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**Exceptionalism, Power, and the Global Architecture:
Reconciling US Power and Multilateral Institution-Building**

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This brief essay begins to address one of the fundamental dilemmas of our time: how to reconcile the demands for broad-based global institutions and norms with the realities of America's power and exceptionalist impulses. How, in other words, can one go about designing and constructing an international architecture whose structures, rules, and decision-making processes serve the needs both of the single hegemon and of the many less powerful countries? Can American power and multilateral institutions coexist happily and productively?

At the outset, it would be helpful to consider the extent to which this is a problem in theory or in practice, in perception or in reality, in all things or in certain sectors. The initial section of the paper suggests some parameters for making these judgments, for concluding, in fact, that while this is indeed a large and growing problem, it is not a universal one. Relations between Washington and international institutions have been handled more adeptly and creatively in some areas than others, and the US is as keen to develop the international infrastructure in some sectors and at some levels as it is cautious about others. The second section, in turn, looks at what lessons can be drawn from this uneven history and from past efforts to accommodate American power and multilateral rule-making. Based on these varied experiences, the final section poses a series of questions about the nature of the US involvement with various regimes, offers a series of criteria and categories in that regard for the purposes of assessment, and lays out some policy options for those seeking to build further norms and institutions in the coming years.

Dimensions of the Problem

Over the last few years, but most loudly since the inauguration of President George W. Bush, it has become commonplace, especially in Europe, to charge that the United States is badly

out of step with the rest of the world in terms of the creation of important new normative regimes for dealing with issues as diverse as the environment, weapons of mass destruction, human rights, landmines, development, population, small arms and light weapons, the death penalty, and the International Criminal Court. Even when its allies largely approve of US actions, as in the conduct of the war in Afghanistan, complaints have persisted about insufficient consultations or attention to allied views.¹ In addition, the US has persistently taken stands on the Middle East, Iraq, and the use of military power that tend to set it apart from most other countries concerning how to handle some of the key geopolitical crises of the day, including the war on terrorism.² Washington, moreover, has over the past two decades repeatedly displayed a brazen willingness to flout the rules and customs of the United Nations if necessary to get its way on matters of administrative and fiscal reform, unilaterally flexing its financial and political muscles in stark contrast to what had been its traditional insistence on preserving the fiscal and constitutional integrity of the world body.³ A veteran *New York Times* correspondent, traveling with Secretary

¹ In August 2001 and April 2002, surveys of public attitudes in France, Germany, the United Kingdom, and Italy found very large majorities agreeing that President Bush “makes decisions based entirely on U.S. interests” without taking European concerns into account. Pew Research Center, Online Reports, <http://www.people-press.org/bush01rpt.htm> and <http://www.people-press/reports> (Americans and Europeans Differ Widely on Foreign Policy Issues). Following the terrorist attacks of September 11, 2001 and with the subsequent war on terrorism, approval ratings for President Bush’s foreign policy did rise modestly in these four countries, according to these surveys, but three-quarters of the respondents still claimed that the President had acted “entirely on U.S. interests.”

² See, for example, the concerns of the European Union’s Commissioner for External Affairs about Washington’s alleged over-reliance on military force to deal with terrorism. Chris Patten, “Jaw-jaw, Not War-war,” *Financial Times*, February 15, 2002.

³ See Edward C. Luck, “Who Should Pay for the UN?,” in Luck, *Mixed Messages: American Politics and International Organization, 1919-1999* (Washington, D.C.: Brookings Institution Press, 1999), pp. 224-253; Margaret P. Karns and Karen A. Mingst, “The United States as ‘Deadbeat’?: U.S. Policy and the UN Financial Crisis,” in Stewart Patrick and Shepard Forman, eds., *Multilateralism and U.S. Foreign Policy* (Boulder, CO: Lynne Rienner Publishers, 2002), pp. 267-294; and Suzanne Nossel, “Retail Diplomacy: The Edifying Story of UN Dues Reform,” *The National Interest*, no. 66 (Winter 2001/02), pp. 94-105.

of State Colin Powell in Europe, wrote of “the heedless, insular, bellicose, unilateralist America seen by many European eyes.”⁴

This would not matter so much, of course, if it were not for the second big complaint: the growing superiority of America’s power position compared to its one-time or potential rivals.

