

February 27, 2007

**Memorandum To: NYU Human Rights Colloquium Participants**

**From: Ken Anderson, WCL & the Hoover Institution**

**Re: *Superpower compliance with international human rights and other international norms, Presentation and Discussion, March 5, 2007***

### **Introduction**

My thanks to Philip Alston and the NYU human rights colloquium for inviting me to talk with you on today's topic of superpower compliance – US compliance – with international human rights and other international norms. I have delayed turning in this discussion paper to you – with my apologies especially to those writing reaction papers to it – in part because I have had shifting views on important parts of it, both in my own mind and in conversations with others I asked to review it. I have finally submitted it to you in the form of a brief memorandum, rather than even calling it a paper, because of my own uncertainties about various fundamental matters.

In particular, the fundamental topic requires making certain assumptions about the nature of the superpower, its power and the future of its power, among other things, that more properly belong to the realm of international politics. As professors and students of international law and politics, we like to think that we have expertise in these things – certainly *I* like to think of myself as expert in these things, someone whom everyone, especially those in power, ought to consult on every occasion, and I find myself unaccountably surprised when they don't. But a quick excursion through the political and foreign policy journals, the op-ed pages, and political commentary reveals, of course, vast disagreement on these questions. I spend more time than I should in DC at various meetings of foreign policy experts, and am struck with how different, and often mutually exclusive, the assessments of power even from people who share roughly the same political commitments, left or right.

'Disagreement' is not precisely the term – profound unease, perhaps better, because it better reflects uncertainties about the very meaning of American power even within broadly partisan political positions. It is not that the right has one analysis, the left another, each side reasonably certain of its own position, while disagreeing with the other. My perception of Washington discussions today, for what it is worth, is deep uncertainty gnawing at everyone, even if the uncertainties lead them in different political and policy directions. How powerful, really, is the United States, particularly as demonstrated by Iraq and Afghanistan? How powerful given the general sense of inability use this supposed power to deflect Iran or North Korea from their nuclear courses? What difference US military might if it cannot win its wars in the grand

strategic sense, at least if the wars in question involve asymmetric warfare and counterinsurgency? As I write this, the wildly speculative, highly corrupt Chinese stock market has undergone (completely unsurprisingly) a sharp correction – is this the kind of internal economic shock that, if amplified, if severe enough, and occurring in a corrupt, authoritarian political system, might cause a political crisis that might even bring with it a disastrous confrontation in the Taiwan straits - and what kind of power does the superpower have to affect such a crisis of internal economic and financial making? Will the United States continue to have economic and military hegemony into the future, or will that dominance erode in the face of rising powers such as China? Will the world continue to be a superpower dominated world, or will it shift into a mode of great powers or regional powers?

I have no special crystal ball as to the short or long term condition of US power. Anything I say to that is irremediably speculative. Yet the nature of the discussion requires offering a view, or views, of precisely that. It is difficult to talk about what compliance means by the United States as the superpower without addressing the question of its power, whether its power gives it special leverage, whether it has, or ought to have, special responsibilities and special prerogatives as the order-guaranteeing hegemon, or whether all of that is simply an illegitimate leap from power to status. In order to get a discussion going, at least, I therefore offer some assumptions about these issues. They are speculative factual assumptions with which you may disagree and about which I might well be quite wrong, and might change my mind about on the train home tomorrow. And this is quite apart from anything that might be right or wrong with my larger conceptual argument about international norms and human rights norms. I would ask you to keep that in mind as I discuss these topics, and I welcome your comments, because I am genuinely unsettled as to assumptions and conclusions.

