



2000

America's Engagement in the World at a New Century's Dawn Legal and Ethical Implications for the Use of Force

Kay Bailey Hutchinson

Follow this and additional works at: <https://scholar.smu.edu/smulr>

Recommended Citation

Kay Bailey Hutchinson, *America's Engagement in the World at a New Century's Dawn Legal and Ethical Implications for the Use of Force*, 53 SMU L. Rev. 377 (2000)
<https://scholar.smu.edu/smulr/vol53/iss1/16>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

AMERICA'S ENGAGEMENT IN THE WORLD AT A NEW CENTURY'S DAWN LEGAL AND ETHICAL IMPLICATIONS FOR THE USE OF FORCE

*Kay Bailey Hutchison**

TODAY I want to talk about America and the world. How do we engage it? Since the Cold War ended, America has been unfocused. Our vast military superiority and our global influence have not been matched by policies that clarify our place and our role in the world.

Most think of our power as military power. It's much more than that. It's our culture, our economy, our very way of life. Let me tell you a true story that illustrates what I mean.

Once not long ago, a U.S. Marine Division was participating in a joint exercise with an African country. Few of the host country's soldiers spoke English, but they managed to communicate despite the language barrier.

One day, a native soldier asked one of the Marines what service he was in. Proudly, the American replied, "The U.S. Marines!"

His counterpart didn't understand. The Marine explained: "Kind of like a soldier and kind of like a sailor. A sea-soldier."

Still no response. The Marine then thought about the movie "Sands of Iwo Jima" and said, "John Wayne." His counterpart's face lit up: "John Wayne!" he repeated with enthusiasm. He called to a friend and, speaking in a torrent of his native language, pointed at the American and declared: "Cowboy!"

Historians will have a difficult time categorizing the role that America plays in the world. That is because there is no precedent for the global economic, cultural, and military power wielded by America today.

The American economy is the envy of the world. Each day it is powered to new heights by the creativity and by the freedom of our people. The millions of daily decisions by individuals result in prosperity the world has never seen.

The same is true for our culture—our music, our movies, the English language Internet, English as the common language for the international

* This speech was delivered by Senator Kay Bailey Hutchison on Tuesday, November 16, 1999, at SMU School of Law.

air traffic control system, our literature, our clothing, our fitness and our sports. It's everything from Burger King to bungee jumping, jet skis to jazzercise.

This is what some call "soft power," the sum total of enticements that flow naturally from genuine freedom. Young people around the globe find it hard to hate America when they love Levis and the Grateful Dead.

Our military power, too—our "hard power"—knows no competitor. In military terms, we are a colossus. Our troops are in Japan, Korea, throughout Europe, and in the Middle East. With their lives, we guard countless other nations.

We keep tyrants in check—from Baghdad to Beijing to Pyongyang. No other nation has ever wielded such military power. What is more, and what is significantly different: this power is wielded not for conquest, but for peace.

America's place in the world is unmatched in all of history. What is our role? It has three elements: First, and foremost, is the protection of our way of life—democracy, freedom of speech and religion, the rule of law, and free enterprise. Second, to support and defend our allies. Third, to encourage other nations to free their people and economies.

What does this mean? Leadership on this scale requires discretion. The confidence to know the right course and the will to pursue it. And the confidence to know when not to engage, but encourage others to do so.

But true leadership—and I believe ethical leadership—is striking out on the right course of action grounded in clear principle. That was the leadership the Senate showed when it recently rejected the Comprehensive Test Ban Treaty. The popular decision would have been to ratify the treaty because—on the face of it—who could be against a ban on nuclear testing? The treaty would have left us weaker, not stronger, by threatening the credibility of America's nuclear deterrent, which has helped keep the peace for a half-century.

Of course other countries signed the Test Ban Treaty. They do not bear the mantle of global responsibility that we do. Dozens of countries rely upon the American nuclear umbrella. Their security is tied to us.