As Oxford’s Timothy Garton Ash, hardly known as a strident critic of the US, phrased it:

The fundamental problem is that America today has too much power for anyone’s good, including its own.... Contrary to what many Europeans think, the problem with American power is not that it is American. The problem is simply the power. It would be dangerous even for an archangel to wield so much power.⁵

Because of its power, the US is seen by some as arrogant not just singular, as domineering not just influential. It is criticized alternatively as being an intrusive, hyper-active, hyper-power or as being self-absorbed, uncaring, and unresponsive as crises flare in various parts of the world. It is, no doubt, the inevitable lot of the world’s leading power to attract brickbats from those capitals whose relative power position is receding. Yet such prevalent and critical perceptions – even if exaggerated – have a troubling way of defining political realities and international relationships over time.

The implications of such a pre-occupation with American power are particularly troublesome in terms of the motivations for and the parameters within which the project of building a larger and denser set of multilateral institutions is proceeding. To put it baldly, in the ongoing effort to create a network of multilateral rules, norms, actors, procedures, and decision-making processes, is the ultimate political objective to constrain and counter US power or simply

⁴ Todd S. Purdum, “A Wider Atlantic: Europe Sees a Grotesque U.S.,” *The New York Times*, May 16, 2002.

⁵ Timothy Garton Ash, “The Peril of Too Much Power,” *The New York Times*, April 9, 2002.

to leash it, wherever possible, to larger and more widely shared goals?⁶ Is America's unsurpassed power, in other words, the problem or potentially a big part of the solution? This is where the anti-Americanism heard so often among European intellectuals and policymakers, and to a lesser extent elsewhere in the world, is working inadvertently to undermine the prospects for effective and sustainable multilateral cooperation.⁷ Even Professor Ash asks, "who, then, should check and complement American power? International agencies, starting with the United Nations, and transnational nongovernmental organizations are a place to start."⁸ The problem with such views, of course, is that they tend to confirm the fears and suspicions of those in the United States who have been most skeptical of the benefits and most concerned about the costs to American sovereignty of multilateral engagements and commitments. It is worth recalling that, prior to World War II, the core arguments in the United States against joining global bodies, seen most vividly in the Senate's reservations about the League of Nations, revolved around a deep reluctance to be bound to the political intrigues and narrow agendas of old world Europe. Now, with the passing of the Cold War and the political marginalization of much of the developing world, there is a real danger that West-West, transatlantic tensions could again rise to frustrate the bold plans of global architects.

These are certainly sobering developments that caution against overly high expectations for multilateral institution building. On the other hand, it would be equally misleading to exaggerate the downside risks, for neither are America's critics as perturbed about its superior capacities as their rhetoric would suggest, nor has the US been as consistent a rejectionist about

⁶ Luck, *Mixed Messages*, op. cit., pp. 291-298.

⁷ Rosemary Righter, "Why It Is Right to Join America's Fight," *The Spectator*, March 16, 2002.

⁸ Ash, op. cit.

multilateral undertakings as many seem to believe. Historically, if one state appeared to be outstripping its neighbors and competitors in terms of the core attributes of power, especially militarily, the others would react by accelerating investment in their own capabilities and/or by forming coalitions to counter the hegemon. Nothing of the sort, however, seems to be happening today, despite all of the grousing about American dominance. One explanation might be that the US lead in military technology and force projection capabilities is too wide to challenge, and another might be that others have decided that military power is a waning asset in a globalizing world. But it seems most likely that others by and large see the US as a relatively benign hegemon, one which has little stomach or motivation for conquest and which faces internal constraints on the sudden and capricious use of force, except perhaps against a handful of rogue states.⁹

It may also be that other states see the growth of international law and organization as another check on US impulsiveness, operating both externally through the Security Council, NATO, and regional arrangements and internally by influencing the way US elites see their policy choices. There may be some validity to such an approach over the long haul, but it hardly represents a foolproof game plan. In particular, such a strategy contains several contradictions that may account for some of the tensions so visible these days within multilateral organizations and regimes. One, the premise that military power matters less these days is highly debatable, as the war on terrorism and the earlier ones in Kosovo and the Gulf would seem to confirm. Two, the credibility of international institutions, most pointedly the UN, is undermined when their leaders have to admit – as the last two UN Secretaries-General have – that military enforcement of their edicts has to be left to individual member states or to ad hoc coalitions of the willing.

⁹ G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order After Major Wars* (Princeton, N.J.: Princeton University Press, 2001), pp. 246-256.

