

THE TRUMP ADMINISTRATION'S APPROACH TO INTERNATIONAL LAW AND COURTS: ARE WE SEEING A TURN FOR THE WORSE?

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INTRODUCTION

Thanks Michael, it is great to be here at Case Western Reserve University School of Law.

I am delighted to see so many friends, former colleagues, and especially former members of the Legal Adviser's office both as speakers and in the audience.

As many of you know, Dean Scharf and Paul Williams, both alumni of the Legal Adviser's office, edited an excellent book a few years ago about the Office of the Legal Adviser, entitled "Shaping Foreign Policy in Times of Crisis," which included essays and interviews by ten former Legal Advisers.¹ Michael and Paul gave me an opportunity to reflect on my four eventful years as Legal Adviser

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1. See generally Michael P. Scharf & Paul R. Williams, SHAPING FOREIGN POLICY IN TIMES OF CRISIS: THE ROLE OF INTERNATIONAL LAW AND THE STATE DEPARTMENT LEGAL ADVISER (2010) (discussing all ten of the living former U.S. State Department legal advisers' accounts of the role that international law played during the major crises on each of their watches).

from 2005 to 2009. They also gave me my first paycheck after leaving government, for which I am grateful.

I want to single out two other speakers for recognition. Todd Buchwald, with whom I worked closely for all eight years while I was NSC and State Department Legal Adviser, is one of the best lawyers and public servants I have ever known. Whenever I needed trustworthy advice on the knottiest of legal issues, I would turn to Todd. His retirement earlier this year was a huge loss for the State Department. And I want to recognize our other keynote speaker, Elisa Massimino, who left Human Rights First earlier this year after twenty-seven years, including ten years as President. Elisa would meet with me regularly when I was Legal Adviser and we have worked closely together for the last nine years. In my mind, she is a model human rights advocate—calm, measured, and persuasive. Elisa's retirement earlier this year was an equal loss to the human rights community. I want to applaud both Todd and Elisa for their past service and to say I look forward to their future contributions.

As many of you know, two years ago in August 2016, I drafted a statement of fifty former national security officials who had served in Republican administrations in which we said that Donald Trump lacks the “character, values, and experience to be President.”² Here are a few quotations from the statement:

- “He weakens U.S. moral authority as the leader of the free world. He appears to lack basic knowledge about and belief in the U.S. Constitution, U.S. laws, and U.S. institutions...”³
- “[H]e persistently compliments our adversaries and threatens our allies and friends.”⁴
- He continues to display an alarming ignorance of basic facts of contemporary international politics.⁵
- He is unable or unwilling to separate truth from falsehood. He does not encourage conflicting views. He lacks self-control and acts impetuously. He cannot tolerate personal criticism.⁶

We concluded by saying that, “[W]e are convinced that he would be a dangerous President and would put at risk our country's national

2. Donald B. Ayer et al., STATEMENT BY FORMER NATIONAL SECURITY OFFICIALS 1 (2016).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 2.

security and well-being.”⁷ If elected, we said he would be “the most reckless President in American history.”⁸

From a national security perspective, the last twenty months of President Trump’s presidency have been even worse than many of us imagined. Rather than making the United States respected around the world, President Trump has withdrawn from international agreements,⁹ launched destabilizing trade wars with China and Europe,¹⁰ criticized and undermined NATO,¹¹ picked fights with our closest allies,¹² gutted our State Department,¹³ stoked unnecessary international controversies,¹⁴ and praised dictators and authoritarian leaders like Kim Jung Un and Vladimir Putin.¹⁵ Rather than

7. *Id.* at 1.

8. *Id.* at 2.

9. Hasan Dudar & Deirdre Shesgreen, *Trump’s Long List of Global Trade Deals, Agreements Exited or Renegotiated*, USA TODAY (Nov. 21, 2018, 8:08 AM), <https://www.usatoday.com/story/news/2018/11/21/donald-trump-foreign-policy-iran-nafta-russia-mexico-canada-trade/1732952002/> [<https://perma.cc/5JNW-QEQX>].

10. See Zachary Basu, *Steel, Soybeans and NAFTA 2.0: A Year of Trump’s Trade Wars*, AXIOS (Dec. 31, 2018), <https://www.axios.com/trump-trade-war-2018-china-europe-mexico-canada-nafta-1e2ef110-55c3-48d2-9ec3-81af22a70859.html> [<https://perma.cc/N5TM-69ZS>] (“President Trump thoroughly upended the global trading system in 2018, slapping tariffs on billions of dollars’ worth of imports as he pledged to ‘put American first’ and renegotiate more favorable trade deals for the U.S. around the world”).

11. Cf. Dan de Luce et al., *Trump’s Shadow Hangs Over NATO*, FOREIGN POLICY (Jan. 29, 2018, 7:30 AM), <https://foreignpolicy.com/2018/01/29/trumps-shadow-hangs-over-nato-transatlantic-alliance-europe-defense-deterrence-europe-mattis-jens-stoltenberg/> [<https://perma.cc/XC2X-DFZJ>] (“And the president’s tone and words have planted serious doubts about whether the United States will deliver in a crisis”).

12. See John T. Bennett, *Analysis: Trump Wanted a Fight. He Found One--with His Allies*, ROLLCALL (Jun. 8, 2018, 12:26 PM) <https://www.rollcall.com/news/politics/analysis-trump-wanted-fight-found-one-allies> [<https://perma.cc/EWX2-LRL2>] (“If Trump was looking to pick a fight, he succeeded”).

13. See Robbie Gramer et al., *How The Trump Administration Broke The State Department*, FOREIGN POLICY (July 31, 2017), <https://foreignpolicy.com/2017/07/31/how-the-trump-administration-broke-the-state-department/> [<https://perma.cc/9GAQ-BLY7>] (“A hostile White House is slashing its budget, the rank and file are cut off from a detached leader, and morale has plunged to historic lows”).

14. Bennett, *supra* note 12.

15. See Krishnadev Calamur, *Why The President Praises Dictators*, THE ATLANTIC (Jan. 13, 2019), <https://www.theatlantic.com/politics/archive/2019/01/trumps-delight-for-putin-duterte-and-mussolini/579652/> [<https://perma.cc/BL3D-VN5Z>] (discussing Donald Trump’s encouragement of authoritarian leaders).

exercising American diplomatic and moral leadership, as past Presidents have done, President Trump has isolated the United States from the rest of the world more than at any point in history.

But what is the Trump administration's approach to international law and institutions?

