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# PRESIDENT TRUMP AND THE FUTURE OF MULTILATERALISM

*Kristen Boon\**

## INTRODUCTION

Although Donald Trump's presidency is still new, it is clear he intends to implement his promise to put "America First."<sup>1</sup> President Trump's plans indicate that furthering global governance institutions is not a goal for his administration. From plans to dramatically reduce funding for multilateral institutions,<sup>2</sup> to draft executive orders signaling the potential withdrawal from various international treaties,<sup>3</sup> to the decision to bomb a Syrian airstrip without Security Council authorization (or the support of a coalition of other states),<sup>4</sup> President Trump has demonstrated a disinterest in the institutions and instruments that normally act as a forum for international cooperation. Unlike

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<sup>1</sup> Nolan D. McCaskill, *Spicer: Trump's Foreign Policy is Still 'America First,'* POLITICO (Apr. 10, 2017), <http://www.politico.com/story/2017/04/trump-syria-america-first-237074>.

<sup>2</sup> In December 2016, then-President-elect Trump tweeted, "The United Nations has such great potential but right now it is just a club for people to get together, talk and have a good time. So sad!" Donald J. Trump (@realDonaldTrump), Twitter (Dec. 26, 2016, 1:41 PM), <https://twitter.com/realdonaldtrump/status/813500123053490176?lang=en>; see Colum Lynch, *White House Seeks to Cut Billions in Funding for United Nations*, FOREIGN POL'Y (Mar. 13, 2017), <http://foreignpolicy.com/2017/03/13/white-house-seeks-to-cut-billions-in-funding-for-united-nations/>; Alan Pappoport and Glenn Thrush, *Pentagon Grows, While E.P.A. and State Dept. Shrink in Trump's Budget*, N.Y. TIMES (Mar. 16, 2017), [https://www.nytimes.com/2017/03/16/us/politics/trump-budget-spending-cuts.html?\\_r=0](https://www.nytimes.com/2017/03/16/us/politics/trump-budget-spending-cuts.html?_r=0) (proposing a twenty-eight percent cut to the State Department's budget).

<sup>3</sup> One order, entitled "Auditing and Reducing U.S. Funding of International Organizations," seeks to better align U.S. national interests with U.S. monetary support to international organizations, such as the United Nations, by "eliminat[ing] wasteful and counterproductive giving." *Read the Trump Administration's Draft of the Executive Order on U.S. Funding*, WASHINGTON POST, <https://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-of-the-executive-order-on-us-funding/2308/> (last visited Mar. 26, 2017). The second draft is entitled "Moratorium on New Multilateral Treaties," which would review current and pending multilateral treaties. This order would support withdrawal from and suspension of any new treaties from being submitted to the President or Senate, apart from those recommended by the committee. *Read the Trump Administration's Draft of the Executive Order on Treaties*, WASHINGTON POST, <https://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-of-the-executive-order-on-treaties/2307/> (last visited Mar. 26, 2017). See generally, 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>.

<sup>4</sup> Charlie Savage, *Was Trump's Syria Strike Illegal?*, N.Y. TIMES (Apr. 7, 2017), [https://www.nytimes.com/2017/04/07/us/politics/military-force-presidential-power.html?\\_r=0](https://www.nytimes.com/2017/04/07/us/politics/military-force-presidential-power.html?_r=0).

his predecessor, who took the position that “multilateralism regulates hubris,”<sup>5</sup> President Trump’s actions indicate that the United States may be withdrawing from its leadership role in international law and institutions.<sup>6</sup> Recent developments suggest the current international legal system may soon be “subjected to a kind of stress test,” which will clarify what is and what is not resilient about contemporary international law and institutions.<sup>7</sup>

