARTMENT OF STATE SUMMARIZED MISSION STATEMENT

“Create a more secure, democratic, and prosperous world for the benefit of the American people and the international community. American diplomacy in the 21st century is based on fundamental beliefs: our freedom is best protected by ensuring that others are free; our prosperity depends on the prosperity of others; and our security relies on a global effort to secure the rights of all. The history of the American people is the chronicle of our efforts to live up to our ideals. In this moment in history, we recognize that the United States has an immense responsibility to use its power constructively to advance security, democracy, and prosperity around the globe. We will pursue these interests and remain faithful to our beliefs. Globalization is compressing distances and creating new opportunities for economic growth. It is expanding the exchange of ideas, providing an impetus for political freedoms. Millions of the world’s poor, however, have not yet benefited from globalization, increasing their risk of alienation. Furthermore, transnational threats have emerged from globalization, enabling the creation of deadly global terror networks, spurring crime that reaches beyond borders, and spreading disease via the most mobile population in history. The spread of unconventional weapon technology risks giving tyrants and terrorists unprecedented power to harm the United States, our allies, and our friends. At the same time, famines and civil conflicts have erupted in countries steeped in poverty or constrained by autocratic rulers, creating waves of refugees and swelling the ranks of internally displaced populations. Traditional conflicts between and within states harm the innocent, with regional instabilities transmitting shock waves throughout our interconnected world. In the coming years, the principal aims of the Department of State and USAID are clear. These aims are anchored in the President’s National Security Strategy and its three underlying and interdependent components - diplomacy, development, and defense. First, we will strive to build and maintain strong bilateral and multilateral relationships in pursuit of our mission. There is the prospect for a durable peace among the great powers based on alignment against common threats. We will strive to strengthen traditional alliances and build new relationships to achieve a peace that brings security, but when necessary, we will act alone to face the challenges, provide assistance, and seize the opportunities of this era. U.S. leadership is essential for promoting this vision, but others must share the responsibility. The history of American foreign policy suggests that we will increase our chances of success abroad by exerting

principled leadership while seeking to work with others to achieve our goals. Second, we must protect our nation, our allies, and our friends against the transnational dangers and enduring threats arising from tyranny, poverty, and disease. Global terrorism, international crime, and the spread of weapons of mass destruction are new challenges born of traditional ambitions. Urban and rural poverty reflects the failure of statist policies, an absence of the rule of law, and poor governance. Radical ideologies are nurtured in societies deprived of the legitimate means of dissent, free markets, economic opportunity, and the free flow of ideas. A world in which half of humanity lives on less than \$2 per day is neither just nor stable. HIV/AIDS is not simply a health issue. This pandemic is destroying precious lives, undermining economies, and threatening to destabilize entire regions. Environmental degradation and deforestation threaten human health and sustainable development. Confronting these threats effectively is beyond the means of any one country, and calls for principled American leadership aimed at achieving effective coalitions that magnify our efforts to respond to these critical challenges. Third, in confronting the intersection of traditional and transnational challenges, we will combine our diplomatic skills and development assistance to act boldly to foster a more democratic and prosperous world integrated into the global economy. We will not waver in our belief that all human beings deserve lives of dignity and the opportunity to achieve their aspirations. We will promote freedom of speech, conscience, and religion, the rule of law, and economic freedom. In concert with civil society organizations, we will speak out against human rights abuses and the trafficking of human beings. The Department and USAID will pursue these aims through coordinated approaches and complementary programs. In addition to bilateral and multilateral relationships, we will engage with citizens and civil society organizations at home and abroad. We will work with U.S. nongovernmental organizations, institutions of higher learning, and private sector partners who share our objectives and help leverage our resources. Providing vital links to the American people and to counterpart organizations and institutions overseas, our U.S. partners help represent the best in America's technical, humanitarian, and management skills. We will support programs that encourage broad-based participation and civil society development as the foundation for democracy and good governance, economic growth and free enterprise, sound environmental stewardship, and quality education and healthcare. In meeting our strategic objectives and goals, the Department and USAID are committed to protect U.S. national interests and advance peace, security, and sustainable development. While we will apply these principles globally, we will focus on the following key priorities during the timeframe of this Strategic Plan, many of which represent Presidential initiatives: Arab-Israeli Peace: The

United States is committed to achieving the vision of two states, Israel and Palestine, living side-by-side in peace, security, and dignity. We seek to end terrorism and achieve a permanent reconciliation between the Israeli and Palestinian peoples. The United States, in consultation with the European Union, Russia, and the United Nations, and in partnership with the Israeli, Palestinian, and Arab governments, will work to promote a lasting peace.