As a candidate, Donald Trump famously attacked numerous international agreements negotiated by his predecessors, including NAFTA, TPP, the Paris Climate Change Agreement, and the Iran deal.¹⁶ In Trump's view, each of these was the "worst deal" ever negotiated.¹⁷ Candidate Trump even criticized the "eggheads" who negotiated the Geneva Conventions after he was told that the Geneva Conventions prohibited torture.¹⁸

Early in the Trump administration, my friend and former colleague, Jack Goldsmith, wrote at Lawfare that "we are witnessing the beginnings of the greatest presidential onslaught on international law and international institutions in American history."¹⁹ For much of the last eighteen months, I had thought this assessment was exaggerated. Although the President and his administration took numerous policy actions with which I disagreed vigorously (such as the travel ban, the trade wars, and the withdrawal from Paris and the Iran agreements), none of them were really direct attacks on international law and institutions.

One reason for this may have been that President Trump himself did not have enough experience with international law and courts to have strong views about them. Moreover, his initial senior national security advisers—Rex Tillerson, Jim Mattis, and HR McMaster—were not international law skeptics. Far from encouraging the President to attack international law, they apparently urged him to comply with it.²⁰ And none of the administration's national security

16. Dudar & Shesgreen, *supra* note 9.

17. See, e.g., Yeganeh Torbati, *Trump Election Puts Iran Nuclear Deal on Shaky Ground*, REUTERS (Nov. 9, 2016, 7:16 AM), <https://www.reuters.com/article/us-usa-election-trump-iran-idUSKBN13427E> [<https://perma.cc/V554-7FD2>] (referring to the Iran Nuclear Deal as such).

18. Jane C. Timm, *The 141 Stances Donald Trump Took During His White House Bid*, NBC NEWS (Nov. 28, 2016, 11:59 AM), <https://www.nbcnews.com/politics/2016-election/full-list-donald-trump-s-rapidly-changing-policy-positions-n547801> [<https://perma.cc/N7Z3-ZSEA>].

19. Jack Goldsmith, *The Trump Onslaught on International Law and Institutions*, LAWFARE (Mar. 17, 2017, 10:09 AM), <https://www.lawfareblog.com/trump-onslaught-international-law-and-institutions> [<https://perma.cc/848Q-UYKC>].

20. See, e.g., Spencer Ackerman, *Trump Gets the National Security Advisor McMaster Tried to Prevent*, THE DAILY BEAST (Mar. 22, 2018, 10:59 PM), <https://www.thedailybeast.com/trump-gets-the-national-security-adviser->

lawyers entered the administration with a strong anti-international law bias.

Perhaps as a result, despite numerous other controversial international actions, for its first 18 months, the Trump administration did not engage in direct attacks on international law and institutions.

This approach may now be changing. With the appointment of John Bolton as National Security Advisor in March,²¹ the administration appears to be taking a more aggressive approach. Ambassador Bolton is well-known for his skepticism, if not hostility, towards international law and international institutions.²² Since taking office, he has strongly criticized the International Criminal Court and the International Court of Justice.²³ He personally announced the closing of the PLO Office in Washington as well as the United States' withdrawal from the Treaty of Amity with Iran and the Optional Protocol to the Vienna Convention on Diplomatic Relations.²⁴ The United States also announced that it would

mcmaster-tried-to-prevent [<http://perma.cc/TH35-W6X3>] (discussing McMaster's distance from Donald Trump's involvement with Russia).

21. Greg Jaffe & Josh Dawsey, *Trump Names Former Ambassador John Bolton as His New National Security Adviser*, WASH. POST (Mar. 22, 2018), https://www.washingtonpost.com/world/national-security/trump-names-former-ambassador-john-bolton-as-his-new-national-security-adviser/2018/03/22/aa1d19e6-2e20-11e8-8ad6-fbc50284fce8_story.html?noredirect=on&utm_term=.c498c2ade873 [<https://perma.cc/EH7Y-93GT>].
22. *Nomination of John R. Bolton: Hearing Before the Senate Foreign Relations Comm.*, 109th Cong. (2005) (testimony of John R. Bolton, then nominee for US Ambassador to U.N, "It is a big mistake for us to grant any validity to international law even when it may seem in our short-term interest to do so--because, over the long term, the goal of those who think that international law really means anything are those who want to constrict the United States").
23. Owen Bowcott et al., *John Bolton Threatens War Crimes Court with Sanctions in Virulent Attack*, THE GUARDIAN (Sept. 10, 2018, 2:49 PM), <https://www.theguardian.com/us-news/2018/sep/10/john-bolton-castigate-icc-washington-speech> [<https://perma.cc/VP3B-MJAC>]; Natasha Turak, *US Rejects International Court of Justice Ruling on Iran, Continuing its Isolationist Charge*, CNBC (Oct. 2, 2018, 9:39 AM), <https://www.cnbc.com/2018/10/05/us-rejects-international-court-of-justice-ruling-on-iran-continuing-its-isolationist-charge.html> [<https://perma.cc/DZ7G-QV8M>].
24. Press Release, U.S. Department of State, Closure of the PLO Office in Washington (Sept. 20, 2018) (on file with U.S. State Department Bureau of Public Affairs); Roberta Rampton et al., *U.S. Withdraws from International Accords, Says U.N. World Court 'Politicized'*, REUTERS (Oct. 3, 2018, 1:35 PM) <https://www.reuters.com/article/us-usa-diplomacy-treaty/u-s-withdraws-from-international-accords-says-u-n-world-court-politicized-idUSKCN1MD2CP> [<https://perma.cc/S9J9-FXHR>].

withdraw from the U.N. Human Rights Council.²⁵ These actions may reflect the beginning of the “presidential onslaught on international law and international institutions” that Jack Goldsmith predicted.²⁶

In this essay, I will address the Trump administration’s approach to international courts and tribunals, to treaties and international agreements, and to international human rights.

INTERNATIONAL COURTS AND TRIBUNALS

Let me start with the Trump administration’s approach to international courts and tribunals, starting with the International Criminal Court, which was the principal subject of Ambassador Bolton’s speech on September 10.²⁷

The International Criminal Court (ICC)

As most of you know, the U.S. Government has had a turbulent relationship with the ICC. During the Clinton administration, the United States participated actively in the negotiations of the Rome Statute, the treaty that created the ICC, but ultimately voted against the final text because of concerns that the treaty lacked sufficient safeguards against politically motivated investigations of Americans.²⁸ Although President Clinton ultimately authorized U.S. negotiators to sign the treaty, he said that the U.S. would not submit it to the Senate for approval until U.S. concerns were addressed.²⁹ In its first term, the Bush administration adopted a hostile approach towards the ICC. Ambassador Bolton, when he was Under Secretary of State, sent a letter to the U.N. Secretary General in 2002 informing the U.N. that the U.S. did not intend to become a party to the Rome Statute—this became known as the U.S. “unsigned” of the Rome

25. Carol Morello, *U.S. Withdraws from U.N. Human Rights Council over Perceived Bias against Israel*, WASH. POST (June 19, 2018), https://www.washingtonpost.com/world/national-security/us-expected-to-back-away-from-un-human-rights-council/2018/06/19/a49c2d0c-733c-11e8-b4b7308400242c2e_story.html?utm_term=.d3cdfc76baf8 [https://perma.cc/Z95J-C7AN].