And three, if the hegemon is conceded major advantages in power outside of international institutions, then it is likely both to expect to be able to enjoy such advantages inside them as well and to be doubly resistant to efforts by others to use these bodies to check its power.

In this regard, the recurrent jockeying between the EU and the US for positions on UN bodies of marginal consequence in recent years and the unending debates on UN reform should have come as no surprise. While the US has been accumulating power outside of the world body, its European allies seem more intent than ever on gaining larger footholds inside it. Yet if the gap between the balance of power outside and that inside the UN and other multilateral institutions becomes too great, then it is the authority and credibility of the institutions themselves that will suffer, as was the case of the UN in the confrontational years – then on a largely North-South axis – of the 1970s and early 1980s.

In those years, the Soviet Union and its allies sought to curry favor with the developing countries by appearing sympathetic to their needs and, through such tactics, to build coalitions against US and western positions. In recent years, issue-specific coalitions of so-called like-minded governments and NGOs have adopted similar tactics, employing multilateral fora as places to work together to seek developing country support for their high-minded sounding agendas and to isolate the US when it appeared obstructionist on individual points. This time around, this approach undoubtedly has enjoyed broader support and greater success, facilitating the negotiation of widely agreed texts on questions such as the International Criminal Court and the landmines convention.¹⁰ At the same time, however, such tactics have also been polarizing:

¹⁰ See Fanny Benedetti and John L. Washburn, “Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference,” *Global Governance*, vol. 5, no. 1, January-March 1999, pp. 1-37 and Motoko Mekata, “Building Partnerships Toward a Common Goal: Experiences of the International Campaign to Ban Landmines,” in Ann M. Florini, ed., *The Third Force: The Rise of Transnational Civil Society* (Washington, D.C.: Carnegie Endowment for International Peace, 2000), pp. 143-176.

making the US look that much more exceptional in the eyes of others, while making multilateral regime building appear that much less attractive and hospitable to American skeptics. This approach also may offer tempting opportunities for free-riding on the part of countries that would face no real constraints under the regime in question and that want to look good for the public and/or to make the US look bad. The jury is still out on whether these were wise tactics in the case of the ICC and landmines and on whether these regimes will function effectively over time without US participation (this seems more likely in the latter case, where the US dissent is quite circumscribed).

The answers will depend, in part, on the nature and limits of American exceptionalism. This author has argued elsewhere that the following four characteristics tend to make a state exceptional in its approach to international institutions:

- 1) a willingness to define its own path and positions within and toward international institutions, regardless of pressures and critiques by others;
- 2) a proclivity for asserting the universal validity of its national values and practices;
- 3) a tendency to look to domestic sources for legitimacy, even in the face of contradictory rulings by international bodies; and
- 4) a confidence that national policymakers have alternative ways of pursuing national interests and values, so that the use of multilateral institutions is generally perceived to be an option, not an obligation.¹¹

¹¹ American Exceptionalism and International Organization: Lessons from the 1990s, in Rosemary Foot, Neil MacFarlane, and Michael Mastanduno, eds., *The US and Multilateral Organizations* (Oxford University Press, 2002, forthcoming).

According to these criteria, the Soviet Union, China, and France have each engaged in exceptional behavior at various periods in the UN's history, though only the US has been able to be as dominant outside of the organization as it has been exceptional within its walls.

Based on its performance over the past dozen years, it would be hard to characterize the US as a country that has been predominantly either unilateralist or multilateralist in its conduct of foreign policy. If anything, it looks like the ultimate pragmatist, choosing in most cases whichever route appears to offer the best prospects for advancing its interests and goals at the time. US policymakers seem to care a lot less about whether their chosen courses of action are labeled as unilateralist or multilateralist than do their critics in other capitals.

In US trade debates, even some harsh critics of the UN supported the creation of the WTO and NAFTA, both of which depended heavily on Republican support in Congress. In arms control, the US backed the OPCW, the IAEA, and UNSCOM, signed but failed to ratify the CTBT, called for a strengthening of the biological weapons convention yet dissented on how this should be accomplished, and led the world in implementing the goals of the Ottawa landmines convention to which it is not a party. The US opposed the dispatch of some UN peacekeeping missions but voted for dozens more. While one of only a handful of holdouts from the ICC, Washington has been one of the strongest supporters of the regional criminal tribunals, as well as of regional organizations in general. Historically, the US has been one of the most consistent advocates for the codification of international human rights norms, though often one of the last to ratify the resulting conventions. And, even after all of its dramatic and short-sighted withholdings, the US remains the largest funder of international institutions, whether through assessed or voluntary contributions.

