

America's Global Leadership Measured by International Law

By Don Kraus

When history looks back on the rise and fall of American global leadership, May 6, 2002 may well be highlighted as the “beginning of the end.” The Bush administration’s “unsigned” the International Criminal Court (ICC) has ramifications far beyond this one particular treaty, which holds the perpetrators of the most heinous crimes—genocide, mass murders, mass rapes, enslavement, ethnic expulsions, and torture—accountable for their actions.

In its ascendancy to power following World War II, the United States was the major force in the establishment of a web of international institutions and laws. From the United Nations Charter to the Declaration of Human Rights, the United States took the lead in creating a world where nations limited their actions based on mutually agreed upon treaties and norms.

This fabric of international laws connected other nations to an American-dominated security and economic regime—but also restricted U.S. ability to employ unrestrained power. In other words, the price of a world order based largely on American values was a reduction in Washington’s freedom of action.

It is the fabric of international law that the United States has swathed itself in that has allowed it to escape the fate suffered by great empires of the past—being torn down by a group of middle powers. Faced with a hegemonic United States that voluntarily constrains its actions, England, France, Germany, Japan, Russia, and even China have been able to conclude that engaging the United States is more productive than trying to topple it.

The Bush administration’s renouncement of the International Criminal Court pulls on a thread that could unravel the entire cloth. In conjunction with Washington’s rejection of the Kyoto

Climate Change agreement, the Comprehensive Nuclear Test Ban, ABM, Landmines, Rights of the Child, and other less-known treaties, it is not surprising that traditional U.S. allies are evaluating their relationship with Washington. Add in Washington’s failure to rejoin UNESCO or to live up to its end of the deal on UN arrears, and it becomes difficult for U.S. “friends” to justify their position to their constituents and policy elites.

There are three reasons why “unsigned” the ICC is particularly problematic. First, it goes to the heart of what international law is supposed to do—protect people from the most heinous of crimes. It is a “law and order” treaty that has been embraced by all European Union nations. Rejection of a treaty promoting universal law and order, a cardinal tenet of U.S. law, because of the remote possibility U.S. service personnel might be endangered does not make sense to our democratic allies.

Second, the act of unsigned is unprecedented. No nation has ever repudiated its signature on a UN treaty before. The decision sets a bad example for world leaders and could become the politically expedient way to walk away from restrictive agreements agreed to by predecessors. The decision also damages the credibility of the U.S. presidency, opening the possibility of future presidential signatures being overturned by successors.

Finally, unsigned promotes a new philosophy called “a la carte multilateralism” by some or “one-way multilateralism” by others. In an attempt to soften the blow to ICC supporters both Under Secretary Marc Grossman and Defense Secretary Donald Rumsfeld said, “The United States respects the decision of those nations who have chosen to join the ICC; but

they in turn must respect our decision not to join the ICC.” This is diplo-speak for “the United States will cooperate when it is in its interest, otherwise you are on your own.”

The Bush administration is right to worry about the actions of Al Qaeda and a few rogue states. However, its apprehension should also be focused on the frightening possibility that, given the different directions the U.S. and the EU are taking regarding international law and institutions, current allies could turn into active opponents capable of doing real damage to United States interests.

A May 13th EU declaration criticized the Bush administration’s ICC policy saying, “The European Union notes that this unilateral action may have undesirable consequences on multilateral treaty-making and generally on the rule of law in international relations.” The progress displayed by new Russia-NATO Council and the largely symbolic U.S./Russian nuclear arms reduction treaty is encouraging. However, EU nations will have difficulty supporting a policy based only on military/security agreements if European voters perceive the United States is unwilling to reciprocate on popular human rights and environmental agreements.

The roots of this emerging threat to U.S. security are political and are

located within the American conservative movement. In a recent missive, American Conservative Union chair David Keene describes the ICC as “dangerous internationalist goofiness.” In President Bush’s home state, the Texas Republican Party’s 2000 Platform called for the United States to withdraw from the United Nations. Conservative think tanks have led the opposition to expanding Washington’s international commitments. One-way multilateralism is, in part, a reaction to the very vocal isolationist/unilateralist activism emanating from the Republican Party’s right wing.

Conservatives correctly believe that the world can be a very dangerous place. They distrust institutions where representatives of dictators have a vote equal to representatives of democracies. They fear the specter of “un-elected officials” claiming sovereignty over the United States. As a result the Senate only ratifies agreements with too much check and not enough balance. Either the United States tightly controls them through its Security Council veto, by funding, or, like the Bush-Putin nuclear treaty, agreements are basically toothless.

America’s founders were wonderful engineers who designed a political system of checks and balances that, in the words of Newt Gingrich, “was too inefficient to ever be taken over by a

dictator.” Today we clearly live in a world that is global. Business, religion, communications, culture, and civil society operate globally and exceed the reach of the political institutions designed to govern them. Rather than fighting this trend, conservatives would better serve U.S. national interests by doing something that the United States is very good at, namely creating a system of checks and balances that work, answer conservative concerns regarding sovereignty and democracy, and proactively defines the conditions that would allow the U.S. to be part of a web of effective international agreements that maintain U.S. leadership and lead to a more just, safe, and peaceful world. In the meantime the Bush administration would be wise to be gentle with the fabric that binds our world together. Although May 6, 2002 may well end up being looked upon as the “beginning of the end” of American global leadership, July 1, 2002—the day the ICC comes into force—will be looked upon as the “end of the beginning” of the era of true international law.

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