Preempting Democracy: The Bush Administration vs. the World

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INTRODUCTION

Today we have assembled to participate in the African-American Law & Policy Report’s symposium, The Role of Law & Policy: Africa, the Caribbean, and the United States. In talking about the role of law today, I would especially like to focus on the rule of law, and its place in American foreign policy.

The answers may seem self-evident, but it remains important to pose two vital questions: (1) What makes the rule of law so important?; and (2) in an era in which the United States is the only superpower in the world, does the rule of law still matter a great deal?

In addressing these questions, I specifically want to talk about the rule of law and foreign policy in the Bush Administration by looking first at the actions of the United States government during the recent coup d’etat in Haiti and then by examining the Administration’s broader assault on international law in the form of the Doctrine of Preemption.1

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The United Nations Charter provides the foundation for the rule of modern international law. The Charter calls on its members to live together in peace as good neighbors; united in strength to maintain international peace and security; to promote the economic and social advancement of all; and to ensure that armed force shall not be used, save in the common interest.\(^2\) The rule, as set forth in the Charter, is tremendously important because when it disintegrates, either within a country or between nations, the world is a less stable, less secure place.

In fact, it is in our national interest for countries, including the United States, to abide by the rule of law. Our leaders recognized the importance of abiding by the rule of law when, in the wake of the terrible, awful destruction of World War II, which left fifty-five million dead,\(^3\) they helped establish the United Nations (UN).\(^4\) The UN codified the principles of international law and security in the UN Charter.

The preamble to the Charter begins:

- We the Peoples of the United Nations Determined
- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom... \(^5\)

While the United States may be the world’s only superpower, we are by no means all-powerful. It is important for the United States to abide by the rule of law because we are a part of the community of nations. That membership brings both benefits and obligations. Furthermore, as the most powerful country in the world, we must realize that we do not walk softly across the earth: each step that we take sends shockwaves that echo across the globe. If we trample international law by ignoring the rule of law, or refuse to take up the burdens of leadership, our actions have repercussions that may be felt around the world for generations to come.

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3. 29 NEW ENCYCLOPÆDIA BRITANNICA 1022 (15th ed. 1990). The exact number of World War II deaths is not universally agreed upon, but many reliable sources estimate the number of deaths to be anywhere from thirty-five to sixty million.
5. U.N. CHARTER pmbl., supra note 2.
Two vivid and very recent examples bring to mind the importance of the rule of law and the chaos and loss of life that follow when it is undermined. First, and closest to home, in Haiti a fragile democracy was shattered not simply by Haitian rebels, but also by the U.S. government. Second, we have what may be the greatest threat to the rule of law of all: the Bush Administration’s Doctrine of Preemption, which ignores international law. These two examples tell us an enormous amount about the Bush Administration’s foreign policy and its approach to the rule of law.

These two examples of the Administration’s foreign policy are connected to one another in several ways. First, they are both central to the Bush Administration’s view of the world. Second, they are both indicative of President Bush’s failures to engage in multilateral cooperation. Finally, both examples reflect the Bush Administration’s failure to uphold the rule of law and, in fact, the Administration’s willingness to violate international law and the principles of democracy whenever it chooses.

I.

HAITI—A DEMOCRACY UNDER SIEGE

Let’s start with Haiti. On February 29, 2004, the Bush Administration helped bring down the first democratically elected government in Haiti’s history. Moreover, the origins of the Administration’s policies with respect to Haiti go back much further than a few weeks and show that the United States started to undermine the Aristide government long before February of 2004.

Haiti is the poorest country in the Western Hemisphere. Its eight million people lack clean water and basic healthcare. To worsen matters, their country lacks roads, jobs, and the economic infrastructure to resolve any of these issues. What Haiti has in abundance is poverty and preventable disease. Haitian life expectancy is only fifty-one years. But for years, in spite of this emergency, the Bush Administration blocked the release of humanitarian loans to Haiti from the World Bank and other international financial institutions. These loans had already been pre-approved, but this Administration strong-armed the Organization of American States (OAS) and the international

8. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK 239 (2004).
9. Id. at 239-40.
10. Id. at 239 (stating that life expectancy in Haiti is currently 51.78 years).
The Congressional Black Caucus fought long and hard to free up these humanitarian loans, and we succeeded. We also fought for U.S. engagement in support of democracy in Haiti in the last few months as it became increasingly clear that “murderers and thugs,” as Secretary of State Colin Powell called them, were threatening the viability of the government and the safety of the Haitian people. The Administration did not become involved and it stood by doing nothing to safeguard democracy in Haiti and, as a result, the Administration rejected its professed commitment to the rule of law.