Lessons from an Uneven History

For some years now, Washington has not gone out of its way to build the foundations of international law and organization as a goal onto itself. Yet rarely has it sought to dismantle or undermine existing regimes. Most of its cautions have sought to put the brakes on, or at least to slow or steer, campaigns to add new norms or institutions to the vast array that already exist. Washington's voice more often than not has been a conservative one in that regard, at least compared to many of its allies, but its stance generally has not been regressive. Moreover, Washington has allowed, and sometimes encouraged, international institutions and norms to flower in countless ways, making the last decade arguably the most ambitious period of institutional growth in world history. If the US is as dominant and as much of a naysayer as some critics charge, then such a blooming of multilateral cooperation could not have been accomplished. No doubt the US has been a vigorous advocate of whatever Washington policymakers have conceived to be its national values and interests. Sometimes, as in the case of the ICC, this has included efforts to incorporate something of a double standard and to create decision-making mechanisms that offer the US as great a degree of control as it can manage. But what else should be expected? In terms of power, the US is exceptional. Yet the pursuit of national advantage is hardly exceptional. Under these circumstances, it would seem to make more sense to try to broaden Washington's views of what constitutes the US national interest than to assert that it should not pursue its objectives when it is engaged in global deliberations. And, yes, it is bound to be tough negotiating with a hegemon.

There would appear to be two basic explanations for the hot and cold pattern that has characterized US policies toward global institution building over the years. Both provide caveats about how such efforts should be pursued in the future. The first source, noted above, relates to

strategic factors and to the natural disinclination of the powerful to be bound by international rules, procedures, and obligations when other means of pursuing their policy goals appear to exist. Regimes that work to confirm and perpetuate the superior position of the big powers, such as the NPT, are obviously easier to swallow than those that might constrain their ability to expand their technological edge, such as the CTBT. While in general satisfied or status quo powers ought to see an advantage in laws and regimes that tend to add a sense of order and predictability to international affairs, especially those norms that discourage violent change, in specific sectors and situations they may prefer to keep open the option of bringing unilateral pressures to bear regardless of international rules and procedures for multilateral decision-making. Regimes that rely on reciprocity and unilateral enforcement measures, as well as on agreed rules and mechanisms, such as the WTO, would seem to serve both criteria (general rules, enforced through national power) and may prove increasingly attractive in the future.

The second explanation for America's zigzag approach to these matters can be found in a unique complex of domestic factors: among them, its political culture, history, and constitutional structure.¹² These, as well as its power position, feed the sense of exceptionalism that is so apparent in the US approach to multilateral undertakings. The problem is not, as some have suggested, that America's geographical isolation and domestic preoccupations condition it to disregard distant developments or the concerns of others. Though Americans are apt to regard big government, especially if it appears distant, opaque, and unaccountable, with some wariness, they are not, as a whole, markedly more negative than people elsewhere in their attitudes toward the UN and other international institutions.¹³ The difference lies, instead, in the fact that

¹² *Mixed Messages*, op. cit., passim.

¹³ Edward C. Luck, "False Choices: Unilateralism, Multilateralism, and U.S. Foreign Policy," to be published in an edited volume by the German Council on Foreign Relations – DGAP in 2002.

Americans are, and have long been, much more deeply divided on these questions than others have been. While the majority can be characterized as vaguely supportive, a vocal and politically active minority of perhaps 15 percent of the people has vigorously opposed – generation after generation – the expansion of international institutions and of US participation in them, largely because of perceived threats to national sovereignty. With this split magnified by partisanship and Congressional/executive differences, the result has been inconsistent and ambivalent policymaking for much of the past century.

In recent years, there has been a worrying tendency on the part of some coalitions seeking to advance international norms on specific topics to conclude that the substance of what they are seeking to achieve is so urgent and so imperative that it is better to try to circumvent the peculiarities of American politics and the realities of American power than to continue to work to bring the US aboard. This appeared to be the case, as noted above, with the negotiations for the ICC and for the Ottawa landmines convention. In these cases, most of the NGO advocacy groups, including those based in the US, made relatively little effort to build support for their causes in the US, particularly on Capital Hill, before focusing attention on the building of global coalitions and regimes. Apparently, their dual assumptions were that their potential adversaries on the Hill and in the Pentagon were beyond the power of persuasion and that it would make more sense to try to assemble a broad international coalition excluding the US and then to use it to bring pressure on Washington from the outside. Unfortunately, such isolating tactics act as self-fulfilling prophecies. By confirming the worst fears of those in the US already suspicious of multilateral processes, they tend, at least in the short run, to harden the US position.

