

1965 the Johnson administration, at a loss as to what else it might do, had basically given up." When Suharto's takeover began on September 30, 1965—itsself a reaction to an attempt by left-wing junior officers to eliminate conservative generals—"American officials remained in doubt as to who Suharto was," writes Brands. He argues that Washington could not have engineered the coup: Declassified cables and memos show that the Americans never really knew what was going on in Jakarta. As late as October 13, for example, Secretary of State Dean Rusk noted: "We are not

at all clear as to who is calling the shots within the military." He instructed the U.S. ambassador, Marshall Green, to be cautious about promising aid to the generals (despite their obvious anti-communism), since "we do not have a clear picture of the military's aims and plans." And in 1966, when CIA director Richard Helms was ordered to look for evidence that the tough U.S. stand in Vietnam had encouraged Suharto, he reluctantly concluded that the coup had "evolved purely from a complex and long-standing domestic political situation."

## Law Games

"The Limits of 'International Law'" by Robert H. Bork, in *The National Interest* (Winter 1989-90), 1112 16th St. N.W., Washington, D.C. 20036.

International law has become the last refuge of scoundrels.

That, at least, seems to be the opinion of Robert Bork, the one-time nominee to the U.S. Supreme Court now at the American Enterprise Institute. He is, in fact, doubtful that any such thing as "international law" exists. Of course, there are international rules governing the treatment of diplomats, disputes over fishing rights, and similar matters, but what people mean when they speak of international law are the grand principles enunciated in such documents as the Charter of the United Nations. But Bork says that these noble sentiments are so contradictory and so often violated with impunity that legal scholars commonly begin treatises on international law by "addressing the question whether the subject contains much that can properly be called 'law.'"

Too often, says Bork, they argue that "since people called international lawyers are doing something, what they are doing must be international law."

What these people seem to be doing much of the time, he adds, is denouncing the United States as an international outlaw—for invading Grenada, aiding the Nicaraguan contras, bombing Libya, or hijacking the airliner bearing the *Achille Lauro* hijackers. But international law is so ephemeral that others can and do argue

that such actions are perfectly legal. And consider, says Bork, the spectacle of the 1984 verdict by the International Court of Justice declaring the United States to be in violation of international law for aiding the contras. At the time, only 47 of the world's 162 nations accepted the jurisdiction of the U.N.-sponsored Court—and nine of the Court's 15 judges came from nations that did not.

In Bork's view, all of this merely underscores the futility of international law. Disputes among nations are political matters, not fit for judicial resolution—which is the reason that we do not refer them to *American* courts. The only way international law can even attempt to deal with such issues is to drain them of morality. Bork writes: "In order to be international, rules about the use of force between nations must be acceptable to regimes that operate on different—often contradictory—moral premises. The rules themselves must not express a preference for freedom over tyranny or for elections over domestic violence as the means of coming to power. This moral equivalence is embodied in international charters. The charters must be neutral, and the easiest neutral principle is: No force. The fact that the principle will not be observed by those who simply see international law as another foreign policy instrument does not affect the matter."