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0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

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## UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW

The foundations of international law have been shaped by successive hegemonic powers throughout history. This book examines whether the current predominance of the United States is leading to foundational change in the international legal system. A range of leading scholars in international law and international relations consider six foundational areas that could be undergoing change, including international community, sovereign equality, the law governing the use of force, and compliance. The authors demonstrate that the effects of US predominance on the foundations of international law are real, but also intensely complex. This complexity is due, in part, to a multitude of actors exercising influential roles. And it is also due to the continued vitality and remaining functionality of the international legal system itself. This system limits the influence of individual States, while stretching and bending in response to the changing geopolitics of our time.

MICHAEL BYERS is Associate Professor of Law at Duke University. His recent publications include *Custom, Power and the Power of Rules* (1999) and (as editor) *The Role of Law in International Politics* (2000).

GEORG NOLTE is Professor of Law at the University of Göttingen. His recent publications include *Eingreifen auf Einladung* (*Intervention upon Invitation*) (1999) and *Beleidigungsschutz in der Freiheitlichen Demokratie* (*Defamation Law in Democratic States*) (1992).

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CONTENTS

*List of contributors*      *page viii*  
*Preface*      xv

Introduction: the complexities of foundational  
change      1  
MICHAEL BYERS

PART I    **International community**

1    The international community, international law, and the  
    United States: three in one, two against one, or one and the  
    same?      25  
    EDWARD KWAKWA  
2    The influence of the United States on the concept of the  
    “International Community”      57  
    ANDREAS PAULUS  
3    Comments on chapters 1 and 2      91  
    MARTTI KOSKENNIEMI, STEVEN RATNER, AND  
    VOLKER RITTBERGER

PART II   **Sovereign equality**

4    Sovereign equality – “the *Wimbledon* sails on”      117  
    MICHEL COSNARD

5	More equal than the rest? Hierarchy, equality and US predominance in international law	135
	NICO KRISCH	
6	Comments on chapters 4 and 5	176
	PIERRE-MARIE DUPUY, MATTHIAS HERDEGEN, AND GREGORY H. FOX	
 <b>PART III Use of force</b>		
7	The use of force by the United States after the end of the Cold War, and its impact on international law	197
	MARCELO G. KOHEN	
8	Bending the law, breaking it, or developing it? The United States and the humanitarian use of force in the post-Cold War era	232
	BRAD R. ROTH	
9	Comments on chapters 7 and 8	264
	THOMAS FRANCK, JOCHEN ABR. FROWEIN, AND DANIEL THÜRER	
 <b>PART IV Customary international law</b>		
10	Powerful but unpersuasive? The role of the United States in the evolution of customary international law	287
	STEPHEN TOOPE	
11	Hegemonic custom?	317
	ACHILLES SKORDAS	
12	Comments on chapters 10 and 11	348
	RAINER HOFMANN, ANDREW HURRELL, AND RÜDIGER WOLFRUM	
 <b>PART V Law of treaties</b>		
13	The effects of US predominance on the elaboration of treaty regimes and on the evolution of the law of treaties	363
	PIERRE KLEIN	

CONTENTS vii

14	US reservations to human rights treaties: all for one and none for all?	392
	CATHERINE REDGWELL	
15	Comments on chapters 13 and 14	416
	JOST DELBRÜCK, ALAIN PELLET, AND BRUNO SIMMA	
 <b>PART VI Compliance</b>		
16	The impact on international law of US noncompliance	427
	SHIRLEY V. SCOTT	
17	Compliance: multilateral achievements and predominant powers	456
	PETER-TOBIAS STOLL	
18	Comments on chapters 16 and 17	477
	VAUGHAN LOWE, DAVID M. MALONE, AND CHRISTIAN TOMUSCHAT	
	Conclusion	491
	GEORG NOLTE	
	 <i>Index</i>	 515

Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

## LIST OF CONTRIBUTORS

ix

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

X

# LIST OF CONTRIBUTORS

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

xi

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

## LIST OF CONTRIBUTORS

xiii

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

---

xiv

LIST OF CONTRIBUTORS

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Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

---

## PREFACE

This volume represents the culmination of a two-year project that began with an informal debate in Göttingen in May 2000. The question then, as now, was whether the current predominance of the United States is leading to foundational change in the international legal system – and if so, how.