A Stable and Democratic Iraq: Now that coalition military forces have ousted Saddam Hussein's regime, the United States will work side-by-side with the Iraqi people to build a free, democratic, and stable Iraq that does not threaten its people or its neighbors. Our goals are for Iraqis to take full control of their country as soon as possible and to maintain its territorial integrity. We will assist the Iraqi people in their efforts to adopt a new constitution, hold elections, and build a legitimate government based on the consent of the governed and respect for the human rights of all Iraqis. We will remain in Iraq as long as necessary, but not one day longer.

Democracy and Economic Freedom in the Muslim World: As we focus on reaching peace in the Middle East, we also recognize the profound need for democracy and market economies to meet the aspirations of a new generation. The Department will take the lead in working with countries in the Muslim world to advance economic reform, increase educational opportunity, and boost political participation, especially for women. Public diplomacy will be central to communicating our objectives and changing negative views of the United States. Through the Middle East Partnership Initiative (MEPI) and programs in non-Arab parts of the Muslim world, the Department and USAID will establish a new model of assistance delivery to ensure our funds support the individual citizens that can drive change from within.

A Stable and Democratic Afghanistan: Helping Afghanistan to achieve peace and stability will require a continued commitment by the Department, USAID, and international donors to four interlocking objectives: (1) Afghanistan must establish internal and external security to ensure economic reconstruction, political stability, and stem the rise in opium production; (2) we must work to establish a stable, effective, and broadly representative central government; (3) economic development must bolster this new government and reduce dependence on donors; and (4) we must help the people of Afghanistan meet their critical humanitarian needs while reconstruction proceeds.

Reduction of the North Korean Threat to the Region and World: The Department will continue to work with friends and allies, particularly South Korea, Japan, and China, to meet North Korea's challenge to peace and security. Our goal is the complete elimination, irreversibly and verifiably, of North Korea's nuclear weapons program. North Korea must know that this is the only route to end its self-isolation and deliver a better life for its people.

Reduction of tensions between India and

Pakistan: Both countries are key partners in the war on terrorism, and vital to our goal of preventing further proliferation of weapons of mass destruction and other dangerous technologies around the world. We will work to prevent the outbreak of war on the subcontinent. We seek broad-based bilateral partnerships with both India and Pakistan spanning a range of security, political, economic, social, and cultural issues. We will work with India to help complete promising economic reforms, reap the benefits of integration into the global economy, and generate opportunities for entrepreneurs and ordinary people in both our countries. We will work with Pakistan to stop terrorism, stabilize Afghanistan, reduce extremism, and strengthen education and institutions that promote the rule of law, constitutional democratic governance, and economic opportunity.

Drug Eradication and Democracy in the Andean Region: The narcotics trade in the Andean Region, especially in Colombia, imposes a very high cost on its ordinary citizens in addition to being the major source of such drugs trafficked to the United States. The Andean Counterdrug Initiative through eradication, interdiction, and alternative development will support the fight against narcoterrorists and secure democracy, extend security, and restore economic prosperity in the region.

Strengthened Alliances and Partnerships: Within the North Atlantic Treaty Organization (NATO), we will integrate new members into the alliance and develop joint capabilities to fight terrorism and respond to 21st century dangers. We will work with the European Union (EU) on transnational threats and challenges to include: (1) fighting terrorism; (2) combating HIV/AIDS; (3) advancing global trade while resolving trade disputes on a mutually advantageous basis; and (4) cooperating on regional crises. Our new relationship with Russia is yielding positive results for both countries in strategic arms reduction, counterterrorism, common approaches to regional conflicts, and development of Russia's energy resources. A key challenge is to find common ground with respect to transfer of dangerous technologies. In a changing and often dangerous environment, our network of robust bilateral alliances with Japan, the Republic of Korea, Australia, the Philippines, and Thailand will remain the linchpin of Pacific regional security. We encourage the emergence of a peaceful and prosperous China, whose citizens enjoy the blessings of liberty, that contributes to the fight against terrorism and proliferation, and that works with the United States and others to reduce dangers existing on the Korean Peninsula, in South Asia, and beyond.