Both the strategic and domestic explanations for American ambivalence toward global institutions suggest that US policymakers and citizens alike may look at the legitimacy of

multilateral arrangements through a different lens than do those in other countries, one that may lead them to distinct conclusions about what any new architecture should look like. In strategic terms, it would appear to be a general rule that smaller or medium powers tend to place a higher priority on the development and observance of processes, mechanisms, and rules for multilateral decision-making than do major or dominant powers. While such standardized procedures may appear to offer some voice and protection for the interests of the less powerful, they may be seen by Washington policymakers as encumbrances that delay effective action or that produce inept compromises. In general, Americans tend to care more about results than process. They also are more likely to look to domestic and constitutional sources for legitimacy than to international ones.

This was never more starkly illustrated than after the terrorist attacks of last September 11th. No doubt US officials were most appreciative of the quick and unanimous votes in the Security Council and General Assembly condemning the attacks and particularly of the establishment of the Council's unprecedented counter-terrorism committee. While determined to build a broad anti-terrorism coalition, however, they certainly did not share the Secretary-General's stated view that these votes were important in imparting legitimacy to the forceful US response. Neither the media nor the public gave more than passing attention to the actions by these two principal organs of international authority. It could be argued, in fact, that the UN organs would have risked losing legitimacy, authority, and relevance if they had not so readily joined the counter-terrorism bandwagon. In earlier years, when UN organs took sharp exception to the US use of force in places such as Grenada and Panama, the White House was able, with considerable success domestically, to cast doubt on the legitimacy of the UN bodies instead.¹⁴

¹⁴ Edward C. Luck, "The United States, International Organizations, and the Quest for Legitimacy," in Patrick and Forman, eds., *Multilateralism and U.S. Foreign Policy*, op. cit., pp. 43-74.

- Lesson One. Washington is a lot more likely to go along with steps that are presented as enhancements of existing regimes than with those that are advertised as radical new departures aimed at tackling dire new threats to humanity. Advocates, of course, are often inclined to adopt the latter course, arousing opponents as much as allies in debates on the Hill, in the executive branch, and in the media. They should bear in mind that incrementalism can be beautiful.
- Lesson Two. In designing international normative regimes, care should be taken not to assert a more rigorous and rigid enforcement mechanism than the realities of geopolitics will bear. In those fields in which major powers are likely to perceive that they have a direct stake, such as trade, terrorism, and weapons of mass destruction, enforcement is best left to a combination of international rules, reciprocity, and unilateral and/or ad hoc action. Where such a national commitment to undertaking effective enforcement measures may be lacking – as has most typically been the case with broadly shared global norms for which compliance responsibilities are also broadly and vaguely shared, such as in human rights, humanitarian affairs, and the environment – more managerial approaches and those emphasizing monitoring, reporting, naming and shaming, and capacity building may be more appropriate.
- Lesson Three. Those seeking to build international regimes should adopt more sophisticated and differentiated strategies for influencing the American public. These would address the sovereignty and accountability concerns of the skeptics in a serious way, avoid simplistic caricatures about US attitudes, and take fully into account the role of Congress in the formulation of US foreign policy. At the same time, they should recognize that there are extensive and often untapped reservoirs of support for most internationalist endeavors in the United States on which to build more sustainable coalitions over time. It takes patience and persistence to work both sides of the political street, but it usually pays off in the long run.
- Lesson Four. In the effort to build international norms and institutions, it is generally more productive for NGOs to focus their work on gaining domestic political support – public, legislative, and executive – especially in key countries, such as the United States, before turning to assembling international coalitions and building global norms. Can a regime be considered global if the most powerful nation state actively opposes it? There are, after all, relatively few subjects on which active and enthusiastic US participation is not either essential or instrumental to the ultimate success of the regime.
- Lesson Five. As a general practice, it is not helpful to corner the United States in multilateral negotiations related to global norm and institution building. Such tactics are bound to reduce American enthusiasm for multilateral undertakings in general and to play into the hands of those most imbued with the notion of American exceptionalism.