I now want to transition into where we are currently with Haiti and how these circumstances were brought about through the United States’ abrogation of the rule of law. Haiti was wracked by internal violence. There is no question about how we should have responded, as a neighbor, as an ally, as a member of the international community, and as a world leader.

Article 17 of the Inter-American Democratic Charter of the OAS requires that all OAS nations come to the aid of a democratic government under siege. President Aristide was democratically elected. Did we come to his aid? No.

Did we go to the United Nations and help forge an international peacekeeping mission to preserve democracy in Haiti? No.

Instead, our government first refused to support democracy and later apparently helped overthrow it. The Administration’s original justification for inaction was that the United States could not become involved on the ground in Haiti until a political settlement was reached. The Administration continued to maintain this line of reasoning—even after the rebel forces rejected any type of peaceful settlement and bands of armed thugs captured cities and began to march on the Haitian capital.

12. Id.
18. Tony Smith, As Police Flee, Rebels Tighten Grip in Haiti’s Heartland, N.Y. TIMES, Feb. 21, 2004, at A3 (“Faced with rebel advance, the [Haitian] government is urging outside intervention, but so far the United States ... [has] insisted a multinational police force can only be dispatched once the government forges some sort of agreement with the opposition to halt the
Next, rather than supporting the democratically elected government, which was under siege, the Administration undermined it. The Administration refused to offer assistance on the ground and blocked efforts that were taking place within the UN to help create the time and space needed for a peaceful resolution. Consequently, the United States thwarted support that might have preserved Haiti's embattled democracy.

In the most egregious act in contravention of the rule of law, the Bush Administration publicly abandoned President Aristide and then apparently pressured him to leave Haiti. The United States helped broker a proposal among the parties for greater power sharing during the remainder of President Aristide's term in office, but the Administration's response to the opposition's total rejection of any compromise or peaceful resolution was to publicly turn on President Aristide, blaming him for the opposition's refusal to accept a peaceful compromise and insisting that it was time for him to go.\footnote{Press Release, The White House, White House Statement on Haiti (Feb. 28, 2004), available at http://www.state.gov/p/wha/rls/30043.htm.}

Although the exact circumstances under which President Aristide was forced out of office and into exile and what role the U.S. government played in this effective coup d'état are not yet clear, what is clear is that the Bush Administration joined the conspiracy against democracy that was taking place in Haiti.\footnote{Jeffrey D. Sachs, Editorial, From His First Day in Office, Bush was Ousting Aristide: Where were the media when Haiti's leader was railroaded and rousted?, L.A. TIMES, Mar. 4, 2004, at B13 (stating the Bush Administration's foreign policy team entered office determined to topple Aristide and subsequently carried out this goal).}

Haiti has now experienced thirty-three coups in its troubled history.\footnote{See After Aristide, What?, ECONOMIST.COM, Mar. 4, 2004, available at LEXIS, News Library, ECONOMIST.COM file (indicating Aristide's ousting raised Haiti's total number of coups to thirty-three). See see Timeline: Haiti, BBC NEWS ONLINE UK EDITION, at http://news.bbc.co.uk/1/hi/world/americas/country_profiles/1202857.stm (last visited Feb. 11, 2005) (noting only five Haitian coups).} The Bush Administration bears considerable responsibility for the last and most tragic one—most tragic because this time, democracy could have been protected rather than preempted.

In the process, the Administration trampled the UN Charter, the OAS Charter, American principles and ideals of democracy, our international credibility, and the rule of law. Unfortunately, those actions are practically the cornerstones of George W. Bush's foreign policy.

These cornerstones serve as a nexus linking the Administration's policies toward Haiti and its policies toward Iraq and the rest of the world. In both Haiti and Iraq the Administration has toppled the existing governments and helped unleash waves of looting and destruction for which it apparently failed to plan.
In Haiti and Iraq the Administration has overthrown foreign governments. And, most importantly, in Haiti and Iraq the Administration has demonstrated a dangerous disrespect for the rule of law.

II.

DOCTRINE OF PREEMPTION

The obvious parallels between the Administration’s policies toward Haiti and those in Iraq bring me to my second topic today: the Bush Administration’s Doctrine of Preemption. What exactly is the Doctrine of Preemption? It is a strategy and a set of firmly stated principles that the Bush Administration has laid out in a number of documents and speeches, including the President’s 2002 speech at West Point, the 2002 National Security Strategy, the Nuclear Posture Review, and the President’s multiple addresses to the United Nations and the country. This doctrine claims that the United States has the right not simply to defend itself or to strike out against imminent threats, but to launch attacks against countries that might someday pose a threat to us.