There are only two real deterrents to some rogue nation using nuclear weapons. The first is a missile defense system that will repel any kind of ballistic weapon of mass destruction. And the second is knowing that America has a nuclear arsenal that is viable. Today our missile defense system has not yet been deployed, so the idea that we would unilaterally disarm ourselves would not only weaken us, but it would also weaken our ability to help our allies in the face of just such an attack. Most Senators understood that it would have been unethical had the United States ratified a treaty that they believed would weaken the obligations we have to defend ourselves and those allies who rely upon us.

Other nations can afford to take risks. But we cannot. We must always be strong. We rely upon diplomacy to maintain much of this leadership.

But when diplomacy fails, global leadership may require the use of military force.

But when and how should the United States use military force? There was a time when the answer was clear. We should use military force when our vital national interests are clearly threatened. The Cold War forced us to be disciplined. We knew that if we acted, the Soviets might react. And vice versa.

Today, because of our superpower status, we are called on to act every time there's a conflict anywhere in the world. So leadership requires much more discipline. In our political system, that discipline comes from the checks and balances built into it.

The Constitution grants the authority to the President, as commander-in-chief, to deploy troops. But the Constitution also grants Congress a number of specific powers: the power to declare war, to raise and support armies, and to provide and maintain a navy; the power to call forth the militia; and the power to provide for organizing, arming, and disciplining the military.

Our framers were quite clear on this issue. They did not break with a monarchy in England only to establish another monarchy in America. In drafting our constitution, they were chiefly concerned with checking the abuses of executive power.

One of the framers of our Constitution, James Wilson, argued that "the system of checks and balances will not hurry us into war; it is calculated to guard against it. It will not be the power of a single man, or a single body of men, to involve us in such distress."

And James Madison remarked "the constitution supposes, what the History of governments demonstrates, that the executive is the branch of power most interested in war and most prone to it. It has, accordingly, with studied care, vested the question of war in the legislative."

George Mason, at the Constitutional Convention, said, "the purse and sword ought never to get into the same hands."

And Hamilton, in Federalist 69, said, "That while the power of the king extends to the declaring of war and the raising and regulating of fleets and armies, the President will only have the occasional command of the military, of the nation and by legislative provisions."

So, it was clear from The Federalist papers and from the writings of the time that our founding fathers wanted it to be very hard to declare war. They wanted it to be a deliberate decision. But throughout the centuries, in particularly the last half of this century, presidents have sent our troops into conflict without the formal declaration of war that is required by Congress or for clear emergencies that were envisioned by our founders.

To regain some control in the waning days of Viet Nam, Congress, in 1973, enacted the War Powers Resolution. The act required the President to seek congressional approval to deploy forces not more than sixty days after they were dispatched. President Nixon vetoed the bill, and Con-

gress overrode his veto. But the truth is, Congress has few tools to check those excesses.

The power of the purse is our most potent weapon, but it's ineffective once our troops are on the ground. I, for one, have fought several times on the Senate floor to keep our troops from joining peacekeeping forces in foreign countries. Once they get there, even though I have had the opportunity, I am very reluctant to cut off the funds because I don't want to be seen in any way not to support the troops once they are there on a mission.

Congress is gradually being excluded from its constitutional role in foreign policy. The consultation process is broken. Congressional involvement in foreign affairs is not and should not be a partisan issue. It is an institutional issue, critical to the future conduct of principled foreign policy.

Here, our ethical and legal responsibilities are intertwined. In a representative democracy such as ours, elected officials must stand up and be counted when the most fundamental decisions of war and peace are made.

Elected representatives have a bond of trust with their constituents that is never more important than when they are considering sending those constituents into armed conflict. The Constitution gives Congress the obligation to declare war because the framers of the Constitution understood that our political system demands that accountability.

There will always be advocates around the world for the U.S. to get involved militarily to stop some crisis or another. But who will advocate for the young soldiers who have to get out there and actually do it? If elected American officials do not think first of the Americans going in harm's way, who will? When we ignore that accountability, we threaten our very political system.