- Lesson Six. In designing and evaluating international institutions, it should be borne in mind that legitimacy derives from substance and results as much as from form, structure, or composition. On the one hand, the UN's preoccupation with form and process is understandable, given its universal character. On the other hand, the constraints this often imposes have made the UN look like something less than a dynamic, vital, and responsive institution. It would be more productive to endow future bodies with greater flexibility and capacity to respond to changing circumstances, even as procedural and constitutional protections for the interests of small countries are built into the structure and rules of the regime.

Questions, Models, and Strategies for the Future

Before offering a few suggestions about how to go about future regime-building, it would be helpful to pose a few questions whose answers might well vary from sector to sector.

- Why would US participation be important to each enterprise? On the positive side, would it be because of the resources or capacities it could bring to the common effort, or because its political support is deemed essential? Or is it needed for symbolic reasons, to confirm the legitimacy and authority of the regime and/or the equity of its rules and constraints? On the negative side, is US participation required because it is essential to limit its behavior, in that its unconstrained actions outside of the regime might well undermine the latter in a disabling or mortal way? Would its decision to or not to participate affect the likelihood of bringing others into the regime?
- Is the goal to attain the formal participation of the US, i.e. accession or membership, or just to assure that its practices are largely consistent with the norms of the regime? Given the constitutional prerogatives of the Senate and the traditional sensitivities of Congress to issues of sovereignty, are formal treaties necessary in a particular sector or would either executive agreements or informal understandings be sufficient to further the substantive objectives of the regime?
- If the US seems reluctant to join an existing or emerging regime, is it primarily because of dissent from the core substantive goals of the regime or because of differences over certain procedural, institutional, or constitutional provisions? How deep and enduring do the US concerns appear to be? What are the prospects for an evolution of American domestic politics on the issue? Would it be more productive ultimately to slow the multilateral negotiating process until US domestic politics can catch up, or is there such urgency to the need to codify the norms or such doubt about the prospects for a shift in Washington's attitudes that it is better to proceed without the US on board?

This last set of questions should matter a great deal to how regime-building is approached, but too often these distinctions seem to be lost in the rush to apply the same exceptionalist label to all cases of American reluctance, whether it is in response to the CTBT, Kyoto, the Law of the Sea, or the Rights of the Child Convention. True, in some sense each of these rejections represents one more step in the historic continuum that is American exceptionalism, but in policy terms their implications and how they should be addressed are substantively different.

For the purposes of analysis, it may clarify these distinctions to think of US policies toward global regimes along three axis: 1) degree of formal US participation, i.e. accession and/or membership (yes/no); 2) degree of informal US participation in the regime, for example through funding or technical support for aspects of it or involvement in certain of its activities; and 3) degree of commitment to the norms and goals of the regime, including through reinforcing (or disruptive) actions and policies. When viewed through these three lens, the nuances and diversity in the US relationship with multilateral regimes tend to stand out. While much of the media and political commentary has revolved around the question of formal US participation, i.e. whether it joins or signs or ratifies, the extent to which it acts to support or sustain a given regime may be an independent matter. In some cases, for example, it would appear that the US is more committed to the goals of some regimes of which it is not a part (Law of the Sea; landmines) than to some of which it is (humanitarian; peacekeeping). No doubt the same thing could be said about other states parties as well. The US commitment may be selective in that it is quite strong concerning some types of violations or violators and more lax concerning others. Alternatively, it may have a relatively shallow but generic concern about the upholding of the norms of the regime across the board. Using these categories, US relations with

various multilateral regimes could be arranged across a spectrum from those to which it has the highest to the lowest commitment, as follows:

- Category One: high commitment with formal participation. Examples: terrorism conventions; WTO and NAFTA; NATO; biological weapons convention.
- Category Two: high commitment without formal participation. Examples: Law of the Sea; landmines.
- Category Three: selective commitment with formal participation. Examples: NPT; chemical weapons convention; various human rights conventions.
- Category Four: selective commitment without formal participation. Examples: rights of the child convention; discrimination against women convention.
- Category Five: shallow commitment with formal participation. Examples: humanitarian law; UN Charter; peacekeeping.
- Category Six: shallow commitment without formal participation. Examples: covenant on economic, social, and cultural rights; UNESCO.
- Category Seven: negative commitment without formal participation. Examples: ICC; CTBT, possibly Kyoto.