26. Goldsmith, *supra* note 19.

27. John Bolton, National Security Adviser, Nat. Sec’y Council, Address to the Federalist Society at the Mayflower Hotel: Protecting American Constitutionalism and Sovereignty from International Threats (Sept. 10, 2018).

28. See David J. Scheffer, *U.S. Policy and the International Criminal Court*, 32 CORNELL INT’L L. J. 529, 532-33 (1999).

29. *Clinton Administration: 1993-2001*, AMICC, <https://www.amicc.org/clinton-administration> (last visited Jan. 22, 2019) [https://perma.cc/Q8D2-7WT2].

Statute.³⁰ Ambassador Bolton reportedly said that this was the “happiest day of his life.”³¹ In its second term, the Bush administration adopted a more pragmatic approach to the ICC. While continuing to dispute ICC jurisdiction over Americans, it agreed to the U.N. Security Council resolution referring the Darfur genocide for investigation by the ICC and President George W. Bush waived restrictions on counterterrorism assistance to many ICC members after Secretary of State Condoleezza Rice publicly remarked in 2006 that the restrictions were like “shooting ourselves in the foot.”³² During its eight years, the Obama administration continued the Bush administration’s pragmatic approach to the ICC, offering assistance to the ICC for certain investigations while continuing to dispute the ICC’s jurisdiction over Americans.³³

Somewhat surprisingly, given historic opposition among conservative Republicans towards the ICC, the Trump administration did not criticize the ICC for its first twenty months.³⁴ This quiet was all the more surprising because the ICC Prosecutor had recommended in December 2017 that the ICC’s pre-trial chamber authorize the initiation of an investigation of United States’ treatment of detainees in Afghanistan and also at CIA facilities in Europe.³⁵ A decision by

30. See Letter from John R. Bolton, U.S. Under Secretary of State for Arms Control and International Security, To Kofi Annan, U.N. Secretary General (May 6, 2002) (on file the U.S. Department of State) (discussing the United States’ request not to become a party to the Rome Statute).

31. Ruth Wedgwood & Morton H. Halperin, *Will the Real John Bolton Please Stand Up?*, FOREIGN POLICY (July 15, 2005, 12:00 AM), <https://foreignpolicy.com/2005/07/15/will-the-real-john-bolton-please-stand-up/> [https://perma.cc/NQA2-YHTX]

32. Steven R. Weisman, *U.S. Rethinks Its Cutoff of Military Aid to Latin American Nations*, N.Y. TIMES (Mar. 12, 2006), <https://www.nytimes.com/2006/03/12/politics/us-rethinks-its-cutoff-of-military-aid-to-latin-american-nations.html?mtrref=www.google.com&gwh=75EE3026BD61F7B8FA0553B7F6B8741E&gwt=pay> [https://perma.cc/H77V-JVEV].

33. Caitlin Lambert, *The Evolving US Policy Towards the ICC*, INT’L JUSTICE PROJECT (Mar. 6, 2014), <https://www.internationaljusticeproject.com/the-evolving-us-policy-towards-the-icc/> [https://perma.cc/N9L7-GCKS].

34. See John Bellinger, *The Trump Administration Throws Down the Gauntlet to the ICC. The Court Should Decline The Challenge*, LAWFARE (Sept. 10, 2018, 11:50 PM), <https://www.lawfareblog.com/trump-administration-throws-down-gauntlet-icc-court-should-decline-challenge> [https://perma.cc/8ZZ5-25TQ] (discussing the Trump administration’s seizure of cooperation with the ICC while the court is investigating U.S. officials).

35. *Id.*

the pre-trial chamber is expected at any time.³⁶ Administration officials have been aware of the Prosecutor's recommendation but made no public comment about it for ten months.

That silence changed on September 10, 2018 when Ambassador Bolton fired a broadside at the International Criminal Court, which he called "ineffective," "unaccountable," "deeply flawed," and "outright dangerous."³⁷ He said the ICC unacceptably threatens American sovereignty and U.S. national-security interests.³⁸ He criticized the ICC Prosecutor's request to start an investigation of U.S. officials for detainee abuses in Afghanistan and elsewhere as "utterly unfounded" and "unjustifiable."³⁹ He said that the United States will "use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court."⁴⁰ Specifically, the United States will not cooperate with the ICC and will provide no assistance to the court.⁴¹ And if the ICC "comes after the United States," he said, the U.S. will "fight back" by banning its judges and prosecutors from entering the United States, freezing their assets, and prosecuting them in the U.S. criminal justice system.⁴² The U.S. will do the same for "any company or state that assists an ICC investigation of Americans."⁴³ He also said the U.S. would negotiate more binding non-surrender agreements and take steps in the U.N. Security Council to constrain the ICC.⁴⁴

Unfortunately, the ICC prosecutor, Fatou Bensouda, invited this attack by asking the court to open a criminal investigation of U.S. officials.⁴⁵ No American administration, Republican or Democratic,

36. The ICC rejected the request on April 12, 2019. *See Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan*, No. ICC-02/17, INT'L CRIM. CT. (Apr. 12, 2019), available at https://www.icc-cpi.int/CourtRecords/CR2019_02068.PDF. In a statement issued that day, the White House declared this decision "a major international victory." *See Statement from the President, THE WHITE HOUSE* (Apr. 12, 2019), available at <https://www.whitehouse.gov/briefings-statements/statement-from-the-president-8/>.