It is time for the Congress to reassert its constitutional role. If the War Powers Resolution of 1973 isn't useful and enforceable, it should be amended or repealed. I believe it is important for Congress to reclaim the deliberate role intended by the Constitution. I have proposed, for example, limits on the duration and size of a force that could be deployed without Congressional approval. I have proposed that the President be required to identify the specific objectives for a mission prior to its approval by Congress. Too often these operations are open-ended, there are no milestones to measure success or failure, and there is no exit strategy.

One of my goals in the Congress has been to reinvigorate the role of Congress in foreign affairs and in the exercise of war powers. The Clinton Administration has difficulty separating the urgencies of regional conflict from the imperatives of superpower leadership. It is a hallmark of this administration for the U.S. to stumble into regional crises and displace friendly local powers who share our goals and could act effectively on their own.

Most recently and disastrously in Kosovo, we fought to sustain an unsustainable government. We are trying to prevent the realignment of a region where the great powers have tried and failed many times to impose their will on ancient hatreds and atrocities.

I do commend the Clinton Administration for not rushing headlong into the recent crisis in East Timor. Instead, the President encouraged the efforts of Australia and New Zealand to take a leading role.

We saw in the Balkans that the U.S. can bomb a much smaller country into temporary submission. There were ethical questions, though. We had to weigh the precedent of bombing a sovereign nation that had not attacked the U.S. against reports of ethnic cleansing. That is a tough ethical question—no doubt about it. Even our method of responding had an ethical component: Is it right to bomb from 30,000 feet—in a desirable attempt to avoid U.S. casualties—with the consequence of casualties among innocent civilians on the ground?

This is a growing problem for the United States: What is our ethical responsibility when it comes to ethnic cleansing and other forms of internal terror perpetrated by governments against their own people? There is no easy answer. Generally, if the United States has a unique capability to stop it, I understand the urge to try.

The original mission in Somalia, for example, was simply to move food from the ports—where it was rotting for lack of distribution—to the people in the countryside who needed it. That was risky business, but very few countries can marshal the sizable logistical resources needed for such an effort—thousands of tons of food and the manpower to distribute it. President Bush's intention was that we would leave once that had been accomplished.

But we didn't declare victory and we didn't leave. Our troops were ordered to capture the warlord Aideed—we changed our mission and did not develop an exit strategy. We lost nineteen of our own Army Rangers in that conflict because the mission wasn't clear. So this is the kind of issue that we are going to have to address, and we're going to have to see that there's something between doing nothing and America taking the full responsibility.

Years ago, President Nixon laid out principles of how our military forces should be used overseas. Based on his principles, I offer the following outline for a rational superpower foreign policy:

(1) Intervene with troops on the ground only when our own national security is endangered. We could choose to get involved in every regional conflict around the world, but that would prevent us from being able to respond where only we can respond. If we're tied down in Kosovo, who will respond when the North Koreans invade the South and China joins in? This is an ethical question for our elected representatives. If there is no American security interest threatened by military action we wish to take, then we have to consider very carefully whether it's right to send

young Americans to possibly die in order to defend someone else's national security interest.

(2) Encourage our regional allies to deal with regional problems, with our assistance if needed. This will let us focus our resources where the U.S. has unique capability. Australia is leading in East Timor. We should applaud that and offer the intelligence and logistics support they may require. This could have been the case in Bosnia. Our European allies most certainly are capable of peacekeeping missions, just as we are. I have to say in some cases they do a better job because it takes more money and is less efficient for American forces to do peacekeeping missions. When we commit 10,000 troops, it's never just 10,000 troops; it's 10,000 troops on the ground with 25,000 to 30,000 troops in the surrounding perimeter to protect the troops on the ground. Because the fact of the matter is American troops are always the target wherever they are. If there is an incident, it's going to be against an American, so we have to have a protection force in addition to the basic force. This is not the case for most of our allies.

(3) Help those who are willing to fight for their own freedom. Too often, we ignore or even oppose local forces who are willing to fight for their own freedom.