I conceive of the discussion question this way. First, the question can be thought of as a strategic question – what are strategies for getting to superpower to comply with a certain set of international norms, where we agree as to the meaning of those norms, their fundamental interpretation, and with the proposition that the United States ought to comply in the ways we think it ought to comply? I am willing to go partway down that strategic road for purposes of discussion – but not completely, because in a group of discussants, I probably have some important areas of disagreement as to the meaning and interpretation of various norms – and I assume that it is partly on account of those disagreements that Philip invited me to come talk today. I will therefore try to indicate some areas where I believe we disagree as to what the norms at issue are and what they mean. Second, how do the answers to the question of compliance change depending on how one sees the current and future power of the superpower – on the one hand, as being genuinely, ‘hegemonically’ powerful today and tomorrow or, on the other, as more powerful in appearance and form than fact, a superpower unable to project its power to the final ends of its policies, today and even more so tomorrow? That second question essentially asks for an assessment on two distinct scenarios. I will spend more time on the second question than the first and, although I have more or less neatly laid out the alternatives here, the actual discussion that follows will be a great deal less neat, more discursive, and not robustly organized.

## What does it mean to be a superpower?

*The conjoined US-UN system.* Classical IR theory tells us that the international system of states can be a state of anarchy among states or, under some circumstances, it might be dominated by a hegemon that is able to enforce a certain amount of status quo order. It also offers various possibilities for what happens to hegemonic order – smaller states, feeling threatened or seeing opportunity, band together to counteract the hegemon, or the hegemon exhausts itself internally, or a new power arises to challenge hegemony, or many other possibilities. I have not the faintest idea where to place the United States in such an array of realist paradigms, but in any case believe that at least in the short to medium term, an analysis of US power in the world must take account of at least the following “extra-realist” considerations:

- The role of values and ideological considerations in the world today, partly reflected around the ideology of human rights, but also increasingly other ideologies, most powerfully political Islamism, but also such ideologies as democratic authoritarianism *a la* Putin or Chavez.
- The role of values and ideologies in US politics, as with other large democracies, whether France or Germany, India or Japan.
- A cultural reluctance in American political culture to play the role of overt imperial power (leaving aside Latin America), even when Niall Ferguson or Michael Ignatieff thinks America should – a reluctance that raises a significant question as to whether the term “hegemon” actually fits US behavior.
- A response to America’s cultural reluctance to be an overt imperialist by other countries that amounts to acquiescence in the US security role; as Michael Mandelbaum correctly, on this point, says, because other generally friendly states trust, not this *policy*, but cultural tendency, against what realism might otherwise dictate, they tacitly accept the American security guarantee, and think it worth much more, with relatively few costs or demands for imperial tribute, than what such international institutions such as the Security Council might offer.<sup>1</sup>
- A firm belief across the partisan board in mainstream American politics – Democrats as well as Republicans – in *some form* of American exceptionalism, an exceptionalism not based on the fact of power alone, but on a belief in its internal moral order legitimating a certain moral place in the world, however differently the partisan actors within American politics interpret that exceptionalism.
- An American belief – again, broadly held across the mainstream political spectrum, Democratic as well as Republican – that international law, norms, and institutions are to be treated and interpreted pragmatically, according to the ‘broad-minded’ interests of a superpower interested in status quo order, stability, and the promotion of economic interconnectedness – and not, despite the

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<sup>1</sup> Michael Mandelbaum, *The Case for Goliath: How America Acts as the World’s Government in the 21<sup>st</sup> Century* (Public Affairs 2005). I think Mandelbaum wrong on many, many things in this book, but not on this point.

rhetoric sometimes offered by Democrats, making a fetish of international law or institutions for their own sake.

All these bullet points, especially the last four, are disputed at the margins. One might think matters were very much otherwise if all one were to consider were the debate in the Security Council over Iraq, for example. But when one looks to the medium term behavior of states, I suggest that this is closer to the truth. There is a kind of equilibrium in which such structures as the United Nations and its norm-system operate with a certain weight and effect, while simultaneously being limited – not precisely by the power of the United States coercing or prohibiting it from acting, but by the preferences of significant actors preferring the implicit security order offered by the United States irrespective of the UN and its norm-structures.

