

America and the Rule of Democratic Law in the World Community

By

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America is unilateralist and sets itself above the rule of law. So goes the conventional criticism of American foreign policy after the war in Iraq. The conventional wisdom is wrong. No country has done more to promote international institutions and the rule of law. And that policy did not change with the recent decision to go to war against Iraq.

The United States and its president, Woodrow Wilson, were the inspiration of the League of Nations. Another president, Franklin Roosevelt, designed the United Nations. And American leadership forged the great military and economic institutions of the Atlantic Community — North Atlantic Treaty Organization (NATO), General Agreement on Tariffs and Trade (now the World Trade Organization, WTO), Organization for Economic Cooperation and Development (OECD), and the Group of Seven Summit Meetings (G-7) — that defended Europe, made European union possible, and won the Cold War without firing a single shot.

This legacy is worth recalling because it has not changed. Presidents Bush Sr., Clinton and now Bush Jr. have all promoted the enlargement and deepening of the global democratic and economic systems. Bush Sr. called for a New World Order and led the successful effort to repel Iraqi aggression in Kuwait in 1991. Clinton fought ethnic violence in Bosnia and Kosovo, expanded NATO, and supervised the transformation of the GATT into the WTO. Bush Jr. brought China into the WTO, expanded NATO a second time, and mobilized a global effort to suppress terrorism in Afghanistan and address the prospect of weapons of mass destruction in the Middle East and the Far East.

In all of these cases, the United States took the lead. Sometimes leadership, particularly at the outset, looks like unilateralism. But leading decisively is the only way in the end to achieve multilateralism. In the first Persian Gulf War, the United States positioned forces in the region unilaterally and then won majority votes in both the United Nations and the U.S. Congress to act multilaterally to repel Iraqi aggression in Kuwait. In Bosnia and Kosovo, the United States acted through NATO when it was apparent that Russia would block any action through the United Nations (UN). And in Afghanistan the United States acted with UN backing.

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Did this commitment to multilateralism and the rule of law suddenly end in the attack against Iraq in March 2003? No, it did not. Fair-minded people will acknowledge that the United States made a major effort to secure UN agreement to act against Iraq. For seven weeks in the fall of 2002, U.S. officials labored mightily in New York to persuade the world community that Saddam Hussein had defied the UN long enough. The UN Security Council eventually passed Resolution 1441 unanimously, an unprecedented feat considering that neighbors and sympathizers of Iraq, such as Syria, sat on the Council. This resolution gave Hussein one last chance to disarm and abide by sixteen previous resolutions of the world body. If he did not, 1441 authorized serious consequences, which did not preclude but actually implied the use of force.

While the U.N. discussions proceeded, the U.S. Administration subjected the question of whether it was legitimate to use force if necessary to disarm Iraq to one of the most vigorous democratic systems in the world. Both Houses of Congress in the United States voted on the issue in the middle of the Congressional elections in fall 2002. Some partisan pundits argued that the Administration used the elections to build support for the war. But when is there a better time to hold a debate about war if not in the middle of an election for Congressional representatives? In such an election, the citizens can look their representatives straight in the eye, ask them how they will vote on the issue of war, and then support or reject the candidates on that basis? When all was said and done, the Republican Administration won substantial gains in the elections (unprecedented in a non-presidential election year), and the Senate and House approved the decision to go to war if necessary by a 3-1 and 2-1 margin respectively. If this is not the rule of law inside a democratic country, what is?

Yes, but did not the United States defy the rule of law in the international community? No it did not. In January 2003 the U.S. Administration returned to the United Nations a second time to secure a resolution that declared Iraq out of compliance with Resolution 1441 and authorized the “serious consequences” called for in that resolution. Everyone, including the UN inspectors, agreed that Iraq was not complying with UN demands. But suddenly France and Russia, key members of the UN Security Council, opposed forceful action under any circumstances. They preferred to let the U.N. inspectors contain Iraq indefinitely, that is, to continue the “cat and mouse game” which had allowed Iraq to avoid disarmament for twelve years and to settle simply for keeping Iraq from expanding its weapons programs.

