The State of the State: Redefining Sovereignty in the 21st Century

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We have before us the opportunity to forge for ourselves and for future generations a new world order, a world where the rule of law, not the law of the jungle, governs the conduct of nations.

President George H. Bush

World events since 1648 have reflected the political, social, economic and military aspirations of people organized into sovereign states. Increasingly, they reflect the influence and authority, both real and perceived, of international law and international organizations. This development has become evident since the end of the Cold War, but its roots go back much further. Recent international interventions in places as diverse as Somalia, East Timor, Haiti, Kosovo and Liberia, conducted under the auspices of the United Nations, regional organizations such as NATO, or by ad hoc coalitions, are shaped by a large and growing body of treaties, practice and custom that we collectively refer to as international law.

The world's leading states, and the United States in particular, have advanced the development of international law for more than a century. At the same time,

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1 U.S. War Department, General Orders No. 100, Instructions for the Government of the Armies of the United States in the Field, April 24, 1863. The first comprehensive summary and codification of the humanitarian rules governing land warfare. Frequently called the “Lieber Code” after its author, Dr. Francis Lieber, G.O. No. 100 furnished inspiration for the Geneva Conventions of 1864 and 1929 and the Hague Conventions of 1899 and 1907.

states become frustrated when international law restrains or limits the pursuit of important national and global interests. This was vividly illustrated in the debates and reactions surrounding American-led efforts against Iraq throughout 2002 and 2003. The debate, in fact, continues. Regardless, its is essential that strategic leaders and their legal advisors understand the global environment as it exists today. International law is a critical component of the current geopolitical environment, and we ignore its impact on state practice at considerable risk.

To put this discussion into context, this paper briefly reviews the development and evolution of international law, its principal components and characteristics, and its relative influence on global politics and state practice over time. It proposes that international law competes with sovereignty as an organizing principal of international relations. Although sovereignty is likely to remain a critical component of the international system, it faces a growing threat from international organizations and institutions that pursue international order and individual rights at the expense of traditional rights enjoyed by sovereign states.

This paper refutes conventional wisdom that this phenomenon sprung to life after the collapse of the Soviet Union and the end of the Cold War in 1990. Instead, it will argue, the ascendancy of international law represents evolutionary developments in politics, philosophy and law over centuries, further shaped by the cataclysmic wars and associated excesses of the Twentieth Century. Important elements of today’s international system matured in relative obscurity during the Cold War as groups and nations sought self-determination, peace, democracy, and individual freedoms. It is important that we examine how developments in international law are subtly but certainly redefining sovereignty and how states are adapting to this reality.

The Search for Order

Humans seek order in life. Traditionally, religion reflects our search for meaning and purpose, but social institutions also address these basic needs. In ancient times, families organized themselves into tribes, then cities, states and empires. Social order implies security and a sense of predictability. Order promotes prosperity and growth – both individual and collective. At the same time, order discourages destructive social behavior and competition for scarce resources. Order requires a degree of cooperation and sacrifice, and by definition some inherent limitation on individual freedom. The political process is the means usually used to create order and