The existence of a hegemon offering security puts a limit on actually testing what the UN might – or might not – accomplish if states overall had to look to it for security and genuinely rest the Thucydean “argument upon your safety” on the logic of collective UN security. There are populations who have no choice but to do that – the inhabitants of Darfur, for example, and before that, the men and boys of Srebrenica; there are also, to be fair, more positive ones as well evident in the relative success of UN peacekeeping missions in recent years. But it is perhaps not surprising that a significant amount of the world’s states, starting with Europe, have not, since 1945, been willing to test the proposition of naked collective security, fearing precisely the outcome that the UN so often amounts to – insincere promises and easy defection. They prefer, as measured by their behavior at least, to trust even grudgingly the superpower’s offer of an undemanding order over the uncertainties of collective action – so much so that they neither look to nor spend significantly for their own defense, but let the superpower do it. This does not stop everyone from loudly complaining, sometime justifiably and sometimes not, about the superpower’s behavior – but the complaining is integrally part of the logic of insincere promising and insincere protesting, and the attempt to bend the superpower to the will of smaller powers through a combination of ideological flattery (“you can be civilized like us”) or the ideological guilt trip (“we won’t love you anymore”).

One may treat each individual dispute with the US on its own, actual merits, of course. My point concerning the relation of the superpower to the UN and its norm system is a different one, and merely a descriptive observation of how the system works over time. The conjoined system of US hegemony and the UN system as a place for countries (and international elites, the NGOs, international civil servants, not just countries) to get angry and let off steam while not intending, not really, to challenge the fundamental bases of that *conjoined* system – insincere protesting, again – has, it seems to me, reached a fairly immovable equilibrium. Lots of key players are invested in both the security and the protesting, invested in dependency and insincerity. If the question, therefore, is getting the superpower to go along with a set of norms defined by the UN, then it is not irrelevant to consider the idea that the international system is not actually one of everyone profoundly frustrated and angry to the point of actually changing it, challenging the superpower by organizing against it materially rather than symbolically – instead, it is

what it has long been, a system in relatively stable equilibrium, in which the shouting, and the periodic amplification of the shouting, is part of how the system works over time.

Could all this change? Sure. The US could gradually lose the economic power to be the security hegemon. Other powers could gradually arise – China, etc. The US could gradually lose steam. The logic of collective security could start to look more attractive to key players currently within the US security blanket. Risk assessments differ, too – Western Europe at this moment is worried about Russia, which worries the US far less than other concerns, such as North Korea or China which, to Europe, is just a large market far away and unthreatening. All sorts of things can and will happen over time. But the system has exhibited a certain equilibrium stability, provided one sees it as a conjoined system, that suggests that key players, even when they protest, are also deeply invested in the system for their own reasons. Change at the level of norms is not so easy, because insofar as the norms are specifically part of a UN-values system, it inevitably raises questions as to whether the participants are genuinely serious, or whether instead the exercise is mostly part of the UN's inherent cycle of insincere promising-insincere protesting-easy defection.

*The conjoined US-UN system seen from inside the US political mainstream, or, what remains of neo-conservatism?* When one looks *inside* US politics, across the spectrum of mainstream politics over time, it is characterized, I think, by a much more shared sense of treating the UN and its norm systems in highly pragmatic ways than the bitter arguments required by today's theatre of partisanship might superficially suggest. The differences are not entirely rhetorical – an administration of H. Clinton or Obama would behave with respect to the UN and its norm system differently in some respects from an administration of McCain or Giuliani – but it is easy, on the basis of the rhetoric, to overstate the substantive differences. The mainstream center of US politics does not fetishize the UN or international law.

Let me try to put this point about shared, rather than battling, views of international law within the US political mainstream in a quite different way. Neo-conservatism is currently the intellectual whipping boy for all that has gone wrong, or apparently gone wrong, in American foreign policy. Everyone is dreaming up new alternatives, at least in Washington, in universities and think tanks and policy centers. For the moment, at least, everyone seems to agree that (conservative) idealism is the problem and we are all, conservatives and liberals, going to be realists for a while – we should have accommodated to Saddam and his sons and sought containment instead of removal and, indeed, containment and accommodation appear to be the new orders of the day with pretty much every bad regime; the only regime, apparently, that can't be accommodated is the Bush administration. One can represent that as merely a realist bow to the fact that the US has had its nose rubbed in the fact of what military action alone can get you and what it can't; still, the writings of a surprising of people out there these days, however, suggests to me that the new liberal realism represents a more profound disillusionment than that, more than just a disillusionment with military solutions to problems, but a disillusionment with muscular idealism as such. It's far from "lesser breeds without the law," yes, but still, it's profoundly unattractive – as though liberal idealists, long

