

UNDERGRADUATE LAWS BLOG

US Exceptionalism and International Law

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Well good morning good afternoon or good evening depending on where and when you are watching this. My name is Wade Mansell and as you probably realise I'm the convener of the public international law module and the author of the module guide.

I've been asked to briefly post on a subject which has a relevance to contemporary international law and also relevant to the course that you have been following and from a myriad of possibilities I've decided to return to the question of the status of the United States in international law and in particular to the attitudes expressed by John Bolton which are discussed in Chapter 11.3.2. At the time that I wrote that piece I felt that one had posed fundamental questions about the very basis of international law and so it was at least of philosophical interest it was topical only in a discussion of the place accorded to international law under the presidency of George W Bush.

Well although shortly after the Trump presidency began, John Bolton's name had been suggested as a potential Secretary of State. This didn't happen for a number of reasons not all of which are explained but one of which was said to be that President Trump had taken a great dislike to John Bolton's moustache. It's more likely however that if he had been appointed as Secretary of State this would have required Senate confirmation and that wouldn't necessarily have been forthcoming.

Well his new appointment as it is in the office of the president will not require congressional approval. Essentially he will now become president Trump's principal advisor on matters of national security and that's why it's relevant once more to consider what sort of advice concerning international law he is likely to proffer to President Trump. But I should just state that whatever your view of the Trump administration that's not really relevant to what I'm going to be talking about at the moment is rather an attempt to try to predict the sort of advice that John Bolton will give to President Trump. So it's crucial to remember that John Bolton has consistently expressed a belief that the United States can do what it wants without regard to international law, without regard to treaties, without regard to the political commitments of previous administrations and it's now of course more than 20 years since he claimed that regardless of the United Nations Charter (treaty to which the United States is obviously party) the United States was not bound by his provisions and could if it wished renege even on its undertaking to pay its dues to that organisation.

With regard to the International agreement with Iran offering trade and other concessions in return for Iran agreeing to suspended its quote nuclearisation unquote. John Bolton has argued as has President Trump that it is a quote terrible deal unquote, and that the United States should withdraw its agreement even though it is not argued that Iran is in breach of its obligations under the treaty. The position that Bolton has taken reflects that of Israel in favour of a unilateral strike intended to destroy any Iranian nuclear capability existing or potential. This may remind you of the stance that he took with regard to treaties as discussed in your module guide and that is that they're only quote binding unquote upon the United States as long as it is in the interest of the United States that they should be so. A rather remarkable position certainly in the eyes of international lawyers.

As to North Korea in February of this year his view was that it was quote perfectly legitimate unquote for the United States to strike first in response to what he perceived as the current necessity posed

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by North Korea's nuclear capability and if the proposed talks between President Trump and the North Korean president do take place it will be for John Bolton to advise President Trump.

Concerning the proposed decision to remove the United States Embassy in Israel from Tel Aviv to Jerusalem in a submission to the House Committee on Oversight and Government Reform which is a Subcommittee on national security. In November of last year John Bolton said and I quote I believe that recognising Jerusalem as Israel's capital city and relocating our embassy there on incontestably Israeli sovereign territory would be sensible, prudent and efficient for the United States government. Indeed, fully regularising the American diplomatic presence in Israel will benefit both countries which is why worldwide the United States Embassy and virtually every other country will recognise is in the host country's capital city. I may say that decision was taken in the face of united opposition from almost the entire world. But I suppose one thing in John Bolton's favour is that he did make it clear that he was not suggesting that the embassy should be moved to east of the Green Line that if you don't be in the and he referred to West Jerusalem.

In other speeches he has however expressed the opinion that the two-state solution that is allowing a Palestinian state to coexist with Israel, was no longer an option and his suggestion was that a solution might be found by conceding Gaza to Egyptian sovereignty, and to returning what remained of the West Bank after negotiations to the state of Jordan. Of course the implicit assumption of that suggestion is that there is not such a thing as a Palestinian people but rather and this used to be the position taken by many Israelis, that Palestinians are better recognised simply as Arabs.

Of course the fact that John Bolton has expressed these views generally well not in a position of state power does not mean that he will pursue them in his new role. He has indeed suggested that his new role will dictate new views but this such consistency in what he has expressed in the past. Which could be summarised I suppose as anti-globalisation and pro constitutional self-interested nationalism. He has always opposed conceding powers to the international community. Arguing that such concessions detract from the United States ability to take its own democratically determined decisions. In one clear example of us which does seem to chime very much with what's happening under the current policy of President Trump, concerns the World Trade Organisation and the treaty commitments undertaken by the parties including of course the United States. Bolton has advocated ignoring the agreed World Trade Organisation dispute resolution mechanism. Suggesting that to do so would enable United States to retaliate against trading partners without submitting to adjudication which is indeed what is happening at this very moment.

A final example of what might perhaps be expected from John Bolton superiors in office concerns the United Nations Paris agreement on climate change. For anyone who hoped that President Trump might reverse his decision to withdraw from the Paris agreement John Bolton's reported response upon hearing of the president's intention is quite instructive. He thought that it was an excellent idea and added quote the Paris Accord is a self licking ice cream cone its purpose is to exist and he added that quote the overall effect on climate by any reputable scientific analysis is zero. He rejoiced in the fact that what was being rejected was any session any ceding of constitutional governance authority to international organisations.

Finally one commentator not unreasonably has suggested that John Bolton's view of international law was there was something there should not be allowed to enable the world's Lilliputians the world small people to constrain the American Gulliver (for those of you who are familiar with Gulliver's Travels). Good luck with the examination