Our interest in the issue of foundational change and the impact of geopolitics on international law is derived in part from the work of Wilhelm G. Grewe, who, in his *Epochen der Völkerrechtsgeschichte*, argued that successive dominant powers have always contributed decisively to changing the international legal system. And yet Grewe, in an epilogue to the English version of his book, in 1998 suggested that the post-Cold War epoch might be different, in that the development of an “international community” could promote a reshaping of the foundations of the international legal system in a different direction, so as to favor global interests rather than simply the national interests of the United States – the dominant power of our time.

Ten years after the fall of the Berlin Wall, it seemed to us time for a preliminary evaluation of the situation. We identified six areas or concepts for examination: international community, sovereign equality, the law governing the use of force, customary international law, the law of treaties, and compliance. Although hardly exhaustive of the areas and concepts worthy of examination, in our view these six categories provided a broad overview of important foundational aspects that might possibly be undergoing change.

We then identified twelve relatively young scholars from a range of cultural, linguistic, and academic backgrounds to write chapters on each of the six areas or concepts (i.e. two authors to each area/concept). Two of the twelve chapter authors come from developing countries; three are North American; six are European. Two of the twelve are political scientists. It is our hope that this book, by bringing these perspectives and ideas together, will add energy and diversity to debates about the role and character of contemporary international law.

Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

To add yet further diversity of perspective, background, and thinking, we invited eighteen more senior scholars to provide short commentaries on the principal chapters. These commentaries are not intended to be stand-alone pieces; they should be read in conjunction with the principal chapters towards which they are directed. Nor are they intended to plumb the depths of the additional issues they raise. The goal, instead, is simply to expose a healthy complexity of viewpoints and insights, leaving ample room for further analysis and debate.

The project has been highly collaborative in character. Each of the principal chapters was discussed and reworked three times. Early versions were subject to a brainstorming workshop at Duke University in February 2001. We are grateful to a small group of colleagues, including Andrew Hurrell, Robert Keohane, Madeline Morris, and Volker Rittberger, who served as facilitators at that workshop. Their ideas have subsequently shaped not only the individual chapters, but also the project as a whole. We are also grateful to Duke University for funding the workshop, and to Patti Meyer for her skilled assistance with logistics and organization.

After that initial workshop, each of the principal authors reworked their chapter before presenting it again, this time at a conference in Göttingen in October 2001. At the conference, each pair of chapters received three commentaries – early versions of the contributions published in this book – as well as considerable input from the floor. We are grateful to all those who participated, as well as to the Volkswagen Foundation for its generous financial support, the Max Planck Institute for History for the use of its facilities, the support of the International Peace Academy as well as of the University of Göttingen, and the staff of the Institute of International Law at the University of Göttingen, in particular Christiane Becker, for their excellent organization.

Finally, all of the principal chapters and commentaries were reworked one additional time, taking into account all of the various comments and criticisms received. We are thankful for the professionalism and good cheer of the contributors, and the close cooperation that ensued amongst them, as they did their bit to make this a truly collective, collaborative work. We are also thankful for the diligent efforts of, again, Christiane Becker, who co-ordinated the submissions, collated the text, and accomplished a myriad of other essential tasks, of Seyda Dilek Emek, who checked the footnotes, and of Hadley Ross, who proof-read the final text.

Cambridge University Press

0521819490 - United States Hegemony and the Foundations of International Law

Edited by Michael Byers and Georg Nolte

Frontmatter

[More information](#)

## PREFACE

xvii

It will already be apparent that this project predates the pivotal date of 11 September 2001, but was not completed until summer 2002 – well after the terrorist atrocities in New York and Washington. In late September 2001, we seriously considered rescheduling the Göttingen conference, given that the overall topic, and particularly the issue of the use of force, was at that point not only prominent but also emotionally charged. In the end, and after consulting with all of the contributors, we decided to go ahead. As a result a lively and, at times, difficult debate animated the conference. Ultimately we were glad that the conference went ahead as planned, and are grateful to all those who participated.

We have learned much during the course of this project, not least that a shared desire for understanding transcends cultures, backgrounds, and disciplines. The impact of the United States on the international legal system of the twenty-first century is an issue that academic international lawyers and scholars of international relations cannot and should not avoid. And yet, as with the proverbial nettle, grasping hold of this issue is hardly a comfortable task. Fortunately for us, the task has been made less uncomfortable – and more enlightening – as a result of the support and collaboration of all of the people involved in this project, from both sides of the Atlantic and beyond.

M. B.  
G. N.