But consider what these countries were now asking the United States to do. The UN inspectors had been kicked out of Iraq in 1998. They returned in December 2002 only under the threat of forceful intervention by U.S. and British troops that had been assembled in the Persian Gulf during the summer and fall of 2002. To continue their work indefinitely, the inspectors would have to be supported by an ongoing threat of forceful intervention. Otherwise Iraq would stonewall the inspection process, throw it into reverse, and eventually force the inspectors out again as it did in 1998. So the United States was being asked by France and Russia to keep its fighting men and women in the desert indefinitely while Iraq maintained its arms and used its commercial contracts, most

of which went to France and Russia before the war, to undermine support for the U.N. inspectors regime. And they were asking the U.S. and Great Britain to do this without being willing themselves to put forces in the desert to support the inspectors indefinitely through an ongoing threat of intervention.

So what were the United States and other UN members who supported the use of force to do? One option was nothing. No U.N. consensus, no use of force. Sounds like the failed League of Nations when Japan vetoed League action against its aggression in Manchuria in 1931. From that experience the world community learned that it could not depend on unanimous consent to act against threats to international security. After World War II, it created the U.N. Security Council where the five great powers and only a majority of the Council members could authorize the use of force. But how often do great powers agree on the use of force? Not always. For forty years, disputes between the United States and the former Soviet Union sidelined the United Nations Security Council.

Should the world community always depend on a system that requires great power unanimity to maintain world order? Certainly it should strive for this ideal. But even then one has to ask what is so ideal about a world run by great powers. This is especially true when two of the current five great powers on the Security Council, namely Russia and China, are not democracies (by any of the sophisticated measures we have to determine that status). Why should the world community operate on a rule of law that one great power equals one veto in the Security Council when some of these great powers do not operate on the rule of law that one citizen equals one vote at home? A majority of U.N. members are not democracies. Why is a decision by this body therefore the only legitimate way to decide to use force? Legitimacy requires more than universal participation. It ultimately requires the consent of the governed. And many UN members do not operate on the consent of the governed.

These are serious questions. It suggests not that the UN is unimportant but that it is limited. The world needs alternatives when the UN cannot act. For the democratic nations, that alternative is NATO. It acted as a backup in Kosovo, and it is playing an increasing role in Afghanistan. Why didn't it serve this purpose in Iraq? Obviously, it couldn't when France, Germany and other NATO members opposed the use of force. But here the United States also made a mistake. After the September 11 attacks, NATO invoked Article 5 calling the attack against America an attack against all NATO members. The United States should have asked NATO to help, as it is doing now in Afghanistan and may do soon in Iraq. But in September 2001 the United States was scared because it did not yet know the dimensions of the threat it faced, and it was frustrated by the attempt to run the Kosovo war in 1998 by NATO committee. So the United States ignored its allies' offer. That decision cost good will and time. Now, two years later, America is asking NATO to field a fast reaction force to help out in Afghanistan and possibly Iraq by fall 2003. This is exactly what it should have done in fall 2001.

In the end, the United States acted in Iraq with a majority of strong democratic countries supporting it. Of the 62 countries ranked highest on democracy scales, 25 sided with the

United States, 13 against, and 24 (mostly small countries) did not take positions. This may not be as big a majority as one might wish to have when free countries decide to go to war. But it is a majority of those countries that give their own citizens the right to make these decisions and therefore represents an outcome that is at least as legitimate as a UN vote with a majority of non-democratic members. If a majority of non-democratic countries could decide what the rule of law is, that rule of law would be despotic, not democratic. Charges that the United States acted unilaterally or put itself above the rule of international democratic law simply do not hold up.

The major democracies were divided by the war in Iraq. And that set back the rule of democratic law in the world community. The United States bears some responsibility for this outcome (especially its early neglect of NATO) but other countries, especially France and Germany, do so as well. The multipolar alternative that France advocated in the Iraq conflict is the old nostrum of great power rule. Nothing can be done unless the U.N. Security Council approves. The multilateral alternative that Germany offered is the idealistic unanimity option of the League of Nations. Nothing can be done unless everyone agrees. The first alternative is undesirable; the second is not always practical. When great powers or universal institutions cannot act, the major democracies must be able to act together. One or another of these democracies may initially take the lead. In military affairs, that usually means the United States until Europe obtains a more equal military capability. But **true multilateralism** based on the rule of **democratic** law depends on these countries acting together, at least by a majority vote. That is the basis for the rule of democratic law both inside and among strong democracies.