37. Bolton, *supra* note 30.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *See ICC Prosecutor Seeks Afghanistan War Crimes Investigation*, BBC NEWS (Nov. 3, 2017), <https://www.bbc.com/news/world-asia-41864315>

would fail to respond to an actual or threatened criminal investigation of U.S. military personnel and officials or fail to warn the court about the consequences of such an investigation. And 2018 is an election year, so this was an easy softball for the Trump administration to hit. Remember that in 2002—another election year—a majority of Democrats, including John Kerry and Hillary Clinton, voted for the American Servicemembers' Protection Act, which prohibited cooperation with the ICC (with certain exceptions), cut off financial assistance to countries that did not agree to non-surrender agreements, and preemptively authorized the use of military force (yes, an AUMF!) to free Americans held in The Hague.⁴⁶

Of course, it is unfortunate that the Trump administration seems to have decided that, whether the court opens an investigation of U.S. officials or not, the U.S. will cease all cooperation with the ICC, reversing twelve years of cooperation that started when I was Legal Adviser during the Bush administration and continued through the Obama administration. But it is hard to imagine any administration would continue to cooperate with the court while it was investigating U.S. officials.

Ambassador Bolton's other threats against the ICC go much further and seem unlikely to be implemented. It would be an extraordinary stretch of the International Emergency Economic Powers Act, or IEEPA, to declare that the ICC presented a "national emergency" justifying the blocking of the assets of its judges and prosecutors. And I am not aware of any federal criminal statute that could be used to charge ICC judges or prosecutors, much less companies or foreign governments that cooperate with the court.

The Trump administration has thrown down the gauntlet and challenged the ICC judges to go forward with the Afghan investigation.⁴⁷ I can imagine that many of the judges will want to double down and not be cowed by the Trump administration's threats. While this might make some judges feel good, it would be counterproductive and would only hurt the court and the cause of international justice in the long run. Few people believe the prosecutor could conduct a successful trial of U.S. officials, and any investigation of the U.S. would result in a cutoff of U.S. intelligence, diplomatic and military assistance to the court, and enormous

[<http://perma.cc/A59C-KES7>] (discussing Fatou Bensouda's request to seek a formal investigation into alleged war crimes committed in Afghanistan).

46. Bellinger, *supra* note 34; American Service-Members' Protection Act. 116 Stat. 820 (2002) (current version at 22 U.S.C. § 7421).

47. Steve Holland, *Trump Administration Takes Aim at International Criminal Court*, PLO, REUTERS (Sept. 9, 2018 11:01 PM), <https://www.reuters.com/article/us-usa-trump-icc/trump-administration-takes-aim-at-international-criminal-court-plo-idUSKCN1LQ076> [<http://perma.cc/ZQE8-7RDH>].

pressure on U.S. allies not to cooperate.⁴⁸ There would be significant cost to the ICC, for little gain.

Rather than accept the Trump administration's challenge, the court would be wise not to act precipitously. Rather than approve the opening of the investigation requested by the prosecutor, it could quietly ask the U.S. for more information about the numerous investigations of detainee abuse the United States has already conducted. Even if the Trump administration chooses not to provide this information, the ICC might well decide that its limited resources are better directed towards investigating war crimes and crimes against humanity that are of "sufficient gravity" to justify the court's attention, as the Rome Statute requires.⁴⁹

International Court of Justice (ICJ)

The ICC is not the only international court that pose challenges for the Trump administration. The Trump administration is facing three cases filed against the United States in the International Court of Justice—two lawsuits filed by Iran and one filed by the "State of Palestine."⁵⁰ The two suits filed by Iran allege violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the US and Iran.⁵¹ The first case was filed in June 2016—during the Obama administration—and alleges that the U.S. violated the Treaty by seizing Iran's Central Bank assets to pay a terrorism judgment.⁵² Iran brought the case after the U.S. Supreme Court ruled in the *Bank Markazi* case that it did not violate the FSIA or international law for the judgment holders to attach the Central Bank assets.⁵³ The United States has filed a response arguing that the ICJ does not have jurisdiction, and an initial hearing is scheduled for next month.⁵⁴

48. Bellinger, *supra* note 34.

49. Rome Statute of the International Criminal Court, art. 17(d), July 1, 2002, 2187 U.N.T.S. 3.

50. *Pending Cases*, INT'L CT. OF JUSTICE (last visited October 29, 2018), <https://www.icj-cij.org/en/pending-cases> [http://perma.cc/G66G-8FHR].

51. Press Release, International Court of Justice, Certain Iranian Assets (Iran v. U.S.) (Oct. 12, 2018), <https://www.icj-cij.org/files/case-related/164/164-20181012-PRE-01-00-EN.pdf> [http://perma.cc/VPH7-C88T]; Press Release, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* (Iran v. U.S.) INT'L CT. OF JUSTICE (Oct. 16, 2018), <https://www.icj-cij.org/files/case-related/175/175-20181016-PRE-01-00-EN.pdf> [http://perma.cc/GP7Z-THSH].

52. Application Instituting Proceedings, Certain Iranian Assets (Iran v. U.S.), 2016 I.C.J. Pleadings 164 at 6 (June 14, 2016).

53. *Id.* at 26.

54. Preliminary Objections Submitted by the United States of America, Certain Iranian Assets (Iran v. U.S.), at 47 (May 1, 2017). The ICJ issued its Judgment on Preliminary Objections on February 13, 2019. In its

More recently, Iran filed a second case against the United States in July 2018, alleging that the United States had also violated the Treaty of Amity by terminating the Iran nuclear deal and reimposing sanctions on Iran.⁵⁵ Two months later, in September 2018, the “State of Palestine” filed an action against the United States claiming that the U.S. violated the Vienna Convention on Diplomatic Relations by moving its embassy to Israel from Tel Aviv to Jerusalem.⁵⁶

On October 3, the ICJ issued an opinion unanimously approving “provisional measures” directing the United States to remove impediments on the export to Iran of medicine and medical devices, foodstuffs and agricultural commodities, and spare parts and equipment necessary for the safety of civil aviation.⁵⁷ Although the decision was a small (and probably temporary) legal victory for Iran, the ICJ rejected Iran’s far-reaching request that the Court order the United States not to reimpose the economic sanctions lifted by the JCPOA or to impose any new sanctions on Iran.⁵⁸

The Trump administration has responded quickly and vigorously to the ICJ’s provisional measure order as well as to the Palestinian action. On October 3, the same day the ICJ announced its provisional measures decision, the Trump administration announced that it would withdraw from both the Treaty of Amity with Iran, under which the two cases by Iran were filed, and the Optional Protocol to the Vienna Convention on Diplomatic Relations.⁵⁹ In announcing the

judgment, the Court rejected certain of the preliminary objections raised by the United States, while accepting one of the objections to jurisdiction raised by the United States. The Court thus determined that it has jurisdiction over the dispute, except over Iran’s claim of an alleged violation of sovereign immunity under customary international law. *See generally* Judgment on Preliminary Objections, Certain Iranian Assets (Iran v. U.S.) (Feb. 13, 2019).