In this brief Essay, I will offer some opinions about the effect of these changes on the U.N. Security Council, the United Nations generally, and the potential role of customary international law going forward. Because President Trump’s policies on multilateralism are continuing to evolve, and at least to date, have manifest some internal contradictions, it is difficult to predict what the future may hold. However, I will argue that the withdrawal of the United States from the post-WWII institutional architecture signals a shift away from engagement and cooperation that may put us on a path towards future domestic and international unrest. This trend is apparent in direct and indirect ways: it is manifest directly by funding cuts and actions that circumvent the authority of international institutions, and indirectly by lack of support for preventative measures or certain causes that would serve to benefit the United Nations.<sup>8</sup> An additional concern is the multiplier effect: the United States’ retreat towards nationalism must be seen in light of other recent events, including: the “Brexit” referendum, the move to the right in other European nations, and Russia’s call for a “post-West” world order.<sup>9</sup> Taken together, these changes indicate a great

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<sup>5</sup> Jeffrey Goldberg, *The Obama Doctrine*, ATLANTIC (Apr. 2016), <http://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>.

<sup>6</sup> See generally Am. Soc’y of Int’l Law, *The United Nations and the Trump Administration*, YOUTUBE (Feb. 23, 2017), <https://www.youtube.com/watch?v=rIQ33v2QCR4>.

<sup>7</sup> *Id.*

<sup>8</sup> Two examples of indirect withdrawal include (i) lack of support for the Paris Agreement which may lead to accelerated climate change, which in turn is linked to draught, refugee flows, and civil unrest; and (ii) ongoing U.S. opposition (which predates the Trump presidency) to assessed contributions at the United Nations to fund reparations / compensation for the introduction of cholera into Haiti and the Green Climate Fund.). See, e.g., Nathan Yaffe, *Will State Inaction at UN Imperil Haiti Cholera Response?*, IPI GLOBAL OBSERVATORY (Apr. 4, 2017), <https://theglobalobservatory.org/2017/04/cholera-haiti-minustah-peacekeeping/>; for a discussion on ceasing contributions to the Green Climate Fund, see *International Law and the Trump Administration: A Live Online Briefing Series, The Future of Environmental Agreements: Video - Part 4*, AM. SOC’Y INT’L L. (Apr. 5, 2017), <https://www.asil.org/100days>.

<sup>9</sup> See Megan Roberts, *Prevention Could Be Cure for UN in Flux*, IPI GLOBAL OBSERVATORY (Mar. 3, 2017), <https://theglobalobservatory.org/2017/03/prevention-united-nations-guterres-syria/>. See also Lizzie Dearden, *Russia’s Foreign Minister Calls for ‘Post-West World Order’ in Speech to Global Leaders*, INDEPENDENT (Feb. 18, 2017, 12:06 PM), <http://www.independent.co.uk/news/world/europe/russia-post-west-world-order-lavrov-munich-security-conference-nato-trump-putin-ukraine-syria-assad-a7587006.html>.

shift in the domestic priorities of great powers that will have “meaningful implications for their engagement with international institutions.”<sup>10</sup>

### I. SHIFTING DYNAMICS AND THE UNITED NATIONS

One forum where U.S. attitudes towards international law are being closely watched is the U.N. Security Council. As a P5 member backed by a sophisticated legal and diplomatic team, the United States has long been a dominant player in the Security Council.<sup>11</sup> Historically close to the United Kingdom and France, the United States traditionally plays a key role in agenda setting, determining the course and mandate of U.N. peacekeeping, drafting resolutions, and backing U.N. authorizations with military might.<sup>12</sup> However, as the United States rotated into the Presidency of the Security Council in April 2017, it has emphasized the need for reform.<sup>13</sup> While some of the principles the United States emphasizes are core to peacekeeping doctrine, such as consent of host parties, others signal a retreat, such as changes to the mandate of peacekeeping missions and new exit strategies.<sup>14</sup>

As is well known, another early but significant change the Trump administration undertook was an interest in and willingness to work bilaterally with Russia.<sup>15</sup> Indeed, after President Trump’s first phone call with President Vladimir Putin, the Kremlin stated that they shared “phenomenally similar” foreign policy views.<sup>16</sup> At the time of writing, this relationship appears to have

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<sup>10</sup> *Id.*

<sup>11</sup> KARA C. McDONALD & STEWART M. PATRICK, COUNCIL SPECIAL REPORT NO. 59: UN SECURITY COUNCIL ENLARGEMENT AND U.S. INTERESTS 3–4 (2010).