A More Effective and Accountable United Nations (UN): The United States participates in multilateral organizations like the UN for specific purposes: (1) to foster international peace and security; (2) protect the innocent; (3) advance freedom, human rights, democratic institutions, and economic development; (4) address humanitarian needs; and (5) raise the quality of people's lives through sustainable development focused on

improving health, nutrition, and education around the world. We engage countries in the UN system to ensure that our priorities are taken seriously and our resources used wisely. The UN can only be truly effective if its member states willingly meet their responsibilities and adhere to the principles for which the organization was founded. It is vital that the United States exert robust leadership throughout the UN system in pursuit of its values and interests. We believe that the UN will be stronger and more effective if more Americans are given the opportunity to work in the UN and related institutions.

HIV/AIDS Prevention, Treatment and Care: In his 2003 State of the Union Address, President Bush announced a \$15-billion, 5-year Emergency Plan for AIDS Relief that will focus on prevention, treatment, and care in 14 severely affected countries in Africa and the Caribbean. The Department will work with USAID and other agencies to ensure these resources support our goals of saving lives, safeguarding people's health, and advancing regional stability.

Reduced Threat of Famine: The United States is committed to finding longer-term solutions to food insecurity and working in partnership with developing countries to address this global problem. In particular, the food crisis in the southern African countries and Ethiopia and the war in Sudan have affected millions of people. The United States continues to meet critical needs in these countries, as well as in Afghanistan and Iraq. We want to increase the contribution of all donors to tackle urgent food shortages and find longer-term solutions.

Famine is a preventable tragedy with the right economic and governance policies and institutions to prevent the conditions that lead to famine. Viable early warning systems and assessments will help mitigate disasters and increase preparedness and response.

Accountable Development Assistance: President Bush has charted a new direction for development assistance by proposing the creation of the Millennium Challenge Account (MCA). The goal is to increase U.S. development assistance by 50 percent over the next 3 years for countries that take responsibility for their own development by ruling justly, investing wisely in their people, and encouraging economic freedom. The Department and USAID will work with other agencies, the White House, Congress, and eventual recipient countries to make this initiative succeed in promoting good governance and prosperity.

Aligning Diplomacy and Development Assistance: In pursuing our shared mission and goals in the international arena, U.S. development assistance [1] must be fully aligned with U.S. foreign policy. This means the Department and USAID must consistently and thoroughly review our policy and development programs as we strive to support those countries that are committed to democratic governance, open economies, and wise investment in their people's education, health, and potential. We will seek opportunities to program our resources in complementary and

targeted ways. With the full support of the Secretary, our organizations will carry forward an agenda to implement new innovative strategies and eliminate redundancies, while ensuring that our diplomacy and development assistance produce results. As discussed later in this Strategic Plan, two joint Department of State and USAID councils will be established to accomplish this priority.” Source: U.S. State Department.

ANNEX 4

UN’S RENEWAL PROPOSAL: “A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY.”