55. Application Instituting Proceedings, Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.) (July 16, 2018).
56. Application Instituting Proceedings, Relocation of the United States Embassy to Jerusalem (Palestine v. U.S.) (Sept. 28, 2018).
57. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.), Request for the Indication of Provisional Measures, 2018 I.C.J. 175 at 28 (Oct. 3).
58. *Id.*
59. *U.S. Terminates 1955 ‘Friendship’ Treaty With Iran After UN Court Ruling*, RFERL (Oct. 3, 2018), <https://www.rferl.org/a/u-s-terminates-1955-friendship-treaty-with-iran-after-un-court-ruling/29523774.html> [<http://perma.cc/BVQ8-2PM6>].

withdrawals, Ambassador Bolton stated, “The United States will not sit idly by as baseless, politicized claims are brought against us.”⁶⁰

The Trump Administration was right to withdraw from the Treaty of Amity. Notwithstanding the severing of U.S. diplomatic relations with Iran after the takeover of the U.S. Embassy in 1979, U.S. policy has always been to try to separate U.S. friendship and support for the Iranian people from U.S. dislike of Iranian government policies.⁶¹ Hence, it made sense for the U.S. to try to remain in the Treaty in order to emphasize U.S. respect for the Iranian people and to ensure the rights of Americans in Iran. However, the Iranian government has now relied on the treaty to sue the United States in the ICJ three times, first in 1992 in the *Oil Platforms* case (which Iran filed after U.S. forces attacked Iranian oil rigs that had been used to mine the Persian Gulf),⁶² then in 2016 in the *Certain Iranian Assets* case (which Iran filed after the U.S. allowed the attachment of Iranian assets to pay terrorism judgments),⁶³ and again in July 2018 in the *Nuclear Sanctions* case.⁶⁴ The United States probably should have withdrawn from the Treaty in 1992 when the *Oil Platforms* case was filed, or at least in 1996 after the Court concluded that it had jurisdiction to hear the case over U.S. objections.⁶⁵ In any event, given the Iranian government’s continued reliance on the Treaty as an instrument of lawfare, it is legally prudent—although Secretary Pompeo might have acknowledged that it is “regrettable”—that the U.S. withdraw from the Treaty.

In contrast, it was unnecessary and potentially counterproductive for the Trump administration to withdraw from the Optional Protocol to the Vienna Convention on Diplomatic Relations (VCDR).

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60. Roberta Rampton et al., *U.S. Withdraws from International Accords, says U.N. World Court ‘Politicized,’* REUTERS (Oct. 3, 2018 1:35 PM), https://www.reuters.com/article/us-usa-diplomacy-treaty/u-s-reviewing-agreements-that-expose-it-to-world-court-bolton-idUSKCN1MD2CP?feedType=RSS&feedName=worldNews&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Reuters%2FworldNews+%28Reuters+World+News%29 [http://perma.cc/J5RB-VKH8].
 61. *See generally Iran, the United States and a Political Seesaw*, N.Y. TIMES (Jan. 11, 2012), https://archive.nytimes.com/www.nytimes.com/interactive/2012/04/07/world/middleeast/iran-timeline.html/#time5_210 [http://perma.cc/9NF6-PMR9] (demonstrating the timeline of the Iran-U.S. relationship which states “Far from a monolithic relationship, Iran and the United States have spent as many decades as friends as they have as enemies.”).
 62. *Oil Platforms (Iran v. U.S.)*, Judgment, 1996 I.C.J. 803 (Dec. 12).
 63. Application Instituting Proceedings, *supra* note 54.
 64. Application Instituting Proceedings, *supra* note 57, at 18 (holding the U.S. should terminate its new “May 8” sanctions against Iran).
 65. *Oil Platforms*, *supra* note 62.

Ambassador Bolton stated that the withdrawal was “consistent with” the Bush administration’s withdrawal from the Optional Protocol to the Vienna Convention on Consular Relations (VCCR) in 2005 (when I was Legal Adviser).⁶⁶ However, the two situations are very different. The Bush administration decided to withdraw from the Optional Protocol to the VCCR only after it had been sued three times before the ICJ (by Paraguay, Germany, and Mexico) for the failure of state and local law enforcement officials to provide consular notice to foreign nationals arrested in the United States and after the ICJ had ruled against the United States in two of the three cases (*LaGrand*⁶⁷ in 2001 and *Avena*⁶⁸ in 2004—Paraguay discontinued its case in 1998).⁶⁹ In 2005, upon the recommendation of Secretary of State Condoleezza Rice and following lengthy interagency discussions, President Bush ordered U.S. states to comply with the ICJ’s ruling in the *Avena* case (which required the U.S. to review the convictions and death sentences of fifty-one Mexican nationals who had not been given consular notice at the time of their arrest) but determined that the U.S. would withdraw from the Optional Protocol to the VCCR to prevent further cases against the United States for inadvertent failures by local officials to provide consular notice.⁷⁰ In contrast, there has been no pattern and practice of other governments suing (much less prevailing against) the United States in the ICJ for violations of the VCCR. Moreover, the United States will have very strong arguments to defend in the case filed by Palestine and is very likely to win. Hence, withdrawal from the Optional Protocol appears to be an overreaction, motivated more by ideological dislike of the ICJ (which John Bolton called “politicized and ineffective”)⁷¹ than by any real legal necessity. Withdrawing from the VCCR Optional Protocol also means that the United States will give up its own right to sue other states if they violate their VCCR obligations to the United States. (For example, the U.S. successfully sued Iran in the ICJ in 1980 for violations of both the VCCR and VCCR for seizing the U.S. embassy in Tehran and holding American diplomats

66. Rampton, *supra* note 60.

67. *LaGrand* (Ger. V. U.S.), Judgment, 2001 I.C.J. 466 (June 27).

68. *Case Concerning Avena and Other Mexican Nationals* (Mex. v. U.S.), Judgment, 2004 I.C.J. 12 (Mar. 31).

69. *Case Concerning The Vienna Convention on Consular Relations* (Par. v. U.S.), Order, 1998 I.C.J. 426 (Nov. 10).

70. Adam Liptak, *U.S. Says It Has Withdrawn from World Judicial Body*, N.Y. TIMES (Mar. 10, 2005), <https://www.nytimes.com/2005/03/10/politics/us-says-it-has-withdrawn-from-world-judicial-body.html> [<https://perma.cc/VNF4-6PF2>].

