

Should We Take Global Governance Seriously?

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Trends in Global Governance: Do They Threaten American Sovereignty?

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I. INTRODUCTION

Even the apparently simple act of entitling a conference "Trends in Global Governance: Do They Threaten American Sovereignty?" is likely to expose the vast disparities which exist between two quite different factions within the United States. One party, small but highly educated, voluble and tireless, knows instinctively (and often emotionally) what global governance is and why it is desirable. Consisting of academics (largely, but not exclusively, law and international relations professors) and media professionals; members of self-styled "human rights," environmental and humanitarian groups; rarified circles within the "permanent government," and at present even in the White House; and a diverse collection of people generally uneasy with the dominance of capitalism as an economic philosophy and individualism as a political philosophy, these "Globalists" find comrades all around the world. Their agenda is unambiguously statist, but typically on a worldwide rather than a national level.

The other faction, consisting silently of virtually everyone else in the United States, has no clue whatever that "global governance" is even an issue worth discussing, since, among other things, it has formed no part of any political campaign in recent memory. This large party can't define global governance, doesn't think about it, and -- when it is explained -- typically reject it unhesitatingly. Although overwhelmingly predominant numerically, these Americans (who are comfortable with individualism and capitalism) are little recognized abroad, lost from view beneath the prolific production of academic papers, endless international conferences, and international media appearances of the diverse and often contradictory views of those whose primal urge, if not their ultimate objective, enrolls them in the party of global governance. Accordingly, when the "Americanists" speak out, foreigners often assume that they are simply the knee-jerk voice of reaction, the great unlettered and unwashed, whom the cultured and educated Globalists simply have not yet gotten under proper control. Europeans in particular will instantly recognize the disjunction between elite and mass political opinions that has characterized their societies for almost their entire democratic experience, and they will empathize, needless to say, with their elite, Globalist counterparts.

In both the Globalist and Americanist parties, for purposes of this analysis, we are considering attitudes and opinions about people in their public capacities, issues of politics and government. Although "globalism" as a buzz-word can be made to cover almost anything, we are less concerned here with what people do in their private capacities, in the fields of business and commerce, religion and culture. Certainly, there are significant areas of overlap, but we are assessing "global governance," which we can perhaps all agree has a narrower scope than the more-often invoked "globalization."

By this point, some readers will doubtless have cried out that the categories of Globalists and Americanists are oversimplified, and they are of course correct. To an extent. Analytically, however, this

philosophical divide is real, and marks an important fault line in the United States that is duplicated in few other countries (the United Kingdom being a notable exception). It is certainly true that the party of "Americanists" has generally not taken "global governance" as a phenomenon seriously, has ignored or derided its huge body of academic and polemical literature, and has allowed "Globalist" theories and organizations to develop with little or no scrutiny, debate or opposition.

My thesis, as a convinced Americanist, is that these happy days are over. Like it or not, the Globalists have seized more readily the opportunities provided by the end of the Cold War to advance their agenda, building on an iceberg-like mass produced by years of writing, conference-going, resolution-passing and networking. In substantive field after field -- human rights, labor, health, the environment, political-military affairs, and international organizations -- the Globalists have been advancing while the Americanists have slept. Recent clashes in and around the United States Senate indicate that the Americanist party has awakened, and that the harm and costs to the United States of belittling our popular sovereignty and constitutionalism, and restricting both our domestic and out international policy flexibility and power are finally receiving attention. Nonetheless, Americanists find themselves surrounded by small armies of Globalists, each tightly clutching a favorite new treaty or multilateralist proposal.

This paper and its commentators will sketch out the broad battle lines of this debate, and subsequent speakers, authors and panels will consider several areas of confrontation in more detail.

II. THE GLOBAL GOVERNISTS DEFINE GLOBAL GOVERNANCE

Fortunately, the Globalists have a manifesto identifying many of their priorities and objectives, frequently cited approvingly in their writings and speeches. Charmingly entitled *Our Global Neighborhood*, the Commission on Global Governance [1] report runs to nearly 400 pages, although its Co-Chairmen's [2] "Foreword" contains the essence of its approach. This eight-page distillation says, for example: "The development of global governance is part of the evolution of human efforts to organize life on the planet, and that process will always be going on." The Co-Chairmen modestly observe "[w]e do not propose to offer a blueprint for all time." They stress "[a]s this report makes clear, global governance is not global government." Instead, they say: "The challenge is to strike the balance in such a way that the management of global affairs is responsive to the interests of all people in a sustainable future, that is guided by basic human values, and that makes global organization conform to the reality of global diversity." [3]

Although disclaiming a crusade for global government, the Co-Chairmen's phrases have a distinctly statist tilt: "organize life on the planet," "management of global affairs," and "global organization" are not phrases generally used in libertarian circles. Moreover, the Co-Chairmen not only make no effort to hide what they think is really necessary, they proudly emphasize it as "a pre-eminent strand in the thinking of the Commission": "the world's need for enlightened leadership that can inspire people to acknowledge their responsibilities to each other, and to future generations." [4] If this assertion sounds chilling, it may be that you are edging toward the Americanist camp.