<sup>12</sup> See James McBride, *How Does the U.S. Spend Its Foreign Aid?*, COUNCIL ON FOREIGN RELATIONS (Apr. 11, 2017), <http://www.cfr.org/foreign-aid/does-us-spend-its-foreign-aid/p39034>; Newsteam Staff, *The UN Security Council (UNSC)*, COUNCIL ON FOREIGN RELATIONS (Apr. 11, 2017), <http://www.cfr.org/international-organizations-and-alliances/un-security-council-unscc/p31649>.

<sup>13</sup> Nikki Haley, Ambassador, Remarks at a UN Security Council Thematic Briefing on UN Peacekeeping Operations (Apr. 6, 2017), <https://usun.state.gov/remarks/7753>.

<sup>14</sup> For example, the United States recently announced an end to the authorization to neutralize certain groups in the UN Mission in the DRC. For background, see generally Ray Murphy, *UN Peacekeeping in the Democratic Republic of the Congo and the Protection of Civilians*, 21 J. CONFLICT & SECURITY L. 209 (2016).

<sup>15</sup> Associated Press, *In Phone Call, Putin and Trump Agree to Work Closely Together, Maintain ‘Regular Personal Contact,’* NAT’L POST (Jan. 28, 2017), <http://news.nationalpost.com/news/world/in-phone-call-putin-and-trump-agree-to-work-closely-together-maintain-regular-personal-contact>.

<sup>16</sup> Sebastian von Einsiedel & Cale Salih, *The UN in the Era of Trump*, UNITED NATIONS U.: CTR. FOR POL’Y RES. (Nov. 29, 2016), <https://cpr.unu.edu/the-un-in-the-era-of-trump.html>.

seriously deteriorated in light of the April 2017 air strikes in Syria.<sup>17</sup> Indeed, whereas there were once concerns that closer ties between Russia and the United States would weaken support for the use of force for humanitarian purposes,<sup>18</sup> it appears that the use of chemical weapons against civilian populations triggered President Trump to act. Many have expressed support for a long overdue intervention, however the fact remains that it took place without U.N. authorization and without broader-based support, which would be key to at least “legitimizing” an otherwise illegal action.<sup>19</sup>

From a legal perspective, U.S. disengagement from the Security Council is significant with regards to the innovative, gap-filling function Council resolutions have played in international law. The United States has been a force behind important “legislative” resolutions by the Security Council, particularly in the terrorism space.<sup>20</sup> While there has been some push back on the authority of the Council to fill this role, there is no question that it has assisted in overcoming lacunas in existing legal frameworks.<sup>21</sup> Moreover, there is evidence that the Council has fundamentally changed the law applicable to internal armed conflict, assisting in equalizing the application of law through evidence of custom.<sup>22</sup> A U.S. retreat will roll back the dynamism of the Security Council, possibly at the expense of longer-term conflict prevention.<sup>23</sup>

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<sup>17</sup> See, e.g., Peter Baker, Neil MacFarquhar & Michael R. Gordon, *Syria Strike Puts US Relationship with Russia at Risk*, N.Y. TIMES (Apr. 7, 2017), <https://www.nytimes.com/2017/04/07/world/middleeast/missile-strike-syria-russia.html>.

<sup>18</sup> von Einsiedel & Salih, *supra* note 15; Heike Krieger, *Trumping International Law? Implications of the 2016 US Presidential Election for the International Legal Order*, EJIL: TALK! (Jan. 3, 2017), <https://www.ejiltalk.org/trumping-international-law-the-implications-of-the-2016-us-presidential-election-for-the-international-legal-order/>.