71. Rampton, *supra* note 62.

hostage.⁷²) In sum, for reasons that appear to be purely speculative (in contrast to the reasons for the U.S. withdrawal from the VCCR Optional Protocol), the Trump administration is depriving future U.S. presidents of a valuable legal tool to defend U.S. diplomats and embassies.

Going forward, the issue to watch in the two Iran cases is what the Trump administration will do if the Court rules in favor of Iran again, such as by concluding that it has jurisdiction to hear the cases or ordering the return of Iran's Central Bank assets. Currently, the Trump administration has permitted the State Department to treat these cases seriously and defend them vigorously, just as the State Department did during the Bush administration when Iran sued the United States in the *Oil Platforms* case and Mexico sued the U.S. in the *Avena* case.⁷³

But if the Court were to conclude, over strong U.S. objections, that it has jurisdiction to hear these new Iran cases, it is possible that the Administration might decide that the U.S. will not continue to appear for the merits phases of the cases. This would, of course, be just what the Reagan administration did in the Nicaragua case in 1981, when the U.S. withdrew from the case after the Court ruled that it had jurisdiction.⁷⁴ Ambassador Bolton cited the Reagan administration's action approvingly when he announced the U.S. withdrawal from the Optional Protocol to the VCCR.⁷⁵ The Nicaragua withdrawal has damaged the reputation of the U.S. for respect for international law to this day.⁷⁶ A withdrawal from the two Iran cases might be popular with some critics of international courts, but it would further damage the reputation of the United States as a country committed to international law. It would also make it virtually impossible for the United States to criticize China,

72. Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 3 (May 24).

73. See Press Statement, Michael R. Pompeo, Sec'y of State, On U.S. Appearance Before the International Court of Justice (Aug. 27, 2018) (stating the U.S. State Department "will vigorously defend against Iran's meritless claims this week in The Hague, and we will continue to work with our allies to counter the Iranian regime's destabilizing activities in the region...that threaten international peace and stability.").

74. Paul Lewis, *World Court Supports Nicaragua After U.S. Rejected Judges Role*, N.Y. TIMES (June 28, 1986), <https://www.nytimes.com/1986/06/28/world/world-court-supports-nicaragua-after-us-rejected-judges-role.html> [http://perma.cc/27KK-AAP4].

75. *White House Daily Briefing*, C-SPAN (Oct. 3, 2018), <https://www.c-span.org/video/?452479-1/white-house-president-stating-facts-mocking-christine-blasey-ford&start=216> [perma.cc/96VH-ZTTW].

76. Paul Lewis, *supra* note 76.

or any other country, that refuses to appear before an international tribunal.

The case filed against the United States by the “State of Palestine” is even more specious than the two cases filed by Iran. First, it is questionable whether Palestine qualifies as a “state” with standing to file a claim with the ICJ. Even it does, it is dubious that the transfer of the U.S. Embassy to Jerusalem would be considered by the Court to raise an issue of interpretation or application of the VCDR. Although the Trump administration is right to consider the case to be baseless and an abuse of the ICJ, the Administration should still appear and make its arguments rather than refuse to appear. If the Administration appears, it is likely to win, most likely at the jurisdictional stage, and to be credited for respect for international dispute settlement. In contrast, if the Administration were to refuse to appear, even in a baseless case, the United States would be criticized for disrespect for international courts.

TREATIES AND INTERNATIONAL AGREEMENTS

Let me turn to the Trump administration’s approach to treaties and international agreements more generally. Richard Haass, the President of the Council on Foreign Relations, has said that if there is a defining doctrine so far of the Trump administration, it is the “withdrawal doctrine.”⁷⁷ The President has withdrawn from the TPP, the Paris Climate Change Accord, and the Joint Comprehensive Plan of Action.⁷⁸ He has also threatened to withdraw⁷⁹ from NAFTA,⁸⁰ the WTO, the Korea-U.S. Trade Agreement,⁸¹ and even the North Atlantic Treaty.

77. Richard N. Haass (@RichardHaass), TWITTER (Oct. 12, 2017 6:40 AM), https://twitter.com/RichardHaass/status/918471381511229440?ref_src=twsrc%5Etfw [<https://perma.cc/2NNR-YTQU>].

78. Dudar & Shesgreen, *supra* note 9.

79. *Id.*; *Everything Donald Trump Has Threatened to Quit*, THE WEEK (Aug. 31, 2018), <https://www.theweek.co.uk/96192/everything-donald-trump-has-threatened-to-quit> [perma.cc/97C6-Y3F4] (observing that Trump’s threats to withdraw from the WTO and NATO are, so far, only threats); Jim Tankersley, *Trump Signs Revised Korean Trade Deal*, N.Y. TIMES (Sept. 24, 2018), <https://www.nytimes.com/2018/09/24/us/politics/south-korea-trump-trade-deal.html> [<https://perma.cc/83XM-YW82>] (discussing Trump’s renegotiated Korea-U.S. Trade Agreement).

80. The Trump Administration resolved to renegotiate NAFTA in a purported effort to improve upon its terms. The United States, Mexico, and Canada signed the renamed “United States-Mexico-Canada Agreement” on November 30, 2018. See Office of the U.S. Trade Representative, “United States-Mexico-Canada Agreement” (last visited Apr. 14, 2019), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.

It seems clear that President Trump dislikes large multilateral agreements. Although he sees himself as a dealmaker, he prefers bilateral agreements, which allow the United States to be more transactional—to get something in return.⁸²

The question that bears watching is whether the President and his administration will take broader aim at other multilateral agreements and even bilateral treaties.

There is at least some reason to be concerned. At the very beginning of the Administration, a draft Executive Order entitled “Moratorium on New Multilateral Treaties” was leaked to the New York Times.⁸³ The draft order expressed concern about a perceived “proliferation of multilateral treaties that purport to regulate activities that are domestic in nature.”⁸⁴ The order cited as examples the CEDAW and the Convention on the Rights of the Child (although the U.S. is not a party to either treaty).⁸⁵ The order stated that these treaties are not appropriate matters for international agreements and instead can be used to force countries “to adhere to often radical domestic agendas.”⁸⁶ Ostensibly to prevent the United States from becoming party to such treaties, the order would have created a Cabinet-level “Treaty Review Committee” to review all multilateral treaties which the United States was currently involved in negotiating or had already joined, and to recommend to the

