

INTERNATIONAL RELATIONS – THE PATH NOT TAKEN

This book is a comprehensive analysis of the relevance of international law to the conduct of international relations and foreign policy. Written by a distinguished international lawyer and academic with over 35 years of experience, this book contains a systematic treatment of both fields of study. The work serves as an introduction to contemporary theories of international relations and as a primer on international law, especially for the nonlawyer. Focusing on contemporary problems of terrorism, nuclear nonproliferation, war and peace, economic development, protection of the global environment, reform of the United Nations, democracy, and protection of human rights, this work develops the thesis that international law is a neglected tool of foreign policy that can be used to address many of today's difficult and unresolved problems. It concludes by advocating a new global order in the form of the rule of law and multilateral solidarity in addressing world problems.

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International Relations – The Path Not Taken

Using International Law to Promote World Peace and Security

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Contents

Preface and Overview	<i>page vii</i>
1 Introduction: Two Very Different Wars in Iraq	1
2 The Twenty-First Century – The End of History or a New Beginning?	14
3 International Power Politics	35
4 A New Global Order Based on International Law and Multilateralism	54
5 Peace and Security: Reinventing the United Nations	96
6 International Political Economy	148
7 International Environmental Protection	196
8 International Human Rights	250
9 International Crimes	285
10 Conclusions	302
Index	307

Preface and Overview

This book advances a simple but highly controversial thesis: International law and international institutions must be the focal points of foreign policy and international relations for all countries. Indeed, they should now be consciously employed to create a new global order in international relations. This thesis, termed “liberal internationalism” by specialists, is controversial because international law and institutions are regarded as having failed badly in the twentieth century after World War I and both are regarded by many as weak and of marginal significance today.

In the chapters that follow, my task is to convince readers that international law and institutions have matured over the past half-century to the point where they now have a proven record of usefulness and accomplishment. Both are also admittedly far from perfect and have obvious flaws. But the question is, What to do about these flaws and failings? My argument is that the way forward is not to ignore and deprecate international law and institutions but to reform and improve them. In other words, the glass is half full, rather than half empty.

My argument assumes that states, which are still central to international society, are rational actors that have interests and seek to further those interests. But I argue that there has been a paradigm shift in how states view their interests. The traditional approach to state-interests theory is to assume that individual interests predominate. Thus, international society is composed of atomistic, self-seeking states that will only cooperate in those relatively rare cases in which there is a coincidence of interests. This view is no longer adequate to explain the world of the twenty-first century.

This new view of international relations is evident in the pronouncements of world leaders. For example, on May 12, 2005, at a gathering of African and Asian leaders in Indonesia, Prime Minister Manmohan Singh of India stated: “Peace has been said to be indivisible [quoting independent India’s first leader,

Jawaharlal Nehru]. So is freedom, so is prosperity now, and so is disaster in this world that can no longer be split into isolated fragments.”

State interests today generally can be grouped into three categories: (1) individual state interests, (2) state interests rooted in cooperation with closely associated and allied states, and (3) state interests held in common with all of international society.

The presence and at times the dominance of categories two and three create a new paradigm that calls for new thinking about international relations. In the pages that follow, I make the case for the predominance of these categories of interests, but some examples are in order here. Interest category two was the reason why so many states allied or associated with the United States gave their support and even sent troops to participate in the Iraq War of 2003. The pull of their relationship with the United States was strong enough to overcome their national self-interest and even to defy national public opinion.

Interest category three is also self-evident: What else explains, for example, the worldwide concern and help in the aftermath of the Indian Ocean tsunami of 2004? In the not so distant past the death or suffering of thousands of people in some remote area was simply ignored. But in the twenty-first century the world is small, and people and their well-being are interconnected as never before. Not only did virtually all states come together to contribute aid coordinated by the United Nations (UN), but individuals, companies, and nongovernmental organizations (NGOs) pitched in as never before. In the United States alone, over 130 companies contributed at least \$1 million each, as well as needed products and services, and individual contributions totaled \$1.2 billion (one 10-year-old elementary-school student raised \$17,000 from residents of his town).

