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# International Law and the American National Interest

Michael Byers\*

## I. INTRODUCTION

There are those, John Bolton<sup>1</sup> and Paul Stephan<sup>2</sup> among them, who worry that international law poses something of a threat to the US national interest. They argue that the United States should disengage from international law and international institutions, that to the degree the United States involves itself in foreign affairs, it should favor unilateral over multilateral action. To others, this concern seems misplaced: what does the sole superpower have to fear from international law? Moreover, the response continues, even if international law is not directly beneficial to the United States, it is clearly beneficial to at least some other countries. Therefore, the non-threatened and magnanimous superpower should support the creation of an effective international legal system that would enable others to cooperate, develop, and prosper.

These two positions, which might be characterized as the “realist” position and the “idealist” position, are both flawed. International law is in fact very much in the US national interest. For the United States, engagement with international law and international institutions offers a stability in international politics—and therefore security—that could never be achieved through isolationism and unilateralism.

## II. THE BENEVOLENT SUPERPOWER

Let me be clear from the start that I am not opposed to the United States. Given the possible alternatives, I would much rather have the United States as the single superpower than, say, Russia, China or even the United Kingdom. This country’s rich

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1. John Bolton, *Should We Take Global Governance Seriously?*, 1 Chi J Intl L 205 (2000).

2. Paul Stephan, *International Governance and American Democracy*, 1 Chi J Intl L 237 (2000).

tradition of democracy and the rule of law, of everything it stands for going back to 1776, is something that makes it a rather benevolent superpower. The United States is committed to individual liberties. It is committed to the rule of law. It is remarkably restrained in the use of force. Imagine a world where Russia or China is the single superpower.

The United States, which played a crucial role in two world wars—and one Cold War—against tyranny, is also to be congratulated for adhering in large part to its international commitments. This sends a very positive signal to other countries. Moreover, the United States' economic and political success as a leading and longstanding democracy provides an important role model for those states in transition that are embracing the idea of democracy and the rule of law themselves.

### III. DANGEROUS WORLD

We all know the threats that worry statesmen and military planners: biological, chemical and nuclear weapons in the hands of terrorists and rogue states. We know about threats to democracy—nepotism, corruption, ethnic conflicts, civil wars—and the problems of environmental degradation, disease and mass migration. We also know about the cronyism and corruption that undermine international business, and about the increasingly internationalized problem of organized crime. We live in a world in which threats to the national interest are increasingly global in character—and where countries that turn inward and ignore these threats risk serious consequences. Countries may be able to isolate themselves politically, but no country, not even the United States, can isolate itself from the effects of pollution, wars, or economic crises abroad.

### IV. OTHER DEMOCRACIES

Democracy in the United States is not all that is threatened. The problems of this dangerous world are problems that face all of the approximately 120 states that are in one way or another committed to democracy and the rule of law. As a non-American, albeit one who lives in the United States, I am alarmed by the fact that this discussion is framed as if this country is the only democracy that needs protecting.

One of the greatest accomplishments of the United States has been the encouragement and the promotion of democracy abroad. Could we have imagined 50 years ago, or even 20 years ago, that by the year 2000 there would be approximately 120 democratic states in existence? This is an amazing accomplishment, and when we are talking about democracy and international law, let us keep that accomplishment in mind.

Now, it could be seen as something of an overstatement to assert that there are approximately 120 democratic states, or to suggest that democracy in each of those countries is as stable and successful as democracy in the United States. Many of these states are newly democratic, and their democracies are fragile. But be that as it may,

they are committed to the same or at least similar ideals as the United States. They have merely adopted different approaches to democracy, as Paul Stephan points out.

Moreover, US democracy itself is hardly perfect. The current presidential election campaign, and the issue of campaign financing, reveals that US politicians are sometimes more responsive to wealthy donors than they are to their own constituents. I also find it peculiar that some people apparently believe that US democracy has been perfect since 1776, when it took Americans almost 100 years to eliminate slavery and almost another 100 years to confront segregation. Not unlike the world's fledgling democracies, the United States too is in a continuing process of perfecting its democracy.

The risks facing the world's democracies are changing. They are becoming risks—such as biological and chemical weapons, and international economic crises—that cannot adequately be addressed through unilateralism, at least not strict unilateralism of the kind that John Bolton and others advocate. Democratic allies are more important today than they have ever been before.

In this era of interdependence, what happens to these other democracies is not just a question of maintaining the legacy that Americans have given to the rest of the world. Their success or failure will have an impact upon the national security, the prosperity, and the latitude for democracy itself within the United States.