“In his address to the General Assembly in September 2003, United Nations Secretary-General KOFI ANNAN warned Member States that the United Nations had reached a fork in the road. It could rise to the challenge of meeting new threats or it could risk erosion in the face of mounting discord between States and unilateral action by them. He created the High-level Panel on Threats, Challenges and Change to generate new ideas about the kinds of policies and institutions required for the UN to be effective in the 21st century. In its report, the High-level Panel sets out a bold, new vision of collective security for the 21st century. We live in a world of new and evolving threats, threats that could not have been anticipated when the UN was founded in 1945 – threats like nuclear terrorism, and State collapse from the witch’s brew of poverty, disease and civil war. In today’s world, a threat to one is a threat to all. Globalization means that a major terrorist attack anywhere in the industrial world would have devastating consequences for the well-being of millions in the developing world. Any one of 700 million international airline passengers every year can be an unwitting carrier of a deadly infectious disease. And the erosion of State capacity anywhere in the world weakens the protection of every State against transnational threats such as terrorism and organized crime. Every State requires international cooperation to make it secure. There are six clusters of threats with which the world must be concerned now and in the decades ahead: • war between States; • violence within States, including civil wars, large-scale human rights abuses and genocide; • poverty, infectious disease and environmental degradation; • nuclear, radiological, chemical and biological weapons; • terrorism; and • transnational organized crime. The good news is that the United Nations and our collective security institutions have shown that they can work. More civil wars ended through negotiation in the past 15 years than the previous 200. In the 1960s, many believed that by now 15-25 States would possess nuclear

weapons; the Nuclear Non-Proliferation Treaty has helped prevent this. The World Health Organization helped to stop the spread of SARS before it killed tens of thousands, perhaps more. But these accomplishments can be reversed. There is a real danger that they will be, unless we act soon to strengthen the United Nations, so that in future it responds effectively to the full range of threats that confront us. Policies for prevention: Meeting the challenge of today's threats means getting serious about prevention; the consequences of allowing latent threats to become manifest, or of allowing existing threats to spread, are simply too severe. Development has to be the first line of defense for a collective security system that takes prevention seriously. Combating poverty will not only save millions of lives but also strengthen States' capacity to combat terrorism, organized crime and proliferation. Development makes everyone more secure. There is an agreed international framework for how to achieve these goals, set out in the Millennium Declaration and the Monterrey Consensus, but implementation lags. Biological security must be at the forefront of prevention. International response to HIV/AIDS was shockingly late and shamefully ill-resourced. It is urgent that we halt and roll back this pandemic. But we will have to do more. Our global public health system has deteriorated and is ill-equipped to protect us against existing and emerging deadly infectious diseases. The report recommends a major initiative to build public health capacity throughout the developing world, at both local and national levels. This will not only yield direct benefits by preventing and treating disease in the developing world itself, but will also provide the basis for an effective global defense against bioterrorism and overwhelming natural outbreaks of infectious disease. Preventing wars within States and between them is also in the collective interest of all. If we are to do better in future, the UN will need real improvements to its capacity for preventive diplomacy and mediation. We will have to build on the successes of regional organizations in developing strong norms to protect Governments from unconstitutional overthrow, and to protect minority rights. And we will have to work collectively to find new ways of regulating the management of natural resources, competition for which often fuels conflict. Preventing the spread and use of nuclear, biological and chemical weapons is essential if we are to have a more secure world. This means doing better at reducing demand for these weapons, and curbing the supply of weapons materials. It means living up to existing treaty commitments, including for negotiations towards disarmament. And it means enforcing international agreements. The report puts forward specific recommendations for the creation of incentives for States to forego the development of domestic uranium enrichment and reprocessing capacity. It urges negotiations for a new arrangement which would enable the International Atomic Energy Agency

