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Building Global Democracy

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John Bolton cannot make up his own mind as to whether “we should take global governance seriously.” On the one hand, he argues that we must. “The costs to the United States—reduced constitutional autonomy, impaired popular sovereignty, reduction of our international power, and limitations on our domestic and foreign policy solutions—are far too great, and the current understanding of these costs far too limited to be acceptable.”¹ On the other hand, in the discussion following the presentation of his paper at the conference hosted by the American Enterprise Institute, he repeatedly disparaged the power and effectiveness of international institutions. He claimed that the United Nations “can be an effective tool of American foreign policy from time to time,”² but that the United Nations (“UN”) Charter “has been violated so consistently, so often, by so many of its members, that [I wonder] how much of it is really left.”³ Similarly, he noted that the United States had “withdrawn from the mandatory jurisdiction of the International Court of Justice (“ICJ”) and what role does that have to play in the world? The ICJ is a joke and our nonparticipation in it doesn’t pose any material problems for us in the conduct of our affairs.”⁴

Bolton cannot have it both ways. Many contend that power politics continue to prevail in the international system, in which case great powers like the United States will use international institutions to further their own ends when they find it convenient and disregard them when they do not.⁵ Others argue that the system is evolving toward a genuine global rule of law, in which international law and

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1. John Bolton, *Should We Take Global Governance Seriously?* 1 Chi J Intl L 205, 222 (2000).
2. John Bolton, Transcript of AEI Conference Proceedings, on file with the *Chicago Journal of International Law*.
3. *Id.*
4. *Id.*
5. See Stephen Krasner, *Power and Constraint*, 1 Chi J Intl L 231 (2000).

institutions meaningfully constrain state choice.⁶ But to maintain both positions at once suggests that Bolton's primary aim is to polemicize and provoke, with little regard for the facts.

The debate between these two positions is as old as international law itself. It is far too broad and fundamental to engage in the space of these brief remarks. I will focus instead on one of Bolton's more specific claims: the implications of global governance for global, or at least national, democracy. Here he makes an important point, one that international lawyers cannot afford to ignore. Yet although I agree with his diagnosis of what is at least a potential problem, I disagree sharply with his prescribed solution.

Instead of disengaging from international institutions, the United States must work within them more equitably and effectively. Bolton's insistence on protecting a narrow and outdated conception of sovereignty will only undermine US power and ability to pursue its interests, including the advancement of its most fundamental values. At the same time, however, the United States should take the lead in designing a new generation of international institutions and redesigning old ones to ensure that they include multiple mechanisms for ensuring popular participation.

To date, efforts to encourage such participation have focused on ensuring access and input from non-governmental organizations ("NGOs"). But NGOs, although important and often powerful actors, do not necessarily represent the world's peoples. Governments do, particularly elected representatives sitting in national legislatures. Yet in designing the institutions of global governance, these men and women are all too often left out. Although space constraints preclude offering a detailed proposal in this regard, I conclude by offering a suggestion for how the UN could develop a mechanism for hosting networks of national legislators.

I. PRESERVING AMERICAN POWER AND GLOBAL LEADERSHIP

For the sake of argument in this brief commentary, I accept Bolton's dichotomy between Americanists and Globalists, although not his description of the motives and members of each camp. And I accept his proposition concerning a potential democracy deficit to the extent that Globalists, in the way that he defines them, are building a new generation of international institutions without directly engaging the representatives of the people worldwide. The debate over the democracy deficit in the European Union is exactly about a project that has engaged various people at the supranational level and the subnational level but has left out in many ways the elected representatives of the people. To the extent that the global governance project seeks to replicate elements of the EU experience in the sense of establishing meaningful and effective supranational institutions, it will confront the same obstacles.

6. See, for example, Thomas M. Franck, *Fairness in International Law and Institutions* (Clarendon 1995).

I also agree that the democracy deficit cannot be remedied by civil society alone, to the extent that civil society means national, transnational, and international NGOs. Not that NGOs should be vilified. They are the modern manifestations of de Tocqueville's celebrated "associations," the "intellectual and moral associations" that he argued were the backbone of American democracy.⁸ They play a vital role in mobilizing individuals and representing their specific interests in ways that their elected representatives cannot or will not. Today, those associations and interests extend across borders, creating transnational networks of national associations. The result is the increasingly self-conscious constitution of a transnational civil society. That society, in turn, is a necessary but not sufficient condition for democratic global governance. NGOs are increasingly facing accountability problems of their own, challenges that will only grow as their power increases.

The critical question is how to build global democracy to the extent necessary to establish and enhance the legitimacy of existing and emerging international institutions. Bolton's solution is to strengthen US democracy by forcing the United States to pull out or not participate in international institutions and to reject any constraints on sovereignty. "If we can't do it our way, then we just won't do it. But at least we the people, the American people, will remain masters of our ship." That, in a nutshell, is his argument.

His prescriptions for strengthening US democracy would weaken US power. They would preserve US sovereignty, but at the expense of US leadership in the global community. In many ways, US power depends not only on participating in international institutions, but also on leading them. The prescription for pulling out of international institutions mistakenly equates an abstract conception of sovereignty with the realities of power.