If the rest of the world were despotic, if the rest of the world were ruled by people like Fidel Castro and Saddam Hussein, I suspect that democratic freedoms within this country would be narrowed. The national security imperative would mean that even a country committed to the US Constitution could not provide the scope of freedoms, including the freedom of expression, that people in this country currently enjoy. When democracy outside the United States is threatened, democracy within the United States may be under threat as well.

## V. A MAJOR OPPORTUNITY

This brings me to my final point, and this is a point that goes, not only to democracy, but also to international law and international institutions more generally. The history of the United States involves not only a commitment to its own national interest, but also a commitment to the rule of law and to the betterment of the human situation, to enabling people to experience and enjoy their full individual liberty. At the international level, such a broader commitment necessarily involves a leadership role. The United States has always been a leader, though in some periods it has demonstrated more of a leadership role than in others—compare the role played by it at the end of the First and Second World Wars to its response to the Rwandan genocide and the crisis in Sierra Leone.

At this particular moment in history, with the unprecedented influence of the United States, in a world that is becoming committed to the rule of law through domestic democratic institutions, in a world where most states are embracing

international legal institutions as well and recognizing that political, environmental and economic interdependence is ever-expanding, in this time of great potential for the furtherance of the American interest and American values, it is surprising to find people advocating that the United States abandon this leadership role. It is incredible that some commentators would suggest that it is in the United States' interest to allow the collapse of the carefully constructed international political and legal infrastructure that it helped to create, that for the single superpower, isolationism and unilateralism are somehow good enough.

It is also my view that a turn toward isolationism and unilateralism would have a significant detrimental effect upon the long-term national interest of the United States. Even if the United States might not need a strong international legal system in the short-term, it would almost certainly benefit from having a strong international legal system in the long-term. The relative power positions of states inevitably change over time, and at some point even the United States will lose its position as the sole superpower. Moreover, it is almost certain that any new superpower—whether China, India, Nigeria, Russia or Brazil—will not be nearly as benevolent as the United States. When the balance of power shifts, the United States might regret not having a strong United Nations and tight constraints on the use of force. It might regret not having binding treaties on nuclear testing, disarmament and non-proliferation. And it might, quite possibly, regret not having an effective International Criminal Court.

Taking the long-term view and looking beyond the domestic electoral cycle, the national interest of the United States would best be served by engaging with and supporting international law and institutions, by seeking to promote the rule of law, not only in the United States, but at the international level as well. The United States should seize the opportunity to exercise its influence in the creation of treaties, of international institutions, and of customary international law. The United States did this remarkably well with the World Trade Organization, which is a resoundingly successful example of American influence and negotiating strategy.

Although the capacity of the United States to negotiate treaties and develop international institutions is sometimes limited by its domestic constitutional system, engagement will always serve the United States better than disengagement. For example, although the Rome Statute for an International Criminal Court is unlikely to be ratified by the United States in the foreseeable future, the statute is more compatible with American interests than it would have been had the United States not participated fully in the negotiating process. Engagement, not disengagement, has been critical.

In terms of customary international law, here too the United States is the predominant power. Customary international law is made largely through state practice. Who engages in state practice? And also, to address Paul Stephan's point, who chronicles state practice? Who writes the law review articles? Who exercises the influence both in diplomacy and academia? Well, largely Americans.

Similarly, Americans have no reason to fear the human rights revolution, for it too is a legacy of the United States, of liberalism, and of the tenets set forward in its Declaration of Independence. It represents the globalization of American values, and as such should be embraced and supported by the United States, rather than disparaged and undermined.

To conclude, I turn to 1776. The American Revolution was a response by those believing in the rule of law and individual liberties to a superpower that had become complacent about its own national interest—and somewhat too smug about the righteousness of its own position. The United States should not make the same mistake that the United Kingdom did in the late 18th century. I would not want the benevolent superpower that I see today to become the not-so-benevolent superpower of tomorrow; I would not want preservation of American democracy tendered as an excuse for abusive policies abroad. Above all, I would not want the benevolent superpower—if it succeeds in remaining benevolent—to lose its position of influence because of an isolationist and unilateralist view of how best to promote its own national interest.

The United States has a major opportunity at this point in history. It also has a significant responsibility, because the United States can play a leading role in developing an international legal system that would serve it, and its citizens, extraordinarily well. All that is required is a long-term view of the American national interest, rather than the short-term view taken by those who worry about, and sometimes thoughtlessly denigrate, international law.

