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'I Am the Law'

Nick and Sam are in a violent feud. Nick goes to court to settle who is the aggressor, who the victim. After the court says it is ready to decide, Sam denounces the proceedings and walks out. He goes on shooting at Nick's house, saying he has a legal right to do so because Nick is an aggressor.

That is the concept of law advanced by the legal adviser to the State Department, Abraham Sofaer. Of course he does not put it so simply. But that is what he means in his statements justifying American policy in Nicaragua. He means that the United States, one party to the dispute, can decide on its own that it has a legal right to use force.

In March, after Nicaraguan troops followed "contras" to their bases in Honduras, Mr. Sofaer said Nicaragua could not justify the incursion under

To justify the use of U.S. force in Nicaragua

international law as an act of self-defense. It could not, he said, because Nicaragua was "an aggressor state."

"An aggressor state does not have the right of self-defense," he said. "You cannot develop a right of self-defense when you started the fight. It's as simple as that."

In a column I described that statement as an example of legal "reasoning" distorted by ideology. I said that Mr. Sofaer, a learned former judge, really knew better. Mr. Sofaer then reasserted his position in a letter to the editor.

"I have described Nicaragua as guilty of aggression against its neighbors," he wrote. "No objective person believes otherwise." To support that proposition the letter cited charges that Nicaragua has armed the left-wing forces fighting against the Government of El Salvador.

When a lawyer says in a brief that "no objective person believes otherwise," an experienced judge is likely to smile. For that kind of language often covers up a lack of evidence to support a claim.

The Reagan Administration has repeatedly described Nicaragua as a supplier of arms to the Salvadoran rebels. But it has produced no convincing evidence of any significant arms flow since early 1981. A former C.I.A. specialist on the subject, David C. MacMichael, said in 1984 that there

had been "no verified report of arms moving from Nicaragua to El Salvador since April 1981."

If the Administration has solid evidence, the place to produce it would have been the World Court. When Nicaragua sued there in an attempt to stop American support of the contras, the U.S. said that support was a legitimate response to Nicaraguan aggression in El Salvador.

But then the United States walked out of the case — and out of the World Court's jurisdiction. Why did it, if the facts were so obvious?

Even if there were good evidence of Nicaraguan aid to the Salvadoran rebels, it would not follow that the United States could justify its support of the contras' war on Nicaragua as an act of self-defense under international law. That is so for several reasons.

The United Nations Charter basically outlaws the use of force by nations. It makes an exception for the inherent right of self-defense against armed attack, but only on condition that the nation attacked ask the U.N. Security Council to act.

The United States never went to the Security Council to complain of Nicaraguan "armed attack" or "aggression" in El Salvador. Rather, Nicaragua went to the Security Council in 1984 to complain about the mining of its harbors, and the Council voted 13 to 1 to condemn the mining — the negative vote being a U.S. veto.

International law, in allowing self-defense, requires that it be proportionate to the attack. If what the United States has done in Nicaragua were a response, it would be grotesquely disproportionate: the creation of a contra army, 10,000 to 20,000 strong, that carries out terrorist attacks with the aim of overthrowing the Nicaraguan Government.

What Mr. Sofaer wants us to believe is that the United States has a legal right to do what it wants to Nicaragua, without producing evidence in court or following the rules, but that Nicaragua has no right under international law to defend itself against a large army attacking from privileged sanctuaries. That is supposed to be law.

The real point is evident. The Reagan Administration wants to use force whenever it pleases, and it looks to its lawyers to provide a cover. In fact, Mr. Sofaer candidly told the American Society of International Law that we withdrew from the World Court so we could decide on our own when to use force in "self-defense." Thus do Mr. Sofaer and his colleagues mock the ideal of law that the United States has for so long sought to promote in international life. □

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