Recognition of this third category of state interests has led to a broadened vision and definition of the concept of security. Until the early 1990s, security in international relations was narrowly defined as protection from external aggression. After the end of the Cold War a new definition emerged – security may now be subdivided into at least three dimensions: state security, human security, and environmental security because international security is threatened today not only by external threats, but also by disease, hunger, chronic poverty, and environmental and ecological disasters. For example, on January 31, 1992 the U.N. Security Council adopted the following understanding of security:

The absence of war and military conflicts amongst states does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian, and ecological fields have become threats to

Preface and Overview

ix

peace and security. The United Nations membership as a whole, working through appropriate bodies, needs to give the highest priority to the solution of these matters.¹

Thus, every state in the world has an interest in preserving peace and security, and this includes dealing with problems of world poverty, disease, deprivation of human rights, and environmental degradation. These considerations increasingly have the power to cause even powerful states to submerge individual interests to achieve larger common goals. Some recent examples of this tendency include, the U.N.'s Millennium Development Goals established in the year 2000 combating poverty; the 2005 G-8 agreement for massive debt relief for poor countries; the ongoing Doha Development trade negotiations at the World Trade Organization, and the Global Fund to Fight HIV/AIDS.

This book shows how international law and institutions are indispensable to furthering state interests in categories two and three. The power of legal rules creates legitimacy as well as order and predictability in international relations. International institutions can give rise to multilateral action that multiplies the force of policy. This multiplier effect is indispensable to the solution of world problems. International institutions and law are more stable than, say, *ad hoc* "coalitions of the willing," which tend to be fragile mirages. A prime example is what happened in Iraq in 2003–5, when the coalition of the willing assembled by the United States melted away and both the U.N. and NATO were called upon to play essential roles.

But my thesis is not only that international law and institutions are essential to interest categories two and three; they are also essential even to realize traditional state interests, category one. This is because of the interconnectedness of international society and the fact that law and institutions form a worldwide network that must be viewed as a whole. This interconnectedness raises dramatically the cost of noncooperation with international legal and institutional norms. A state that follows its own individual interest in, say, controlling the emission of greenhouse gases that contribute to climate change, will pay a price in generating a lack of cooperation and sympathy when it comes to completely different issues of policy. U.K. Prime Minister Tony Blair summarized this point nicely when he stated in January 2005: "If America wants the

¹ Statement adopted by the U.N. Security Council 31 January 1992, quoted from Tatsuro Kunugi, "Redressing Security Deficits in our Fragmented World: U.N. Perspectives and Beyond," in *Toward a Peaceable Future* 13, 14 (Thomas S. Foley Institute for Public Policy, Yoichiro Murakami, Noriko Kawamura, and Shin Chiba, eds. 2005).

rest of the world to be part of the agenda it has set, it must be part of their agenda too.”²

The events of September 11, 2001 made international relations a central concern for Americans. In the race for president in 2004, 41 percent of voters said they based their vote on foreign policy or national security.³ This is an historic high matched only during the years of World War II. The reelection of President George W. Bush was generally considered a confirmation of his conduct of foreign policy since 9/11. Among voters who considered terrorism the critical issue – and there were many – President Bush won by 86 percent to 14 percent.

I have timed this work to follow closely and fit in with two important recent works: (1) *The 9/11 Commission Report* (2004), a best seller, the final report of the National Commission on Terrorist Attacks upon the United States, and (2) the *Final Report of the United Nations High Level Panel on Threats, Challenges and Change* (Dec. 2004), which calls for fundamental reforms of the United Nations.

This book is a critical assessment of international relations and America’s role in the world. At the end of the Cold War, the United States found itself in an unparalleled position of global power and leadership. It seemed like a dream come true: The “evil empire” of communism disintegrated like an evil monster turned into dust. The United States stood tall – the good fight was over – as the last of the totalitarian “isms” of the twentieth century was finished for good.

With the end of the Cold War, the United States was free to choose a new basis for its relationship with the rest of the world. Briefly, under the first President George Bush (Bush 41) and his Secretary of State, James Baker, a new world order was proclaimed: America would rely on cooperation with the rest of the world. The touchstone of foreign policy would be international law and international institutions like the United Nations. Because the United States no longer had to worry about “enemies” (apart from a few, rather impotent “rogue nations”), international problems could be addressed cooperatively.

Alas, this did not come to pass. Frustration with the weaknesses and limits of international law and institutions and a consciousness of the overwhelming superiority of American power have led to ever-greater unilateral action in foreign policy and what is perceived by the rest of the world as arrogance on the

² Tony Blair, Speech at the Meeting of the G-7, Davos, Switzerland, January 27, 2005.

³ Ian Bremmer, President of the Eurasia Group, “Sept. 11 Changed How U.S. Voters Pick a President,” *Financial Times*, Nov. 15, 2004.