This is a vision of the world in which the United States possesses the right to launch first strikes, even nuclear first strikes, against countries that pose no proven imminent danger to us.

The Doctrine of Preemption represents a worldview that is based on the flawed assumptions that: (1) the United States can prevail in all conflicts through force of arms; (2) the Administration has the right to ignore international and U.S. law in the pursuit of its goals; and (3) it is acceptable to start a war based upon a perceived future threat.

These assumptions are tragically and dangerously wrong.

In fact, the Doctrine of Preemption does not make us safer; it makes us less secure. We need allies, we need to adhere to the rule of law, and we need


23. NATIONAL SECURITY STRATEGY, supra note 1.


to live up to our own democratic values. International law already firmly embraces the principle that a nation has a right to defend itself when it faces an attack that is imminent, armed, and certain. It is clearer by the day that Iraq’s supposed threat was none of those: not imminent, not armed, and not certain. Apparently, not even there. The Bush doctrine goes well beyond concepts of self-defense that are recognized in law. Think about the repercussions of that. There are other hotspots in the world. There are other nuclear powers—is this a precedent we want them to follow?

In his State of the Union address on January 20, 2004, President Bush insisted that “America will never seek a permission slip to defend the security of our country.” Well, we don’t need a permission slip—we have the Constitution and the UN Charter and both highly respected documents give the United States full authority to defend itself. What we do not have, however, is the right to wage preventive war against potential threats. We do not want to live in a world where countries believe that they possess the right to launch preventive wars because that is a world in which the rule of law has been sacrificed. Unfortunately, the Doctrine of Preemption has established such an unseemly precedent.

President Bush has gone at various times to Congress, the UN, and the American people and said with absolute certainty that Iraq possessed weapons of mass destruction. With equal certainty President Bush said that these weapons posed an imminent threat to the United States and our allies. Vice President Dick Cheney even stated that “[w]e believe [Saddam Hussein] has, in fact, reconstituted nuclear weapons.” White House spokespersons repeatedly used the words “absolutely” and “of course” when asked if Iraq posed an imminent threat to the United States.


27. U.S. CONST. art. I., § 8, cl. 1; U.N. CHARTER art. 51 (“Nothing... shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.”).


In the State of the Union—one of the most important communications between the president and the American people—President Bush stated with absolute certainty that Iraq was attempting to purchase uranium in Africa to build nuclear weapons.31 These weapons of mass destruction, we were told by the Administration, not only justified a preemptive war, they demanded one.

Many members of Congress voted to authorize the use of force because they were convinced by these arguments. I wasn’t, and neither were 132 other members of Congress who voted against authorizing the use of force against Iraq.32 Seventy-one members went even further and supported my amendment that would have ruled out the use of military force while strengthening the inspections process and our commitment to the UN.33

It now seems clear that there were no massive stockpiles of unconventional weapons in Iraq and that information supplied to the Administration was false. The supposed evidence was manufactured and, reportedly, the CIA and State Department suspected as much at the time. Deputy Defense Secretary Paul Wolfowitz has stated that weapons of mass destruction were not the real reason for the war, but represented “the one reason everyone could agree on.”34

That is an appalling thought.

Secretary of State Colin Powell has said that the absence of a stockpile of unconventional weapons “changes the political calculus; it changes the answer you get” with regard to his recommendations as to the need for war.35 The Administration’s own chief weapons inspector, David Kay, has stated “[w]e were almost all wrong” in believing that Iraq had weapons of mass destruction.36

Well, the fact is, not everyone was wrong: Mohammed ElBaradei, Director-General of the International Atomic Energy Agency (IAEA)37 and Dr.

Boucher, White House Spokesperson (Sept. 9, 2002), available at http://www.state.gov/r/pa/prs/dpb/2002/13344.htm (answering a query about the probability of weapons of mass destruction in Iraq: “So you could say why predict when . . . you already know that they have it.”).

33. Id. at H7751.
Hans Blix, chairman of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) inspectors, among others, all expressed doubts about Iraq’s alleged weapons of mass destruction and the dangers they supposedly posed. As I previously said, 132 members of Congress voted against the use of force. But the Administration still carried the day, apparently by distorting the information that it presented.