Power is certainly military. It is certainly economic. As Stephen Krasner argues, the United States is not suffering on those dimensions.⁹ But power in a nuclear era and an interdependent global economy is also about influence, about our ability to lead and to persuade others to shape the world the way we want to shape it.¹⁰ That requires engagement, not disengagement. Instead of rejecting international institutions and treaties, we must work to shape them so that they conform to US interests. That is what we did in 1945. That is what we need to do in 2000.

7. Alexis de Tocqueville, *Democracy in America* 513–17 (Doubleday 1969) (J.P. Mayer, ed. and George Lawrence, trans).

8. *Id.* at 517.

9. Krasner, 1 *Chi J Intl L* at 232 (cited in note 5).

10. Joseph S. Nye, Jr., *Bound to Lead: The Changing Nature of American Power* 188 (Basic 1990); Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard 1995).

When other countries refuse to follow our lead, as they are doing more and more, they may be balancing against us, but frequently what they say is: "You're still not playing by the rules. We won't play with you. You're still not participating. You're still not paying your UN dues. We don't have to listen to you." This is the world the United States set up, after all. It was the United States that proclaimed that we wanted a world under the rule of law. We wanted these institutions. We wanted them because we thought they were the best safeguard of our security and power, and we wanted other countries to play by those rules. But when we then refuse to honor our commitments and obligations to those institutions under rules applicable to all, and we refuse even to play, we lose our influence in ways that undermine our ability to achieve our goals and our most fundamental values.

II. A NEW APPROACH TO BUILDING GLOBAL DEMOCRACY

Disengagement is not the answer. But neither should the United States uncritically embrace the projects of other countries or global governance for its own sake. The order and enhanced cooperation afforded by international institutions advance US interests. So too does enhanced democratic representation in global law-making, decision-making, or simply consensus-building. The United States, often hobbled in other nations' eyes by its own democratic processes, should take the lead not only in educating the American people about the benefits of multilateral engagement, but also in educating the world about not only the necessity but the benefits of enhancing the voice of the people in global governance.

A. *Not Only NGOs . . .* Here Bolton is right to critique the overwhelming focus on NGOs. Taking the UN, as he does, as the archetypal example, consider the Secretary General's *Millennium Report*, prepared for the UN Millennium Summit to be held in September 2000. It is entitled "We the Peoples: The Role of the United Nations in the 21st Century." The Prologue declares: "no shift in the way we act or think can be more critical than this: we must put people at the centre of everything we do."¹¹ Yet consider the ways the Secretary General proposes to fulfill this mission.

The Report lays out an ambitious and vital substantive policy agenda focused on the goals of preventing conflict, promoting human rights and economic development, developing a legitimate and effective framework for humanitarian intervention, strengthening peace operations, targeting sanctions, pursuing arms reductions, and protecting the global environment. The Secretary General recognizes, however, that such goals cannot be achieved without major institutional reform, beyond streamlining the UN bureaucracy and management systems. He proposes harnessing the power of both civic and corporate non-state actors through "global policy

11. Kofi A. Annan, *Millennium Report of the United Nations Secretary-General: We the Peoples: The Role of the United Nations in the 21st Century* 7, UN Doc DPI/2103 (2000).

networks," "coalitions for change" that bring together international institutions, civil society and private sector organizations, and national governments in pursuit of common goals.¹² Developing a more "focused and systematic approach" toward including these networks in global governance processes will transform the UN from an international to a genuinely global institution capable of responding to the contemporary challenges of globalization.¹³

Closer examination of this proposal, however, reveals a significant omission. The *Millennium Report* highlights the potential of using the UN to enhance the role of multinational corporations as bearers of "global corporate citizenship."¹⁴ It also devotes several pages to the exponential growth of NGOs and their critical role in mounting global campaigns to establish a land mine treaty and an international criminal court.¹⁵ But it pays only lip service to the involvement of national government officials in these networks, notwithstanding the emphasis elsewhere in the *Millennium Report* on the role of the state.¹⁶ It offers no specific recommendations on how to engage national officials charged with regulating virtually all of the substantive issues on the UN agenda, from public health to arms control to the environment.

B. . . . *But Also National Legislators.* In fact, networks of national officials are one of the fastest growing mechanisms of global governance, though one all too often ignored.¹⁷ The internationalization of jobs once thought exclusively to be a domestic preserve has been one of the byproducts of globalization, such that networks of central bankers, securities commissioners, and insurance supervisors are playing an increasingly important role in regulating the global economy. In other areas, too, from criminal law enforcement to competition policy to environmental protection, networks of national ministers are coordinating national action and collaborating on resolving common problems. The European Union has institutionalized this mode of government through its Council of Ministers. But other international institutions,

12. *Id.* at 70.

13. *Id.* at 71, 11–12.

14. *Id.* at 14.

15. *Id.* at 70–71.

16. *Id.* at 13.