Preface and Overview

xi

part of the United States. For example, the administration of George W. Bush repudiated or rejected six key international agreements, including the Kyoto Protocol to curb global warming and the International Criminal Court. International institutions and new multilateral initiatives like the 2004 Framework Convention on Tobacco Control, which combats tobacco consumption and cigarette smuggling on a global scale, are treated with benign neglect. In every field of foreign affairs the United States has made important decisions alone and overridden long-established rules and institutions. Cooperation has been reduced to “he who is not with us is against us” and the formation of “coalitions of the willing.” John Bolton, the Bush Administration’s Ambassador to the United Nations, appointed in 2005, has written: “We should be unashamed, unapologetic, uncompromising American constitutional hegemonists.”⁴

This emphasis on power and confrontation is merely a twenty-first century version of the old game of balance of power in international relations. We know from history where this game leads. There are now glimmers of the old realities on the horizon. For example, Robert Kaplan, an author close to the Bush administration, has written an article, “How We would Fight China,”⁵ an account of a predicted military confrontation in the Pacific over U.S. navigation rights in the seas off the Chinese coast. In contrast, this book demonstrates that international law can be used to resolve this dispute; ironically, the United States refuses to strengthen its hand by remaining one of the only countries in the world not to accept the U.N. Convention on the Law of the Sea.

The administration of George W. Bush casts its policies in highly moralistic terms, focusing on “the war against terrorism with a global reach,” as a fight against pure evil by the forces of good and of human freedom. This good versus evil dichotomy has the advantage of justifying whatever measures the side of the “good” wishes to employ. Such a policy is in reality, however, *Realpolitik* of the kind that gave us the wars and disruptions of the nineteenth and twentieth centuries. American foreign policy, particularly since 9/11, is based on narrow conceptions of U.S. power and interests. The all-out effort to protect the American people against another Al Qaeda attack has endangered broader aspects of national security – the political and economic standing of the United States.⁶ American unilateralism has called into question the very

⁴ John E. Bolton, “Is There Really Law in International Affairs?,” *Transnational Law & Contemporary Problems* 1 (2000): 98.

⁵ Robert Kaplan, “How We would Fight China,” *Atlantic Monthly* (June 2005): 49.

⁶ During the 2004 campaign for president, Republican Senator Chuck Hegel of Nebraska said: “I think both these campaigns have let down this country. The most important issue

foundation of U.S. foreign policy since the end of World War II: the Atlantic Alliance and NATO. Many formerly close allies of the United States now suggest a parting of the ways; nations that cooperate with U.S. initiatives do so reluctantly and in token fashion.

U.S. foreign policy at the beginning of the twenty-first century is in crisis. The Bush administration team appointed in 2005 includes Condoleezza Rice, Secretary of State, an architect of the policy of disassociation and dismantling of international treaties, organizations, and laws, and Alberto Gonzales, Attorney General, the source of the legally flawed and misguided policy of executive power that led to the abuses of prisoners in Afghanistan, Iraq, and Guantanamo. Diplomacy is eschewed in favor of confrontation and war with disastrous results. Of the three nations President Bush singled out in 2001 as “an axis of evil,” one, Iraq, has been attacked in a war that has become a debacle, and at this writing no clear policy other than possible attack has been established to deal with the other two – North Korea and Iran, which have become more defiant than ever.

Unilateralism is married to moral relativity, the idea that because America represents “the good guys” there are no standards of conduct: Dissembling to lead the nation into war, destroying cities to save them, and disregarding international norms forbidding torture and the inhumane treatment of prisoners are all permissible. The end justifies the means, and might is right.

As a result, U.S. standing in the world has taken an enormous hit. The widespread sympathy for America after 9/11 has been replaced by aversion. Opinion polls in European NATO-allied countries show a majority hold a negative opinion of the United States. In the Arab world this reaches 90 percent even in countries like Egypt that receive billions in U.S. aid. Among formerly sympathetic people there is a mixture of anger and apprehension and talk of an “American empire.”⁷

The U.S. response to homeland security has been narrowly militaristic. This was the correct response in the case of Afghanistan in 2001 – targeting the elimination of Al Qaeda training camps and Taliban collaboration with terrorists. However, the 2003 war in Iraq was clearly an overreaction, as demonstrated by the *9/11 Commission Report* of 2004, which found no link between Iraq and Al Qaeda. The Iraq War has been counterproductive to the war on

to address is how to put back together America’s standing in the world.” In James Bennet, “Foreign Policy Split: Wide Gulf or Not?,” *Washington Post*, Nov. 1, 2004.

⁷ John B. Judis, *The Folly of Empire* (2004).

