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US Turns Blind Eye to Global Unity

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US Turns Blind Eye to Global Unity

by David Wirth

Somewhere in rural Pennsylvania, I once passed a barn with “US out of UN and UN out of US” painted prominently on its roof. This distrust for multilateralism in the American psyche resonated all too clearly in the low-grade fever that preceded the invasion of Iraq in mid-March. Now there is a serious risk that the Bush Administration’s on-again off-again approach to the United Nations Security Council may ultimately lead to a lose-lose scenario that destabilizes world security.

The conclusion of the United Nations Charter in 1945 marked a dramatic shift in the way nations approach the use of armed force. In previous centuries, war had been seen as a legitimate instrument of foreign policy. The Charter presumes instead that “to save succeeding generations from the scourge of war,”...“armed force shall not be used, save in the common interest.” The text of the Charter consequently requires Security Council authorization for the deployment of armed force, the sole exception being individual or collective self-defense in response to an “armed attack.”

The law of war has always been controversial, and the application of basic principles in particular settings can produce legitimate disagreements. But international law is also pragmatic, adjusting to changed circumstances through the accretion of “custom.” The global response to the September 11 attacks is an excellent example of the potential for international law to adjust to new challenges such as terrorism. Perpetrated as they were by a loosely structured network of individuals, the terrorists’ acts would not previously have been understood as an “armed attack,” which must be initiated by a foreign government to warrant reliance on the inherent right of self-defense.

When President Bush went on television that evening and stated that “[w]e will make no distinction between the terrorists who committed these acts and those who harbor them,” he potentially catalyzed a change in this principle. The members of NATO reinforced the momentum when they unanimously agreed the following day to invoke Article 5. (continued on page 45)
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of the North Atlantic Treaty for the first time in history by declaring those events an “armed attack.”

A skeptic might observe that this is just an example of “might makes right,” but that would be correct only up to a point. That point is general acceptance by the community of states. An elastic interpretation of the law in response to the terrorist strikes of September 11 seems to have enjoyed widespread, if not necessarily universal, support. By contrast, significant portions of the rest of the world, both governments and the public, at present appear to disagree with President Bush’s extension of the notion of self-defense to encompass unprovoked preemptive strikes in Iraq and possibly elsewhere.

The Bush Administration’s decision in the autumn of 2002 to seek Security Council approval for an invasion of Iraq represented a modest success for principles of multilateralism. While the Council’s November 2002 resolution got weapons inspectors back into Iraq, it stopped short of explicitly authorizing armed force, instead threatening unspecified “serious consequences” without the “all necessary means” formulation used in 1990 to approve the forcible expulsion of Iraq from Kuwait.

While the UN weapons inspectors proceeded to dig for information that might or might not justify subsequent Security Council approval of the use of force, the Bush Administration argued that the case for an attack had already been made. The US decision to seek a second resolution became a moment of truth for principles of multilateralism. To attack Iraq without clear backing from the Council risked international condemnation. On the other hand, the outcome of negotiations on a second resolution, as demonstrated by subsequent events, was uncertain at best.

The President’s warning that the Council “risks irrelevance” by failing to authorize what the “coalition of the willing” had already decided upon may have been a cogent expression of realpolitik. But from a legal point of view, and in the eyes of much of the rest of the world, the United States had gotten it backwards. Regardless of the technical arguments about the need for a second resolution, the Administration’s actions communicated an unfortunate disdain for the multilateral process and, by implication, for the opinion of the rest of the world.

The Bush doctrine of preemptive self-defense shares a critical feature with seemingly compassionate theories such as humanitarian intervention. These unilateral doctrines can be invoked by a single state, acting in a self-judging mode, with little or no input from other countries. While such unilateral excursions may be motivated by benign or even desirable policy purposes, when seen through the lens of the UN Charter, they are inherently suspect because of their potential to trigger a spiral of armed conflict.

Although international law may not be a reliable predictor of actual state behavior, respect for legality has considerable legitimizing force. But the United States has too often evaluated the UN primarily by asking whether it is effective strictly as an instrument of US foreign policy without regard for the concerns of other states. The United States government was prepared to use the UN’s institutional mechanisms to its advantage in the first Persian Gulf war, but it has been all too ready to turn its back when things do not appear to be going its way.

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As times and the needs of global society change, international law can and does evolve, but not always in ways that are responsive to one state’s, even a superpower’s, short-term interests. While we might be able to avoid the immediate consequences, is it genuinely in our long-term interest to risk disrupting the sense of stability provided by international law?

One only need think of the Asian subcontinent, where both India and Pakistan both now have nuclear capabilities, to appreciate the potentially corrosive effect of widespread acceptance of an expansive doctrine of preemptive self-defense. The international power of the United States rests as much on a global perception of legitimacy as on military muscle and economic might. Can we genuinely predict the costs of allowing ourselves, rightly or wrongly, to be perceived not as a nation of principle but as unpredictable adventurists?

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Behind the Columns
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ational Law Society and the Jewish Law Students Association invited Tal Becker, legal advisor to the Permanent Mission of Israel to the UN, to talk about terrorism in Israel. The BC Law Democrats encouraged students to get involved in the Massachusetts gubernatorial election.

The Domestic Violence Advocacy Project was formed to educate and advise the community about domestic violence issues, and to establish a network of law students to volunteer in local shelters and other domestic violence advocacy-related areas. The Public Interest Law Foundation (PILF), twenty years old next year, promotes the placement of law students with public interest firms and agencies. PILF provides summer grants to students who would not otherwise be able to afford to work in these traditionally low-salaried areas (see page 5). The American Constitution Society for Law and Policy was formed in 2001, partly in reaction to the more conservative Federalist Society. I could go on at more length, but you get the idea.

I have not dwelt on racial diversity, but it is obviously on my mind. I have wanted to make the point that different groups of like-minded students, if present in sufficient numbers, can contribute a lot to the business of education. It is entirely proper for schools to pursue students who will make that contribution. And racial diversity contributes to the mixture in ways essentially similar to other differences that we value.