17. Sol Picciotto, *Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism*, 17 *Nw J Intl L & Bus* 1014 (1996–97). See also Scott H. Jacobs, *Regulatory Co-operation for an Interdependent World: Issues for Government*, in *Regulatory Co-operation for an Interdependent World* 15 (OECD 1994), ("[A] web of formal and informal intergovernmental regulatory relationships is emerging in the OECD area (and beyond) that simultaneously empowers and constrains governments with respect to their ability to solve problems through regulation."); Anne-Marie Slaughter, *The New Real World Order* 76 *Foreign Aff* 183 (Sept/Oct 1997); Anne-Marie Slaughter, ed., *Government Networks: The Heart of the Liberal Democratic Order*, in Gregory H. Fox and Brad R. Roth, eds, *Democratic Governance and International Law* 199 (Cambridge 2000); Anne-Marie Slaughter, *Governing the Global Economy through Government Networks*, in Michael Byers, ed, *The Role of Law in International Politics: Essays in International Relations and International Law* 177 (Oxford 2000); Anne-Marie Slaughter, *Judicial Globalization* 40 *Va J Intl L* (forthcoming 2000).

such as the World Intellectual Property Organization and the North American Free Trade Agreement, have devised creative ways to incorporate these “government networks” into international and supranational processes.¹⁸

The United Nations would do well to follow suit, if only by periodically hosting meetings of existing government networks with the aim of linking them up with relevant NGOs and international agencies. Recognizing the role of existing transgovernmental networks and working to integrate them with supranational and subnational actors will enhance the effectiveness of UN initiatives by reaching beyond the often insular diplomatic world of UN ambassadors. But it will not solve the UN’s accountability problems, in the larger sense of enhancing global democracy. Networks of regulators and judges, the two domains in which transgovernmental activity is most intense, raise their own accountability problems. Regulators and judges, even in democracies, are generally unelected officials and are often deliberately insulated from national political processes. Thus to the extent the UN faces the problem of not being, or being perceived to be, the voice of “we the peoples,” reaching out to regulators and judges is not enough.

The missing piece in the Secretary General’s proposals is a role for national legislators—the elected representatives of the people. Senator Jesse Helms’ visit to the United Nations in January 2000 was widely regarded as a diplomatic debacle, in light of his blunt rejection of the organization’s aims and self-conception. More generally, the visit reinforced worldwide perceptions that the US Congress, and by extension any national legislators who respond more to local concerns than global imperatives, is the problem—not the solution. Elected political bodies are certainly messy and imperfect mechanisms for governance at any level. They are fractious and difficult to lead. They typically respond to short-term rather than long-term interests. They reflect all the imperfections of the voters they represent, magnified by the distortions and pathologies of the election process itself, which vary from country to country. But they are indispensable to legitimate and accountable national government. They will prove equally indispensable to legitimate and accountable global governance.

The United Nations should take the lead in creating fora not only for NGOs and multinational corporations, but also for national parliamentarians directly engaged with the national regulation of issues on the global policy agenda. It could start with regular meetings, under UN auspices, of the heads of foreign relations committees in national parliaments. Jesse Helms’ visit should become the rule, not the exception, but not to address the Security Council. He should be invited to engage his counterparts around the world, to share his constituents’ concerns over both

18. Marney L. Cheek, *The Limits of Informal Regulatory Cooperation in International Affairs: A Review of the Global Intellectual Property Rights Regime*, *Geo Wash Intl L Rev* (forthcoming, 2000); see also Scott C. Fulton and Lawrence I. Sperlberg, *The Network of Environmental Enforcement and Compliance Cooperation in North America and the Western Hemisphere*, 30 *Intl Law* 111 (1996).

substantive policies and institutional mechanisms to achieve them. In the most optimistic scenario, he might find over time that some of the concerns of North Carolina voters echo concerns of voters around the world on issues where the United Nations can play a constructive role. More pessimistically, his views might simply confirm the current gulf between the perceptions and priorities of many Americans and those of many other peoples. But, at the very least, he would find it more difficult to portray the United Nations as John Bolton does, as an elitist diplomatic organization seeking to substitute world government for national government.

The Secretary General's *Millennium Report* makes much of the finding in a global public opinion poll that "governments received even lower ratings than the United Nations. In most countries, a majority said their elections were free and fair, but as many as two thirds of all respondents felt that their country, nevertheless, was not governed by the will of the people."¹⁹ These respondents may have been reflecting fears that national governments are being tossed like flotsam on the tide of globalization. But they are unlikely to turn to the United Nations or any other international institution as the answer if it means bypassing or further disempowering their elected representatives. These individuals are ultimately the only instruments of government the voters control.

Globalists are right to insist that technology, the urgency of genuinely global problems, and political and economic interdependence make it increasingly impossible to conduct national politics without global institutions. But if all politics are becoming global, they also remain local. To the extent that global institutions require at least a measure of global democracy, they will also require reaching out to a host of state as well as non-state actors. National legislators, however parochial and recalcitrant they seem, are a fine place to start.

19. Annan, *Millennium Report* at 16 (cited in note 11).