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81. President Trump signed a modified version of the Korea-U.S. Trade Agreement on September 24, 2018. See Jim Tankersley, *Trump Signs Revised Korean Trade Deal*, N.Y. TIMES (Sept. 24, 2018), <https://www.nytimes.com/2018/09/24/us/politics/south-korea-trump-trade-deal.html>.
 82. See Harry Broadman, *Trump's Misplaced Pendant For Bilateral Trade Deals*, FORBES (Jan. 31, 2018, 10:07 PM), <https://www.forbes.com/sites/harrybroadman/2018/01/31/trumps-misplaced-pendant-for-bilateral-trade-deals/#e31a02d57b95> [<https://perma.cc/342V-KERU>] (discussing Trump's preference for bilateral treaties over multilateral treaties).
 83. Max Fisher, *Trump Prepares Orders Aiming at Global Funding and Treaties*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/us/politics/united-nations-trump-administration.html> [<https://perma.cc/RL4G-3XWJ>].
 84. Draft Executive Order, The White House, *Moratorium on New Multilateral Treaties*, available at <https://assets.documentcloud.org/documents/3424628/Read-the-Trump-administration-s-draft-of-the.pdf> [<https://perma.cc/8NKK-T6L5>] (unpublished).
 85. *Id.*; see Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Oct. 6, 1999, 2131 U.N.T.S. 83 (showing that the U.S. has neither signed nor ratified the CEDAW); see also Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3, (showing that the U.S. has signed but not ratified the Convention on the Rights of the Child).
 86. *Moratorium on New Multilateral Treaties*, *supra* note 84.

President whether the United States should cease participation in negotiations or refuse to sign, or to withdraw from certain treaties to which the U.S. was already a party.⁸⁷

Although this executive order was never signed, it obviously did reflect the view of at least some White House staff that prior administrations had engaged and potentially become party to multilateral treaties that were not appropriate. Ironically, the two treaties it cited as examples of concern—the CEDAW and the Rights of the Child—the United States has never joined.⁸⁸ It also reflected a lack of understanding of the treaty-making process, in which the Secretary of State and ultimately the White House seek interagency approval before the United States begins negotiating or transmits any treaty to the Senate.⁸⁹ And even if this executive order was never signed, the question remains whether the Administration is engaged in any quieter internal review to determine whether it should withdraw from other multilateral treaties. In October, for example, when Ambassador Bolton announced that the United States would withdraw from the Optional Protocol to the Vienna Convention on Diplomatic Relations, he also said that the Trump administration would “commence a review of all international agreements that may still expose the United States to purported binding jurisdiction, dispute resolution in the International Court of Justice.”⁹⁰

And with respect to treaties more generally, it is important to note that during the last twenty months, President Trump has transmitted only one new treaty to the Senate, and has not ratified any treaties approved by the Senate.⁹¹ The State Department has

87. *Id.*

88. *Id.*; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 85; Convention on the Rights of the Child, *supra* note 85.

89. Jonathan B. Tucker, *Interagency Bargaining and International Negotiation: Lessons from the Open Skies Treaty Talks*, 12 NEGOT. J. 275, 276 (1996).

90. Rampton, *supra* note 60.

91. *See Treaties Pending in the Senate*, U.S. DEPT. OF STATE (Jan. 2, 2019), <https://www.state.gov/s/1/treaty/pending/> [https://perma.cc/78AH-5WWB] (listing only one treaty that has been submitted to the Senate since President Trump took office on January 20, 2017); *see also Treaties Approved by the Senate During the 115th Congress*, CONGRESS.GOV, <https://www.congress.gov/search?q=%7B%22source%22%3A%22treaties%22%2C%22congress%22%3A%22115%22%2C%22treaty-status%22%3A%22Approved%22%7D> [https://perma.cc/N568-GM2X] (last visited Jan. 26, 2018) (listing six treaties that have been approved by the Senate since President Trump took office on January 20, 2017); *see also 2018 Treaties and Agreements*, U.S. DEPT. OF STATE, <https://www.state.gov/s/1/treaty/tias/c78676.htm> [https://perma.cc/L4ZQ-GSH8] (last visited Jan. 26, 2018) (listing all the treaties that were

not submitted a Treaty Priority List, which administrations generally submit to the Senate within the first 6-9 months to inform the Senate which treaties pending before the Senate the administration supports.⁹² In the last twenty months, the Senate has approved six treaties,⁹³ but President Trump has not ratified any of them.⁹⁴

By way of comparison, during President Bush's first two years in office, the Senate approved twenty treaties,⁹⁵ during his next two years the Senate approved an additional thirty-three treaties,⁹⁶ and in his second term while I was Legal Adviser, the Senate approved an additional 110 treaties,⁹⁷ for a total of 163 treaties approved by the Senate during President Bush's eight years in office. By way of further comparison, during President Obama's eight years in office, the Senate approved only twenty treaties.⁹⁸

So, the key issues that bear watching with respect to treaties and international agreements are whether President Trump will withdraw from any more Senate-approved treaties, and whether he will end up with the worst treaty record by the numbers of any recent president.

HUMAN RIGHTS

I want to end with a few observations about the Administration's approach to human rights.

Unfortunately, the cold truth is that neither President Trump nor any senior member of his administration appear to care about international human rights or the historic U.S. role as a leader and

ratified by the U.S. in 2018 and none of the six treaties that the Senate has approved since Trump took office are on the list).

92. Curtis Bradley et al., *The Death of Article II Treaties?*, LAWFARE (Dec. 13, 2018) <https://www.lawfareblog.com/death-article-ii-treaties> [https://perma.cc/M2CK-72MD].
93. The Senate has since ratified the U.N. Convention on the Assignment of Receivables in International Trade, bringing the total to seven treaties. See U.N. Convention on the Assignment of Receivables in International Trade, U.S. Congress (last visited Apr. 14, 2019), <https://www.congress.gov/treaty-document/114th-congress/7?r=14&s=1>.
94. *Treaties Approved by the Senate During the 115th Congress*, supra note 91; *2018 Treaties and Agreements*, supra note 91.
95. John Bellinger, *Senate Approves Two More Treaties, Bringing Obama Administration's Treaty Record to Fifteen*, LAWFARE (July 16, 2016) <https://www.lawfareblog.com/senate-approves-two-more-treaties-bringing-obama-administrations-treaty-record-fifteen> [https://perma.cc/56DH-NURP].
96. *Id.*
97. *Id.*
98. John B. Bellinger III, *International Law and the Foreign Affairs Challenges for the Next Administration*, 48 GEO. J. INT'L L. 909, 917 (2017).