<sup>19</sup> INDEP. INT’L COMM’N ON KOSOVO, THE KOSOVO REPORT 4 (2000), <http://reliefweb.int/sites/reliefweb.int/files/resources/6D26FF88119644CFC1256989005CD392-thekosovoreport.pdf> (“The Commission concludes that the NATO military intervention was illegal but legitimate. It was illegal because it did not receive prior approval from the United Nations Security Council. However, the Commission considers that the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.”).

<sup>20</sup> See, e.g., Stefan Talmon, *Security Council as World Legislature*, 99 AJIL 175 (2005); see also S.C. Res. 2178 (Sept. 24, 2014) (on foreign terrorist fighters).

<sup>21</sup> See generally JAMES CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART (2014) (discussing the gap-filling role of security council resolutions in the attribution context).

<sup>22</sup> Greg Fox & Kristen Boon, *The United Nations Security Council and the Law of Internal Armed Conflict* (unpublished manuscript) (draft on file with authors).

<sup>23</sup> SECURITY COUNCIL REPORT, CAN THE SECURITY COUNCIL PREVENT CONFLICT? (Feb. 2017), <http://www.securitycouncilreport.org/special-research-report/can-the-security-council-prevent-conflict.php>.

Moreover, it will hasten the trend away from international institutions towards more diverse groupings, whether regional or state based.<sup>24</sup>

U.S. disengagement will also affect the robustness of the United Nation's sanctions power. Under Article 41 of the U.N. Charter, the Council has the power to apply non-military enforcement measures colloquially known as sanctions.<sup>25</sup> Through targeted-sanctions, efforts at stabilization, and regulation of future threats to peace and Security, the U.N. Security Council has become an active and innovative body.<sup>26</sup> U.S. retreat from sanctions committees may remove the muscle behind recent efforts to use sanctions to stem the flow of weapons, to backstop peace agreements, and to promote good governance and human rights.<sup>27</sup>

Fortunately, the new Secretary General of the United Nations is a highly skilled statesman. For example, although António Guterres did not mention Trump by name, the new Secretary General and former U.N. High Commissioner for Refugees sent a clear message to the Trump Administration regarding the recent immigration ban.<sup>28</sup> He noted that although countries have the right and even obligation to “responsibly manage their borders” to prevent terrorism, immigration policies that discriminate on the basis of religion, nationality, or ethnicity are “against the fundamental principles and values on which our societies are based,” trigger anger and anxiety that facilitate terrorist propaganda, violate international law, and are ultimately ineffective against sophisticated terrorist movements.<sup>29</sup>

## II. THE FUTURE ROLE OF CUSTOMARY INTERNATIONAL LAW

If the United States exits treaties or constructively withdraws from the United Nations, an important bulwark against wholesale withdrawal from

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<sup>24</sup> See American Society of International Law, *Closing Plenary: Global Governance, State Sovereignty, and the Future of International Law*, 107 PROCEEDINGS ANNUAL MEETING 489, 499 (2013), <http://www.jstor.org/stable/pdf/10.5305/procanmeetasil.107.0489.pdf> (discussing Germany's options for a Security Council seat, and recommending that Germany seek more influence in the EU).

<sup>25</sup> U.N. Charter art. 41.

<sup>26</sup> Jacob Cogan, *Stabilization and the Expanding Scope of the Security Council's Work*, 109 AJIL 324, 324 (2015); see also Kristen Boon, *UN Sanctions as Regulation*, 15 CHINESE J. INT'L L. 543, 543–44 (2016).

<sup>27</sup> Boon, *supra* note 25.

<sup>28</sup> Julian Borger, *UN Chief Decries Discriminatory Border Bans in Rebuke to Trump Travel Decree*, GUARDIAN (Feb. 1, 2017, 9:24 AM), <https://www.theguardian.com/world/2017/feb/01/un-antonio-guterres-trump-travel-ban>.