constrained by their moral Calvinism to worship at the altar of severe Wilsonian idealism, were suddenly freed, through the failure of conservative idealism, to celebrate a Carnival of liberal realism, stern moralists suddenly freed to dance drunkenly in the avenues of dubious virtue, to party in the precincts of hard realism usually reserved to the morally benighted Brent Scowcroft and James Baker, freed to expound on the virtues of accommodation, containment, stability, and the necessity of maintaining ‘our sonofabitch’. This is a caricature, sure – but isn’t there a grain of truth to it?

I also do not think it will last. Liberals and Democrats in the United States will sober up and rediscover – the sooner the better, to my mind – that they really are committed long term to certain values, and that the objects of that idealism – its targets – will be more than simply going after the Bush administration which, in any case, will not be around that much longer. But it is essential to understanding the long term center of American foreign policy to understand how much of neo-conservatism is, in other language and other forms, part of that long term center. Francis Fukuyama’s *After the Neocons* offers a useful guide to the underlying propositions of neo-conservatism; not all, but most of them will show up again in ideologies of both right and left in America, under other names, because there is an irreducible idealist strain in American foreign policy that will not go away.<sup>2</sup>

The point is this. America’s superpower status is irretrievably bound up in its own mind, in its political center, in its mainstream politics both Democratic and Republican, with the moral legitimacy of that power. Others may scoff at that, think it supremely hypocritical, accept it as the fact of power without legitimacy, an exercise in gross wickedness, etc. – but it would be a profound mistake to imagine that a change of administration in the United States will deeply alter that internal perception. Superpower emphasizes “power”; American politics, even with the bitter debates over the morality of American actions in the world from Guantanamo to Abu Ghraib, emphasizes its legitimacy. A new Democratic administration is unlikely to draw from the experience post 9-11 that America is a superpower by reason of power alone, but instead the quite different lesson that it has to clean up the moral mess of the Bush administration in order to continue what it, along with the American ‘vital center’ has long seen as the legitimate moral order – a flexible, pragmatic international system that consists of a sometimes messy, sometimes inconsistent *conjoined* international system. In the collective mind of that American vital center, the UN and its system of norms are not – as they are for some on the American right - irrelevant, just as they are not – as they are for some on the American left – overriding. It is a messily conjoined system.

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<sup>2</sup> Frances Fukuyama, *After the Neocons: America at the Crossroads* (Yale 2006). I highly recommend the book – I’ve written two reviews of it, and as time goes by, I’ve decided that those reviews are actually too harsh. It is a very insightful book, not just for its dissection of neo-conservatism, but for its attempt to sketch a future foreign policy. For the short review, see “Doomed Internationalist,” Times Literary Supplement, September 20, 2006, available at SSRN, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=940309](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=940309). The long version, with a lengthy discussion of multiculturalism and terrorism, appears in “Goodbye to All That? A Requiem for Neo-conservatism,” American University International Law Review, Vol. 22, February 2007, almost final version downloadable at SSRN, at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=922344](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=922344).

If that is so – and of course perhaps I am quite wrong – then the question then becomes, what is the status and role of international human rights norms, particularly as understood and interpreted by the human rights movement, Western European governments, and international bodies, for new, post Bush administration regimes in the United States, in the *continuing* claim of superpowerness that partakes of legitimacy? But the fundamental perception of the American political center partakes directly of a central proposition that Fukuyama identifies with neo-conservatism – the conjoined American belief in *both* the legitimacy of the exercise of American power as a force for generally good order in the world, *and* American exceptionalism that goes along with that. Perhaps I am wrong, but I do not suppose that fundamental internal perception across the American political spectrum has been altered, even by the reign of the Bush administration.