In the Balkans, President Milosevic was able to suppress the Croats until they ignored our arms embargo and fought to a draw. Once President Milosevic got a dose of his own medicine—he fled in terror from the Croats. Congress tried twice to raise the arms embargo on the Muslims, but the administration refused and our European allies refused as well. It was during this time when the Muslims were totally unarmed, unable to fight for themselves, begging us to lift the arms embargo, that we had the mass slaughter of Muslims in Srebrenica. I believe the atrocities would not have been as bad if we could have given them some semblance of a fair fight.

The risks of ignoring these principles are great. Our military forces are being stretched to the breaking point.

Just last week, the Army announced that two of its ten combat divisions are unfit for battle—one fifth of our entire Army. That should alarm anyone who believes that a strong U.S. is a force for good in the world.

Qualified personnel are leaving the services in droves. In 1998, forty-eight percent of Air Force pilots eligible for continuation opted to leave the service. The Army will fall at least 6,000 below Congressionally authorized troop strength by the end of 1999.

We used up a large part of our weapons inventory in Kosovo—we were down to fewer than 200 cruise missiles worldwide, for example. That sounds like a lot, but it's about a day's worth for an operation such as Desert Storm.

So let's be clear that if we are not discriminate about the use of our forces, it will weaken our base and our core. It is, in my mind, unethical

not to be strong enough to make those tough decisions. Should we have to send our forces into combat, it would be unethical to send them without the arms they need, the troop strength they need, and the up-to-date training that they must have. It takes nine months to retrain a peacekeeping force into conflict readiness. So it's becoming harder as we expand our missions and lower the number in our military.

By failing to keep our armed forces combat ready, we invite other nations to take advantage. Congress is responding with military pay raises and regular increases in the President's annual defense budget requests.

There are other ways we are trying to change course. Congress recently passed a bill I authored that called on the Administration to examine whether we can reduce America's global commitments where the mission has ended or can be accomplished with fewer troops.

As a superpower, the U.S. must draw distinctions between the essential and the important. Otherwise, we will dissipate our resources and be unable to handle either.

To maximize our strengths, we should focus our efforts where they can be best applied. That is clearly air power and technology. This will be the American responsibility, but troops on the ground for those operations short of full combat can be better provided by allies with our backup rather than us taking the lead every time. So when we talk about the ethics of U.S. troops on the ground or going into conflict that could be handled in other ways, it raises questions. It is the difference between the wise father and the impetuous son. Of course, the impetuous son wants to do good wherever he can, but the wise father knows that if you dissipate your strength on things that others can do as well as you, you may not have the strength to do what only you uniquely are capable of doing. So it is my belief that the ethical decision must be leaning to the side of preserving our core strength. That is our responsibility to our people and to the allies with whom we have alliances.

If America's core strength were allowed to dissipate, it would hurt our allies and others yearning for freedom. We cannot and should not do it all. We must carefully guard the strength entrusted to us by the people. It is not an endless supply, and it is not easily replaced once exhausted.

Let me close with the wise words of President John Quincy Adams, Secretary of State, President, and member of Congress.

In 1821, John Quincy Adams defined his vision of America's role in the world. It provides a glimpse at the ethical underpinnings of American engagement by one of our earliest practitioners of foreign policy.

America well knows that by once enlisting under other banners than her own . . . , she would

involve herself beyond extrication in all the wars of interest and intrigue. . . . The fundamental maxims of her policy would insensibly change from liberty to force. . . . Wherever the standard of freedom and independence has been or shall be unfurled, there will America's heart be. She goes not abroad in search of monsters to destroy. She

is the well-wisher to the freedom and independence of all. . . . The frontlet upon her brows would no longer beam with the ineffable splendor of freedom and independence; but in its stead would soon be substituted an imperial diadem, flashing in false and tarnished luster the murky radiance of dominion and power. She might become the dictator of the world: she would no longer be the ruler of her own spirit.

That warning still applies today, and it frames the ethical questions we must address in a foreign policy that is right for our country. The answers to the questions must have the following goals:

- (1) to remain strong,
- (2) to stay true to our core principles, and . . .
- (3) . . .to be the beacon of freedom to the world.

Comment