to act as a guarantor for the supply of fissile material to civilian nuclear users at market rates, and it calls on Governments to establish a voluntary time-limited moratorium on the construction of new facilities for uranium enrichment and reprocessing, matched by a guarantee of the supply of fissile materials by present suppliers. Terrorism is a threat to all States, and to the UN as a whole. New aspects of the threat – including the rise of a global terrorist network, and the potential for terrorist use of nuclear, biological or chemical weapons – require new responses. The UN has not done all that it can. The report urges the United Nations to forge a strategy of counterterrorism that is respectful of human rights and the rule of law. Such a strategy must encompass coercive measures when necessary, and create new tools to help States combat the threat domestically. The report provides a clear definition of terrorism, arguing that it can never be justified, and calls on the General Assembly of the UN to overcome its divisions and finally conclude a comprehensive convention on terrorism. The spread of transnational organized crime increases the risk of all the other threats. Terrorists use organized criminal groups to move money, men and materials around the globe. Governments and rebels sell natural resources through criminal groups to finance wars. States' capacity to establish the rule of law is weakened by corruption. Combating organized crime is essential for helping States build the capacity to exercise their sovereign responsibilities – and in combating the hideous traffic in human beings. Response to threats. Of course, prevention sometimes fails. At times, threats will have to be met by military means. The UN Charter provides a clear framework for the use of force. States have an inherent right to self-defense, enshrined in Article 51. Long-established customary international law makes it clear that States can take military action as long as the threatened attack is imminent, no other means would deflect it, and the action is proportionate. The Security Council has the authority to act preventively, but has rarely done so. The Security Council may well need to be prepared to be more proactive in the future, taking decisive action earlier. States that fear the emergence of distant threats have an obligation to bring these concerns to the Security Council. The report endorses the emerging norm of a responsibility to protect civilians from large-scale violence – a responsibility that is held, first and foremost, by national authorities. When a State fails to protect its civilians, the international community then has a further responsibility to act, through humanitarian operations, monitoring missions and diplomatic pressure – and with force if necessary, though only as a last resort. And in the case of conflict or the use of force, this also implies a clear international commitment to rebuilding shattered societies. Deploying military capacities- for peacekeeping as well as peace enforcement -has proved to be a valuable tool in ending wars and helping to secure States in their aftermath. But the

total global supply of available peacekeepers is running dangerously low. Just to do an adequate job of keeping the peace in existing conflicts would require almost doubling the number of peacekeepers around the world. The developed States have particular responsibilities to do more to transform their armies into units suitable for deployment to peace operations. And if we are to meet the challenges ahead, more States will have to place contingents on stand-by for UN purposes, and keep air transport and other strategic lift capacities available to assist peace operations. When wars have ended, post-conflict peacebuilding is vital. The UN has often devoted too little attention and too few resources to this critical challenge. Successful peacebuilding requires the deployment of peacekeepers with the right mandates and sufficient capacity to deter would-be spoilers; funds for demobilization and disarmament, built into peacekeeping budgets; a new trust fund to fill critical gaps in rehabilitation and reintegration of combatants, as well as other early reconstruction tasks; and a focus on building State institutions and capacity, especially in the rule of law sector. Doing this job successfully should be a core function of the United Nations. A UN for the 21st century. To meet these challenges, the UN needs its existing institutions to work better. This means revitalizing the General Assembly and the Economic and Social Council, to make sure they play the role intended for them, and restoring credibility to the Commission on Human Rights. It also means increasing the credibility and effectiveness of the Security Council by making its composition better reflect today's realities. The report provides principles for reform, and two models for how to achieve them – one involving new permanent members with no veto, the other involving new four-year, renewable seats. It argues that any reforms must be reviewed in 2020. We also need new institutions to meet evolving challenges. The report recommends the creation of a Peacebuilding Commission – a new mechanism within the UN, drawing on the Security Council and the Economic and Social Council, donors, and national authorities. Working closely with regional organizations and the international financial institutions, such a commission could fill a crucial gap by giving the necessary attention to countries emerging from conflict. Outside the UN, a forum bringing together the heads of the 20 largest economies, developed and developing, would help the coherent management of international monetary, financial, trade and development policy. Better collaboration with regional organizations is also crucial, and the report sets out a series of principles that govern a more structured partnership between them and the UN. The report recommends strengthening the Secretary-General's critical role in peace and security. To be more effective, the Secretary-General should be given substantially more latitude to manage the Secretariat, and be held accountable. He also needs better

support for his mediation role, and new capacities to develop effective peacebuilding strategy. He currently has one Deputy Secretary-General; with a second, responsible for peace and security, he would have the capacity to ensure oversight of both the social, economic and development functions of the UN, and its many peace and security functions. The way forward the report is the start, not the end, of a process. The year 2005 will be a crucial opportunity for Member States to discuss and build on the recommendations in the report, some of which will be considered by a summit of heads of State. But building a more secure world takes much more than a report or a summit. It will take resources commensurate with the scale of the challenges ahead; commitments that are long-term and sustained; and, most of all, it will take leadership – from within States, and between them.” Source: UN.

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