### **Interpreting human rights norms**

Understood as a conjoined system, it is easier to understand, from the view of the American political center, that arguments from human rights neither fall on deaf ears nor automatically win the day. It would be a logically more coherent, but politically less satisfying, system if it were all one or the other. But even within the arguments over human rights norms and United States compliance with them, it would be a deep mistake to assume that there is agreement over what those obligations are, what they mean, how they are to be interpreted, and whether and the extent to which the United States is actually out of compliance since the beginning of the US war against terror.

I am going to skip over all the various ways in which the United States is claimed to be in violation of various human rights standards, including law of armed conflict standards, and skip over as well all the various views and responses of the United States in reply. Those debates have been stated and re-stated; I will simply say that in general, I share the views of John Bellinger<sup>3</sup>. His view, roughly summarized, is that international law is a lot more complicated than critics of the US have made out – which is to say, he restates the traditional American view that international law is much more flexible and pragmatic and able to be shaped to new circumstances than many critics of the Bush administration have been willing to admit. I do not join Bellinger at every turn – he, after all, is in the position of defending the administration at every turn – and in particular I join the critics in saying that the war on terror does not, in fact, meet the requirements to constitute, as such, a war in the legal sense, any more than the Cold War was for forty long years, all of it, a war in the legal sense. I understand and sympathize with the impulse to treat it that way in the period immediately after 9-11, but I do not think it meets the legal tests as a whole, global enterprise at this point.

What I do share with Bellinger is a view that it is far too quick for Bush administration critics boldly to assert, in every instance, its violation of international law and human

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<sup>3</sup> A convenient place to get some of those views summarized is at the Opinio Juris blog, where Bellinger guest blogged during a couple of weeks in January 2007 – a quite remarkable exchange of views between Bellinger, a number of guest respondents from the international law community, and many, often highly erudite, commentators. See [www.opinioujuris.org](http://www.opinioujuris.org).

rights and humanitarian law norms as though in every case the meaning, applicability, interpretation, etc., of those norms were transparent. I understand the critics taking the moral high ground in the face of the torture memos, among other things; I am unwilling, on the other hand, to turn around and say, well, from now on the critics' views of what these norms mean controls over those of the United States government. I entirely share, for example, the State Department's long held views of the territorial application of the ICCPR. I do not think the Torture Convention self-explanatory as to what actual, concrete behaviors constitute torture; the Convention does not come with a user's guide to what actual CIA interrogation practices constitute torture. Someone has to interpret these things, and while one can have long legal arguments as to whom and in what fora, more interesting to me is that part of the argument lies not solely in the substance of the question as in how international norms are conceived in the first place. Notably missing from the discussion is the possibility that, given the inherent ambiguity of at least some of these norms and their meanings, their interpretation and meanings are being formulated in some part by the state practice of the United States itself.

Yet I am finally not so much interested in pursuing those questions here. They are vital questions of practice today, accountability for practices in the past, yes, but what concerns me far more at this point is what the relationship of international human rights and US (and other countries') counterterrorism policies should look like into the future. Part of the intractability of counterterrorism policy as a political debate in the US, at least, is that everyone today is highly invested, either as critic or defender, in past practices and arguments over past practices. This makes it difficult, sometimes impossible, to look forward to what counterterrorism policy ought to be – no one can propose or admit a change from what they have done or criticized having been done in the past without a damaging admission. Whereas, in the US, the possibility of a change of administration, Democratic or Republican, offers a chance to reformulate and re-conceive basic counterterrorism policy – but that won't happen unless at least part of the debate refocuses on the going-forward.