Although two Americans were members of the Commission, [5] the report's anti-American tone is unmistakable, a fact we can and should legitimately consider in assessing the Globalist agenda. The Co-Chairmen say, for example, in abjuring "global government" that they seek to avoid a world that is "more accommodating to power [and] more hospitable to hegemonic ambition." At a time when "hegemony," whether used in Beijing, Moscow or Paris (or even by well-meaning Americans) is a code word for the United States, [6] the animus is clear. The Co-Chairmen pose as alternatives: (1) "go[ing] forward to a new era of security that responds to law and collective will and common responsibility"; or (2) "we can go backward to the spirit and methods of what one of our members described as the 'sheriff's posse' -- dressed up to masquerade as global action." [7] Leaving aside apparently trivial problems such as how to measure the international "common will," the Co-Chairmen have taken direct aim at what the United

States did in the 1991-92 Persian Gulf War,[8] and which was broadly believed by most Americans to be an accurate description of America's role in the post-Cold War world.[9]

III. EVOLVING GLOBAL GOVERNANCE -- SOME SPECIFICS

Much of this conference will consist of more detailed examinations of various aspects of global governance, but some initial generalizations may be helpful. This categorization is by no means exhaustive, but it provides an introduction to the fuller scope of Globalist activities. In one sense, therefore, what follows is also a topography of where the battle between Americanists and Globalists has already been joined, although the outcome is still far from certain.

A. The Use of Force: Legitimacy and Authority. To make "Our Global Neighborhood" hospitable, an important predicate is to restrain the use of force, not in the old-fashioned, balance-of-power way among nation states, but by constraining and limiting the nation-states themselves. Since decisions to use military force are the most important that any nation-state faces, limiting their decisions or transferring them to another source of authority is ultimately central to the diminution of sovereignty and the advance of global governance. Here is where the Americanist-Globalist divide is the deepest.

Nowhere has this issue been more graphically raised than by recent comments of Kofi Annan, Secretary General of the United Nations. During a visit to Macedonia at the height of the NATO air campaign over former Yugoslavia in 1999 (a military action not authorized by the UN Security Council), the Secretary General said explicitly: "Unless the Security Council is restored to its preeminent position as the sole source of legitimacy on the use of force, we are on a dangerous path to anarchy." [10] Repeated in other contexts, the Secretary General said a few months later in his annual report to the UN membership that actions such as Kosovo, undertaken without Council authorization, constitute threats to the "very core of the international security system. ... Only the Charter provides a universally legal basis for the use of force." [11]

Both of these statements are flatly incorrect. They are unsupported either by the language and background of the UN Charter, or by over fifty years of experience with the Charter's operation, and they represent the most sweeping assertion of power by any United Nations official in its entire history. Nonetheless, substantial segments of the Globalist party believe the Secretary General to be entirely correct, even if they struggle to disagree with the conclusion that inevitably follows from acceptance of his remarks, i.e., that NATO's Kosovo campaign was illegal. [12] Inevitably in the years ahead, we will see other conflicts where the United States must decide whether and when to act, unilaterally or in concert with a few other countries, without first obtaining "approval" by the Council. Thus, America's pattern of behavior will likely determine whether the Secretary General provides correct, or whether we maintain the capability for independent (and, where necessary, unilateral) military or other action.

I presented this argument in testimony before the first field hearing of the Senate Foreign Relations Committee, held in New York City on January 21, 2000, the day after Committee Chairman Senator Jesse Helms had addressed the Security Council. The prepared testimony urged the Committee, and indeed the full Senate to debate the Secretary General's remarks, because of their enormous implications for U.S. foreign policy. While it was no surprise that Senator Helms, then and previously, had rejected the Secretary General's analysis, Globalists must certainly have been shocked and surprised by the response to the testimony of Senator Joseph Biden, the Committee's ranking Democrat, and, in effect, the senior Democratic spokesman in the Senate on foreign policy matters. Senator Biden's analysis is worth quoting at length:

"I do not think you have to worry about there being any debate on the Secretary General's statement about the sole source of [legitimacy] is the Security Council. Nobody in the Senate agrees with that. Nobody in the Senate agrees with that. There is nothing to debate. He is dead, flat, unequivocally wrong,

and ... I cannot even figure how one gets that interpretation from the [UN Charter] ... It is a statement that an overexuberant politician like I am might make on another matter, but I hope he did not mean it if he did. I love him, but he is flat-out wrong. There is nothing to debate. We totally agree on that." [13]

Not even the most accomplished linguist could find ambiguity in these spontaneous remarks by Senator Biden, which reinforce the view that the Americanist position is comprehensively shared among our citizenry, and therefore graphically reflected by its elected representatives, on a broadly bipartisan basis. We consider this and other aspects of the debate on military force in the April 5 panel "UN Wars and American War Powers."