Preface and Overview

xiii

terror, diverting American resources and power and serving as a recruiting tool for Al Qaeda. Unfortunately, the United States is now mired in a quagmire with no foreseeable escape.⁸

The narrow-minded homeland security policy of the United States, which is based on military action abroad and a fortress mentality at home, risks creating war without end and a “clash of civilizations”⁹ with Islam. Current policy neglects the need for a fundamental reassessment of U.S. policies toward the Muslim world. It is common to say that the terrorists have “hijacked” an otherwise benign religion. This is only partially correct; it ignores the many passages in the Qur’an exhorting the faithful to “slay the infidals.” It also ignores the widespread political oppression and denials of human rights in countries with a majority Muslim population, especially in the Arab world. The respected NGO, Freedom House, in its 2003 report, *Freedom in the World*, discloses that of forty-one predominantly Muslim countries in the world, not one is assessed as genuinely “free” or fundamentally respectful of political rights and civil liberties. The United States, with other like-minded states, especially in Europe, should engage the Muslim world in a broad policy dialogue to instill democracy, tolerance, and liberal principles in Islam. At the same time the United States should reevaluate its own policies toward Islamic countries, especially in the Middle East, to reduce its reliance on those policies that provoke anger and to install positively beneficial policies. For example, Deputy Secretary of State Robert Zoellick has proposed the creation of a Middle East Free Trade Area with the United States by 2013.

As Pakistan’s President Pervez Musharraf warned in October 2004, “Action must be taken before an iron curtain finally descends between the West and the Islamic world.”¹⁰ Al Qaeda is not a state, does not have an army, and is not even an organization in the conventional sense. It can flourish only through the continuing recruitment of people motivated by anger and hatred. The pool it can draw upon is immense: Islam is the world’s fastest-growing religion, and the Middle East leads the world in the rate of population growth. Al Qaeda and its allies can only be eliminated through political change.

This book argues that there are better, more effective values upon which foreign policy may be based – the path not taken: international law and

⁸ The CIA warned in a confidential report in December 2004 that the situation in Iraq was deteriorating and would not rebound any time soon. Douglas Jehl, “CIA Reports a Bleak Outlook in Iraq,” *Washington Post*, Dec. 8, 2004.

⁹ The phrase comes from Samuel Huntington’s 1996 book with this title.

¹⁰ BBC News, International Version, http://news.bbc.co.uk/2/hi/south_asia/3681290.stm

international institutions, including the United Nations. These were once important forces in U.S. international relations, and in fact the United States played an essential role in creating much of the existing structure of law and international institutions. At present, however, they are dismissed as hopelessly out of date, too constrictive, or just plain irrelevant. No U.S. political figure dares to embrace these structures because they are considered political poison. The news media in the United States, with rare exceptions, commonly ridicule or ignore them.

As a result the U.S. public is largely unaware that much of the rest of the world, including most importantly the European Union, affirms that international law and institutions are the touchstones of foreign policy and international relations. Laila Freivalds and Jack Straw, the Foreign Ministers of Sweden and the United Kingdom, respectively, put it this way:

International law is a common baseline for all international relations, and central to our efforts to build a safer and more prosperous world. The postwar multilateral system, centered on the United Nations, has helped to prevent major world conflict for 60 years. . . . International law is also a framework for constructive collective action.¹¹

This book is an exploration of the implications of this idea. It concludes that, although international law and institutions are no magic bullets, or panaceas – they are rather fragile and imperfect – yet they constitute the best hope for the construction of a better world. The American embrace of these structures would reduce the dangerous split with the rest of the world and foster the gradual emergence of a “global community of shared interest.”¹²

International law and the United Nations are also in crisis. Certain aspects are clearly out of date, and their relevance is under attack. As the Secretary-General of the United Nations, Kofi Annan puts it, “We have come to a fork in the road.” The United States and the rest of the world face a choice: either embrace reforms or allow the whole enterprise to slip away, much as did the League of Nations after World War I.

This book argues that international law and the United Nations are indispensable to human welfare in the twenty-first century. It will be a disaster if we allow this opportunity for reform to vanish. Reform will be difficult, and it may be that the international rule of law is doomed always to imperfections. But, as a former U.N. Secretary-General put it, “The U.N. was created not to take humanity to heaven but to save it from hell.” International law and

¹¹ “A Global Order Based on Justice,” *International Herald Tribune*, Sept. 15, 2003.

¹² This is also the vision of Zbigniew Brzezinski in *The Choice* (2004), p. vii.

Preface and Overview

xv

institutions are much like Winston Churchill's view of democracy as "the worst form of government – except for all the others that have been tried." As former Secretary of State Henry Kissinger has stated,¹³ "America's special responsibility is to work toward an international system that rests on more than military power – indeed that strives to translate that power into cooperation. Any other attitude will gradually isolate us and exhaust us."

¹³ Quoted in the New York Post, August 11, 2002, p. 24.