Let me suggest, in rapid fire, bullet point form, what some basic points of a reformulated, forward looking counterterrorism policy might be.<sup>4</sup> I leave aside the Iraq war altogether in this; I regard it as Joe Lieberman does, as an integral part of the war on terror, but I understand that this view is far from universally shared:

- *The role of war.* War is a critically useful strategic paradigm for understanding the long term struggle against Islamist terror, just as it was in the Cold War. Actual war in counterterrorism that meets the legal definition of war – especially the large scale use of military force – is not usually about fighting the terrorists themselves, since they melt away into the background. It is more usually about

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<sup>4</sup> I draw here in part from a very interesting exercise sponsored by the Stanley Foundation as part of its Bridging the Foreign Policy Divide project – bringing together center right and center left figures to write jointly on common ground and differences between them on various foreign policy issues in advance of the 2008 election. I was privileged to work with Elisa Massimino, Washington director of Human Rights First, producing an article titled “The Cost of Confusion: Resolving the Ambiguities in Detainee Treatment,” March 2007. I will post a pdf to SSRN as soon as the final version is released on March 6, 2007

- fighting regimes – those that offer safe haven, on the one hand, or those that threaten to provide terrorists with WMD, on the other, on whatever criteria of threat assessment a post-Iraq war policy deems advisable. War is an essential tool of counterterrorism policy – but not all counterterrorism policy is war, either.
- *The role of law enforcement.* On the one hand, there is obviously a large role for law enforcement in counterterrorism, especially domestically, and in cooperation with law enforcement abroad. On the other hand, as Judge Posner, Michael Scheuer, and many others have written, there can be no return to the Clinton-era reliance upon post-hoc law enforcement as the primary means of counterterrorism policy.

If actual war is limited, and likewise law enforcement, too, as means of counterterrorism, the question is what lies in the broad middle ground between those two? I ask this partly for its own sake – what should counterterrorism look like – but, in the context of this memorandum, specifically to ask what relationship that middle ground has to human rights norms. After all, the relationship of law enforcement, criminal justice, the criminal courts, to human rights norms is not really at issue. For that matter, when it comes to actual war, the law of war (while subject to intense debate as to what it means when applied to situations not obviously about war or battlefields in the ordinary, traditional sense) is probably the most work-out, refined set of rules in all of international law. From the standpoint of the question posed in this memorandum, the issue of what this broad middle ground of counterterrorism policy consists of is really a question as to what law applies to it, or to any particular part of it, and how is that law to be interpreted and by whom and in what fora. Some of these “middle ground” issues are not hugely troubling from the human rights norm standpoint, such as efforts to disrupt terrorist financing or information sharing among foreign intelligence services,<sup>5</sup> and I will leave those aside. But others raise deep civil liberties as well as human rights issues even as they are, I suggest, core parts of a forward-going counterterrorism policy for a new administration, whether Democratic or Republican:

- Surveillance issues, what is legal, what is not, and who must review and approve decisions.
- Detention decisions, who makes them, and how they may be challenged.
- Interrogation and what constitutes cruel treatment, etc., and the legal line of torture.
- Secrecy decisions – an overlooked aspect of counterterrorism policy, long present but now sharply at the forefront is the whole legal and administrative structure of classified information.
- Decisions to release terrorist suspects, when, and to whom; rendition questions; and the (un)willingness of governments to take back their nationals.
- How to try detainees for alleged crimes, under what legal regime.

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<sup>5</sup> Although the extraordinary rendition cases now being developed in Europe change that assessment in part.

- The use of force short of the legal definition of war in assassination, abduction, detention, destruction of terrorist materiel, etc. – what law applies to regulate this conduct and what should the substantive standards be?

I suggest that under a forward looking counterterrorism policy, these will figure prominently among the issues for which superpower compliance with international norms is debated. For some of these, I can suggest some answers.