advocate on human rights issues. The President has repeatedly praised authoritarian leaders and human rights abusers like Putin, Duterte, and Kim Jung-un.⁹⁹ He went so far as to say that Kim Jung-un—perhaps the most notorious human rights abuser in the world—“loves his people.”¹⁰⁰ The only time I am aware that President Trump has personally raised human rights concerns is when he tweeted in December 2017 that he would be watching for “human rights violations” by the Iranian Government, a tweet that seemed to be motivated more by enmity towards Iran than concern about human rights.¹⁰¹

The Administration’s National Security Strategy, issued last December, does not mention promoting human rights as a goal.¹⁰² The strategy commits the Administration to support individual dignity, freedom, and the rule of law.¹⁰³ Such good things, however, are cast as “American values,” rather than rights to which all people are entitled.¹⁰⁴ The strategy does make several references to individual rights but the term “human rights” appears just once to warn that the United States will deny admission to “human rights abusers.”¹⁰⁵ The Strategy goes out of its way to emphasize that “[w]e are not going to impose our values on others.”¹⁰⁶ In other words, U.S. human rights policy will be only to lead by example and not to promote human rights in other countries. This is not only a sharp departure from the bipartisan commitment to human rights promotion in previous administrations, both Republican and Democratic, but it is hard to see that the U.S. sets a positive example for the rest of the world when the President imposes a travel ban on

99. Calamur, *supra* note 15.

100. Maegan Vazquez, *Trump Says Accused Human Rights Abuser Kim Jong Un ‘Loves His People,’* CNN (June 12, 2018, 11:09 AM ET), <https://www.cnn.com/2018/06/12/politics/donald-trump-kim-jong-un-loves-his-people/index.html> [https://perma.cc/AC9E-2NU6].

101. Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 31, 2017, 5:03 AM), https://twitter.com/realDonaldTrump/status/947453152806297600?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E947453152806297600&ref_url=https%3A%2F%2Fwww.cnn.com%2F2017%2F12%2F30%2Fpolitics%2Fdonald-trump-iran-protests%2Findex.html [https://perma.cc/2FNY-VPKQ].

102. THE WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (Dec. 2017), *available at* <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> [https://perma.cc/USM7-AVZ3].

103. *Id.* at 42.

104. *Id.* at 41.

105. *Id.* at 1, 38, 42.

106. *Id.* at 37.

nationals from Muslim countries,¹⁰⁷ attacks the free press,¹⁰⁸ and encourages racial tensions.¹⁰⁹

And, of course, the Administration withdrew from U.S. participation in the Human Rights Council earlier this year.¹¹⁰ Although this is not necessarily evidence of a disregard for human rights—the Bush administration chose not to join the Human Rights Council when it was established¹¹¹—the Trump administration's withdrawal seemed to be motivated more by domestic political considerations than a desire to advance human rights more generally.¹¹²

In short, the Trump administration has abandoned the traditional U.S. role as a leader in promoting international human rights. Bipartisan support for human rights remains strong in Congress, and career officials will continue their efforts, but it is hard for the U.S. to lead with any credibility, given the tweets and actions of the President.

CONCLUSION

In sum, it is still too early to tell whether we are witnessing the “greatest presidential onslaught on international law and international

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107. Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 8,977 (Feb. 1, 2017) (executive order effective Jan. 27, 2017).
108. See, e.g., James Doubek, *Hundreds Of Newspapers Denounce Trump's Attacks On Media In Coordinated Editorials*, NPR (Aug. 16, 2018), <https://www.npr.org/2018/08/16/639125774/hundreds-of-newspapers-denounce-trumps-attacks-on-media-in-coordinated-editorial> [<https://perma.cc/YEZ5-ZYWZ>].
109. See, e.g., Julie Pace, Steve Peoples, & Zeke Miller, *Analysis: One Year On, Trump Still Fuels Racial Divide*, U.S. NEWS & WORLD REPORT (Aug. 11, 2018), <https://www.usnews.com/news/best-states/louisiana/articles/2018-08-11/trump-still-fuels-racial-divide-a-year-after-charlottesville> [<https://perma.cc/H9UJ-FYCQ>].
110. *President Donald J. Trump is Standing Up for Human Rights at the U.N.*, THE WHITE HOUSE (June 21, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-standing-human-rights-u-n/> [<https://perma.cc/U7ET-LBTX>].
111. Michelle Kelemen, *Bush Administration Won't Join Human Rights Council*, NPR (Apr. 7, 2006), <https://www.npr.org/templates/story/story.php?storyId=5330109> [<https://perma.cc/F2T9-79K4>].
112. See Will Gore, *The US Has a Point Leaving the UN Human Rights Council, Even If Donald Trump's Reasoning Is Flawed*, INDEPENDENT (June 20, 2018), <https://www.independent.co.uk/voices/usa-donald-trump-un-human-rights-council-israel-a8407941.html> [<https://perma.cc/GPN2-FW7N>] (“The withdrawal surely has much more to do with an ideological distaste for multilateral engagement than a belief that the body is beyond repair – it's another symbol of the America First policy Trump campaigned on.”).

institutions in American history.”¹¹³ But the warning signs may be there, starting with Ambassador Bolton’s fierce attack on the ICC and the Administration’s subsequent withdrawal from the Treaty of Amity with Iran and the Optional Protocol to the VCDR. Ambassador Bolton’s speech on Monday¹¹⁴ reflects a much more aggressive stance by the Trump administration towards international law and institutions, and there may be more to come.

A potential ray of light is that most of the senior Administration lawyers, including the State Department Legal Adviser, are reasonably centrist lawyers who served in the Bush administration and do not appear to be personally hostile towards international law.¹¹⁵ But they may have limited ability to steer the Administration’s international law agenda if it is set by the President and the National Security Advisor.

I do want to end with an appeal to the law students in the room. I hope that the current turbulence in our government does not deter you from entering public service. Although disconcerting and distracting, most of this turbulence is taking place at the White House and the higher political levels. The government still needs talented lawyers at the State Department, Justice Department, Defense Department, Treasury Department, and elsewhere. Our institutions remain strong, but they can only remain strong if talented people continue to serve. So my plea to you is this: Please do not be deterred. There are plenty of interesting international law jobs in the U.S. Government and your government needs you. Please serve.

113. Goldsmith, *supra* note 19.

114. Bolton, *supra* note 27.

115. See John Bellinger, *Jennifer Newstead Nominated to Be State Department Legal Adviser*, LAWFARE (Sept. 15, 2017), <https://www.lawfareblog.com/jennifer-newstead-nominated-be-state-department-legal-adviser> [<https://perma.cc/W8G9-T34G>] (discussing State Department Legal Adviser Jennifer Newstead and other Trump Administration lawyers).

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