The American people have a right to know, and Congress has a duty to find out, how this intelligence was used or misused and why this nation sent young men and women to war. Those young men and women are still in harm’s way, and this continuing occupation and guerrilla war is costing the American people billions upon billions of dollars.

You cannot build a solid foreign policy on a foundation of deception. Intelligence is often murky and inconclusive; that’s the nature of the business. But the Bush Administration went to the American people, Congress, and the UN and said it was crystal clear: Iraq posed an imminent threat.

If we relied on intelligence that was distorted or less complete than implied, if we failed to share crucial information with our allies, then we have undermined our own national credibility. Who will believe us next time? Based on what I have seen so far, I still won’t.

We are witnessing a pattern of deception underlying the Doctrine of Preemption that makes it even more dangerous. One year ago, before the war began, I introduced a resolution disavowing this doctrine. My resolution never mentions the word “Iraq” because the Administration has made it devastatingly clear that the Doctrine of Preemption does not end with Iraq. In fact, there’s no telling where it ends. Is Syria next? Or is it Iran? This reckless approach creates new hazards all by itself.

Weapons of mass destruction are dangerous, but the Bush Administration’s actions are accelerating arms races, not defusing them. The answer is not to escalate tensions, but to adhere to the rule of law by working through the UN, the Non-Proliferation Treaty, and other agencies and institutions to ultimately eliminate all weapons of mass destruction in the world, including our own.

We do not lead by encouraging isolation, rather than multilateral interaction.

We do not lead the way toward a future without weapons of mass destruction.


destruction by developing new nuclear weapons and threatening to use them in a preemptive strike.

We do not lead by withdrawing from international agreements such as the ABM Treaty.41

We do not lead by rejecting and undermining the International Criminal Court.

We do not lead by violating well-established principles of the international rule of law.

So, the question becomes: where do we, as a nation, go from here?

III.

LOOKING TOWARD THE FUTURE

We start by exposing this Administration’s foreign policies to the light of day. That is equally true of the war in Iraq and the coup in Haiti. In March of 2004, joined by over thirty Members of Congress, I sent a letter to the new members of the President’s so-called independent commission on intelligence lamenting the fact that Congress had no opportunity to appoint any of the members or help set their agenda.42 We did, however, set out our expectations for a full and thorough inquiry into the use of intelligence. First and foremost was our demand that the American people receive a report on this crucial matter before the November elections. The President has given the commission the vast task of examining global intelligence issues and administered a 2005 deadline.43

We deserve an answer on the imperative question of how and why this nation went to war in Iraq well before then.

Similarly, just as I have pushed for both independent and congressional investigations of the war in Iraq and the policies that lie behind it, I have also insisted that Congress exercise its powers and obligations in regards to Haiti.

The Congressional Black Caucus has been deeply engaged with Haiti for years,44 and last week we launched our own march on Washington by storming the White House where we met with the Secretary of State, the National

Security Advisor, and ultimately the President himself. Moreover, at my request, along with that of other Democratic members, the House International Relations Subcommittee on the Western Hemisphere convened a hearing on the events in Haiti and the policies that led up to them.

The full House International Relations Committee and the Select Permanent Committee on Intelligence should jointly convene public hearings to investigate the Administration's role in undermining a democratically elected government. The creation of an independent commission to investigate the role of this government in the disintegration and overthrow of democracy in Haiti is essential to obtaining the answers the American people deserve. These efforts to expose the truth are a start. I would argue that we must all go much further.

CONCLUSION

The Bush foreign policy has made the world a more dangerous place. The Bush Administration has helped overturn a democracy that is just off our own shores. It has already launched one war using the Doctrine of Preemption and has threatened more. It has neglected and under-funded the entire continent of Africa. It has undermined the United Nations, while alienating long-standing allies and inspiring new enemies. These policies must be added to a disastrous domestic policy that leaves the poor poorer, the rich richer, and our nation in debt and in trouble. This Administration has demonstrated the horrifying aftermath that results when a nation undermines the rule of law.

As attorneys and students of the law, and as the next generation of leaders, you have a special role to play in the struggle to redefine and remake our foreign policy. The mission statement at the African-American Law & Policy Report calls for the Report to ultimately improve conditions for African-American communities by infusing intellectual discourse with provocative and innovative scholarship, thus deepening thinking about policy options and choices.

I ask you to do all that and more. I ask you to bring your skills and dedication to bear on the challenges before us. Be provocative. Be innovative. And be active.

Thank you for your commitment to this cause, and thank you for inviting me here today.