In relatively few cases, it would appear, has the US chosen to reject a regime categorically for substantive reasons and then sought to undermine it, as appears to be happening with the ICC. More frequently, the US has found specific aspects of a regime objectionable, while managing to support or participate in other aspects.

The US relationship with a regime, moreover, is rarely static. Individuals make policy and their views can evolve over time, as have Senator Jesse Helms' understanding of the need to

address the HIV/AIDS pandemic and President Bush's views on the value of foreign assistance.¹⁵ Moreover, it has sometimes proven easier to persuade Washington to accept multilateral agreements or arrangements on a regional than a global level. This has been the case with international criminal tribunals, human rights bodies, and some aspects of arms control, trade, and the environment. A positive experience with a regional regime may make a global one seem more palatable.

There have also been a number of cases in which Washington – typically the Congress – initially rejected formal participation in a global regime, yet selectively supported some of its activities, and then allowed growing cooperation to lead to an eventual reconciliation. While some of the commercial and institutional provisions of the Law of the Sea Convention, for instance, initially raised sharp and ideological objections from conservatives on Capitol Hill, its core goals were embraced by many in Washington as advancing US interests in trade, rights of passage, and security. Through the years, the US has not hesitated to invoke the Convention in times of crisis and the Clinton and now Bush Administrations have pledged finally to seek the Senate's consent to its ratification. The US relationship with UNESCO has followed a similar pattern. Getting the Senate reconciled to the ratification of human rights conventions has often taken decades, but it has usually come around over time. Even after the Senate had so dramatically rejected membership in the League of Nations four generations ago, the US went on to become an active participant in many of its programs and missions. And, in many ways, the US leadership in creating the United Nations, as well as the reluctance of senators to criticize the

¹⁵ In the latter case, it is notable that an April 2002 Pew survey found that only 53 percent of Americans expressed approval of the President's decision to dramatically increase foreign aid, while some 90 percent of respondents in the four major countries of Western Europe did. Pew, *op. cit.* On the President's decision, see Joseph Kahn, "White House Adds Billions to an Increase in Foreign Aid," *The New York Times*, March 20, 2002; Elizabeth Bumiller, "On the Eve of Latin Trip, Bush Ties Aid to Reforms," *The New York Times*, March 18, 2002. On Helms, see Adam Clymer, "Helms Reverses Opposition to Help on AIDS," *The New York Times*, March 26, 2002, and an editorial, "Senator Helms as an AIDS Savior," *The New York Times*, March 26, 2002.

new world body, represented a reconciliation with both the spirit and the ambitions of the League.

This rejection, cooperation, reconciliation pattern reinforces the hypothesis articulated earlier that the US tends to base its policies, over time, more on pragmatism than on a slavish devotion to either unilateralism or multilateralism. It also gives some nourishment to a functionalist interpretation of US relationships with global regimes. According to this view, while often initially wary of entangling and constraining legal or institutional commitments, over time Washington is likely to give increasing weight to the practical benefits that cooperating with or joining a global regime would impart for specific economic, security, or foreign policy objectives or for advancing core national values. The incrementalism embodied in such graduated approaches may not satisfy either extreme – impatient advocates on one side or, on the other side, those fearful of a slippery slope toward a degradation of American sovereignty – but it does speak to a practical way of dealing with America’s historic sense of ambivalence toward such undertakings.

In broad strokes, those interested in building a particular normative regime have three basic choices when Washington’s view of what the new regime’s rules and architecture should look like differs in important respects from that which is held by most other capitals. They can 1) move forward without the US, 2) make major concessions to its viewpoint, or 3) go slow, looking for opportunities to narrow the differences over time.

The first option – leaving the US behind – may bring some gratification to those resentful of US power, priorities, or exceptionalism in the short run. But it is a strategy that will usually invite disabling implementation and enforcement headaches, as well as political complications, in the long run. As noted above, when the issues over which the US dissents are relatively

discrete substantively and do not have worrying political implications domestically, as was the case with the landmines accord, then the damage will be manageable and the prospects for eventual reconciliation will be fairly good. But when the substantive and philosophical differences are stark and political battle lines have been drawn sharply within the US, as has occurred with the ICC, then trouble lies ahead. In such cases, caution is generally the better part of valor.