<sup>29</sup> *Secretary-General's Statement*, UNITED NATIONS SECRETARY-GEN. (Jan. 31, 2017), <https://www.un.org/sg/en/content/sg/statement/2017-01-31/secretary-generals-statement>.

international norms will be customary international law. Custom binds all states, regardless of whether they are parties to treaties containing similar or identical obligations. As conceptualized in the Hague in the 1920s and reiterated by the International Law Commission's 2016 Draft Commentaries on Customary International Law, custom consists of two parts: *opinio juris* and state practice.<sup>30</sup> It is well established that treaties may codify custom, and that customary international law may emerge from treaties.<sup>31</sup> The ability of the United States to fully exit treaty obligations will therefore be constrained where parallel obligations exist under customary international law.<sup>32</sup> Moreover, states may refuse to acknowledge U.S. attempts at withdrawal where the substance of the conventions themselves is considered to be of particular international concern.<sup>33</sup>

### CONCLUSION

The United Nations is a reliable negotiating forum, and lends legitimacy to international deal making and cooperation. It is also a flexible and multi-layered institution that is heavily informed by the relations between its member states.<sup>34</sup> Despite major U.S. contributions to the United Nations, the United Nations ultimately alleviates overall costs through burden sharing.<sup>35</sup> While U.S. efforts to reform the United Nations are not new, and certainly resonate with the general American public, U.S. threats to withdraw from the U.N. Human Rights Council if it is not reformed are not being perceived as constructive.<sup>36</sup> The United Nations keeps conflicts at bay through peacekeeping operations and by responding to humanitarian crises. The stability and security of the world is promoted through shared legal values and rules, which is what a multilateral institution like the United Nations

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<sup>30</sup> U.N. GAOR International Law Commission, 68th Sess., U.N. Doc. A/CN.4/L.872 (May 30, 2016).

<sup>31</sup> DAMROSCH & MURPHY, *INTERNATIONAL LAW CASES AND MATERIALS* 88–90 (6<sup>th</sup> ed. 2014).

<sup>32</sup> Fionnuala Ní Aoláin, *Brexit and Rights: Discussion Seminar on the Human Rights and Equality Implications of the EU Referendum*, COMMITTEE ON ADMIN. JUST. (2016), [http://www.caj.org.uk/files/2016/11/03/2\\_Brexit\\_and\\_Rights\\_-\\_Fionnuala\\_N%C3%AD\\_Aol%C3%A1in\\_CAJ-TJI\\_2016.pdf](http://www.caj.org.uk/files/2016/11/03/2_Brexit_and_Rights_-_Fionnuala_N%C3%AD_Aol%C3%A1in_CAJ-TJI_2016.pdf).

<sup>33</sup> For example, see DAMROSCH & MURPHY, *supra* note 30, at 184–5 for a discussion of the non-acceptance of North Korea's efforts to leave the NPT.

<sup>34</sup> Catherine Brölmann, *A Flat Earth? International Organizations in the System of International Law*, 70 *NORDIC J. INT'L L.* 319, 320 (2001).

<sup>35</sup> Suzanne Nossel, *The U.N. Has Great Potential for Trump!*, *FOREIGN POL'Y* (Dec. 28, 2016), <http://foreignpolicy.com/2016/12/28/the-u-n-has-great-potential-for-trump-nikki-haley/>; *U.S. Engagement with the United Nations*, *supra* note 7.

<sup>36</sup> Rachael Revesz, *Rex Tillerson Threatens to Withdraw from UN Human Rights Council to Improve Human Rights*, *INDEPENDENT* (Mar. 15, 2017, 8:48 AM), <http://www.independent.co.uk/news/world/americas/rex-tillerson-un-human-rights-council-us-secretary-state-china-saudi-arabia-egypt-a7630531.html>.

represents. Although President Trump appears committed to nationalist policies, if the United States hopes to retain its position in the global order, it should reconsider abandoning multilateralism and continue to engage globally, at the United Nations and beyond.