- *A civilian national security court.* My view is that it is time to create a national security court, with judges drawn from the existing circuit courts, civilian in nature, with special rules for procedure, evidence, and so on. The US could usefully draw upon the experience of Western Europe with regards to national security courts and special counterterrorism laws. The rules of the international criminal tribunals are also instructive. It would take over from the military in any military commission cases, and would, ideally, serve as the court periodically to review the factual basis of and on-going need for what should amount to administrative detention in other cases. The military should be limited to dealing with detainees taken on battlefields as ordinarily defined in the legal definition of war. (This will not eliminate all military detainees at Guantanamo, however, many of whom were taken on battlefields as ordinarily defined.)
- *Close Guantanamo.* I do not say this as one of the administration's legion critics; I supported its creation and think that it served as useful purpose at the outset of the war on terror. This does not mean releasing a handful of high-value detainees; but they are a tiny handful, and their detention should be reviewed by a national security court.
- *Require Congress to share ownership of counterterrorism policy.* One profoundly effect of the Cheney faction focus on executive power has been that it has let Congress off the hook in having to take, and share, responsibility for US counterterrorism policy. So long as the Bush administration is willing – masochistically – to take all the heat, in the name of protecting executive power – for every counterterrorism policy, Congress will not easily on its own step up and accept responsibility for it. I obviously have strong views on what counterterrorism policy should be; still more important is that in a democratic system, the legislature share and enact such policies for the long term, whatever they substantively happen to be.

These and other measures will raise important questions of the application of human rights norms. I would suppose that some part of the discussion would shift away from the laws of war and the battlelines redrawn over human rights law generally. On many of those issues, the US has strong and long pronounced views; I do not suppose there would be much agreement forthcoming in those debates. But I would caution, once again, that while there are indeed differences in how a Democratic administration would view these matters from how a Republican one would, those differences are less than might be thought.

### **The Meek Multilateralist?**

Insofar, therefore, as many of the burning issues of US compliance have to do with the war on terror, there are possibilities in the future that might better satisfy critics of the US while satisfying US security concerns. Not on everything, and not as the critics might like. But if the attention could be focused at least partly forward and not entirely backwards, possibilities for restructuring counterterrorism policy that would even satisfy someone like me who, at the end of the day, supports the Bush administration's overall policy, become more evident. Let me close this rambling memo, however, with a very brief consideration of a quite different sort.

The conventional wisdom seems to be that the US has quite exhausted itself with war – perhaps not unlike its exhaustion with war following Vietnam. Not everyone shares that view – Ivo Daalder and Robert Kagan, in particular, are soon releasing a startling essay arguing that the United States will be no less bellicose in a new administration - but conventional wisdom says no more wars for a good while. From the European point of view, that does not make the US security guarantee any less good – better even – because for Europe, US counterterrorism wars simply stir up Islamist terrorists in its own cities, places that can't be attacked by the 82<sup>nd</sup> Airborne. What it most likely leads to – and I will close on this note – is a return to the Clinton era, with a certain added air, in a Democratic administration at least, of contrition expressed as a 'meek multilateralism'. But recall what that meek multilateralism served in the early Clinton years – a get along, go along foreign policy not really interested in anything foreign other than trade. It was willing, most of the time, to say all the right multilateralist things. It was always willing to feel everyone's pain for anything out in the world. But it was much less willing to act. It wanted to be multilateralist, in other words, precisely in order, through its partly lipservice compliance with all those international norms, to try and be just another power in the multilateral gaggle of nation-states, whose compliance is partly lipservice, too.

Just being one of the guys, so to speak, doesn't work for the United States, of course, and it doesn't work for the rest of the world either – what, rely, *really* rely, on the promise of collective security through the UN? Who are we kidding? Within a few years the Clinton administration was in a different mode – but it wasn't willingly and it wasn't for lack of desire to loom small on the world stage. We face, under either a Democratic or Republican administration, the possibility of a return to a form of meek multilateralism by the United States. It might actually be more compliant with international law norms. It might be much more respectful of international law as the international law professors see it. One might wish that the US would essentially submit its power to supervision and control by its allies and friends and take instruction from them, but that seems unlikely. The choice, I believe, is much more likely between a meek multilateralism that masks a deep desire to ignore, at least for some quite possibly critical years, the responsibilities and obligations of the superpower, in order not to be seen to be exercising its privileges, and also frankly to lick its wounds – or a more robust assertion of American exceptionalism to the point of special privilege, arrogant as that always in fact is, and infuriating to the rest of the US's friends and allies, as that always is, and less compliant and respectful of others' views of international law. The latter choice may not rise, in a

new administration, to the Bush administration's special levels of bellicosity, but it would not be a return to the early 1990s, either. Think carefully upon which you prefer.

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