The second option – giving in to US demands – runs the risk of alienating other countries, of weakening the rigor of the regime, and, as in the choice of leaving the US out, of undermining the potential legitimacy of the regime. Certainly there are situations when a system of differentiated obligations and responsibilities is both necessary politically and justifiable substantively. The NPT would be a case in point. It is a fundamentally inequitable treaty that works to sustain the nuclear monopoly of a handful of states. Yet it also serves the security interests of the world at large, has more parties than any previous arms control accord, and has yet to have a single drop-out. In today's political climate, it probably would not be negotiable, as its political liabilities would in all likelihood be allowed to trump its substantive benefits. For all of its alleged domination of international politics, the US rarely can dictate the international normative agenda the way that the two superpowers could in security affairs – when they worked together – during the Cold War years. So the scope for this second option would also appear rather limited.

It is to the third option – of moving slow and keeping the door open – that one might look for the most feasible and promising scenarios. Among these, the following three appear particularly promising, as they seek to build on targets of opportunity:

- 1) Floating dialogue. Like a ship that chooses not to land until conditions look propitious and the anchorage secure, on subject after subject it has been possible

to keep productive transnational policy, expert, and public dialogues going on the costs, benefits, and possible design of a regime for years, even decades, until the issue is ripe for negotiation and codification. Such unofficial exchanges can be enormously helpful in identifying both differences among states and ways to resolve them, so that when official negotiations finally commence they can move relatively expeditiously. To be of value, however, such dialogues should include critics as well as the like-minded and should grapple seriously with their reservations. If the US looks like a possible hold-out, then parallel and sometimes overlapping activities could usefully be undertaken to engage policy influentials around the US, in the media, and on Capitol Hill.

- 2) Step-by-step construction. Like Rome, international regimes of historical proportions are not built in a day, nor should they be. In some cases, the pieces may not be separable and only a holistic architecture will do. But if there is wide agreement, including the US, on sections of the edifice and they could stand on their own in terms of performance, then it may well make sense to build the regime piece-by-piece as political conditions permit. For example, when the Cold War made progress on implementing the enforcement provisions of Chapter VII of the Charter impossible, the more limited and modest alternative of peacekeeping, nowhere to be found in the Charter, was developed instead. Though the history of peacekeeping has been rocky at times and the military provisions of Chapter VII are not much closer to being realized, the notion of multilateral military operations to keep the peace has taken hold and there are more peacekeepers, UN and non-UN, deployed today than ever before. For skeptics of international law and organization, the experience provided by multilateral cooperation in field after field, step by step, has tended to ease suspicions and to permit an impressive growth in regime-building over the past decade or two.
- 3) Regional arrangements. As noted above, it is often possible to accomplish things region by region that cannot be done, at least initially, on a global scale. As experience with both codification and implementation is accumulated in specific regions, valuable lessons can be gleaned about how a global regime might be structured and run. This has been the case in arms control and human rights, subjects on which both Europe and Latin America have taken leadership roles in advancing international norms and the institutions to carry them out. Clearly there are limits to what can be accomplished by a regional approach to truly global issues, such as those addressed at Kyoto, but even there intra-regional dialogues can have value. In trade, the past decade has seen major steps on both the regional and global levels, which can be mutually reinforcing. In that sense, regional measures may serve as a stepping stone toward, not as an alternative to, progress on a global scale.

In conclusion, there is little reason for rosy optimism about the future of US relationships with existing global institutions, much less with the efforts to create new ones. American

ambivalence is deeply rooted and has shown remarkable continuity over the last century. Yet neither does the historical record provide much sustenance for the rash and sweeping charges, which seem to be in vogue these days, especially in Europe, that the US has become unabashedly anti-internationalist or unalterably allergic to multilateral cooperation. The US record is far more differentiated and subtle than that. Indeed, it is through a sober assessment of where, when, and why these variations in US practice have occurred that one can begin to identify some points on which to build. To the more ambitious global regime builders, such selectivity and the incremental approaches it implies may seem hopelessly insufficient to the grand challenges of the day. But alternative strategies that seek more, and risk alienating the world's most powerful country in the process, may end up achieving far less. The better choice is to seek common ground with the US, to try to nudge its domestic political processes forward by appealing to its higher values as well as to its long-term interests, and, meanwhile, to consolidate the impressive gains that have already been achieved in terms of building global norms and institutions. Having just emerged from an era of unprecedented global regime creation, it may fall to the early 21st century to be a time of implementation more than of codification, and of reinforcing the foundation more than of constructing new wings and spires.