B. The Use of Force: Two Case Studies. The Globalists' progress in the politico-military field, however, extends far beyond mere rhetoric by international civil servants. In recent years, they have achieved two substantial victories: the signing of the International Land Mines Convention in Ottawa in December, 1997, and the July, 1998, signing of the Statute of Rome creating the International Criminal Court ("ICC"). The Land Mines Convention, although limited by its terms to the subject of banning anti-personnel mines, represents (for its signatories) a significant limitation on conventional weapons, those other than what are commonly called "weapons of mass destruction" (nuclear, chemical and biological). As such, it may form an important precedent for future efforts to limit other conventional weapons systems, substantial consequences of which will inevitably be felt by the United States.

On its face, the Statute of Rome is a much broader Globalist advance, creating a potentially powerful new international institution, with the authority to override national judicial systems, and with a jurisdiction far more sweeping even than the existing International Court of Justice ("ICJ"). [14] Even though it appears to create institutions and procedures for trying named individual defendants, there seems to be little doubt that its ultimate aim is to control the behavior of states. [15] One little noticed effect of this development has been to impair severely the concept of "the sovereign equality of states," much beloved by Third World governments in defending the one-nation-one-vote principle of the UN General Assembly. It was, of course, at best only a useful fiction for their purposes in any event, but is now also conceptually in disarray.

Even before Secretary General Annan's comments about the legitimacy of the use of force, other senior UN officials were setting the stage for possible prosecutions of NATO members for the Yugoslav air campaign. Mary Robinson, UN High Commissioner for Human Rights, said for example:

"It surely must be right for the Security Council of the United Nations to have a say in whether a prolonged bombing campaign in which the bombers choose their targets at will is consistent with the principle of legality under the Charter of the United Nations." [16]

Indeed, complaints alleging that NATO in fact committed the crime of aggression have been submitted to the Prosecutor of one of the ICC's predecessor courts, and have apparently not yet been entirely dismissed. [17]

Negotiation of both of these measures had commenced with the strong support of President Clinton, whose Administration has consistently been the most Globalist of this century. [18] Ironically, however, the Clinton Administration has not yet signed either of the two treaties, perhaps reflecting why President Clinton has also been one of the most successful American politicians of this century. On land mines, determined objections by the Pentagon rested on the importance which anti-personnel landmine technology still plays in protecting anti-tank landmines (not limited by the treaty) and in critical defensive positions, such as along the DMZ in Korea. On the ICC, there were much more emphatic philosophical differences going to the essence of the ICC concept, strongly supported by Pentagon fears about the consequences of the proposal for future American military deployments. All of these concerns would certainly have been reflected and magnified in any Senate debate over the two proposals, and most observers believed that defeat in the Senate was nearly certain for both. Accordingly, even so Globalist

an Administration as this one backed down to avoid potentially embarrassing defeats by energized Americanists in the Senate.

C. The Use of Force: A Globalist Success in Washington. Despite its reticence on landmines and the ICC, the Clinton Administration showed no such hesitation in its advocacy of American ratification of the Comprehensive Test Ban Treaty ("CTBT"), which would have banned all nuclear testing. Nonetheless, to its considerable dismay and to the dismay of arms-control theologians around the world, the Senate crushed the treaty on October 13, 1999, by a vote of 51-48. This outright defeat of the CTBT -- the first major treaty expressly rejected in the Senate since the Treaty of Versailles after World War I -- brought ominous predictions of reduced American influence around the world,[19] none of which have yet to materialize.

Nonetheless, Globalists could have only rejoiced at the Clinton Administration's reaction to this humiliating rejection of a centerpiece of the President's personal "legacy" campaign. Immediately after the Senate vote, the Administration announced that it would continue its unilateral policy against nuclear testing. Instead of relying on the President's acknowledged constitutional power to do so under the commander-in-chief clause, however, the Administration chose to rely on a provision of an unratified international agreement, the Vienna Convention. Article 18 of the Convention provides that a signatory may not take actions that would frustrate the intent of the treaty prior to its expected ratification, which is in fact a provision more suited for a parliamentary system of government than one of separated powers, but which in any case the United States has never adopted. Even so, Secretary of State Albright asserted in letters to her foreign counterparts that the United States still intended to ratify the CTBT. Characterizing the Senate defeat as a "delay in U.S. ratification," she went on to say "as more states ratify ..., I believe that this will positively influence future Senate deliberations." [20]

No one could seriously have questioned the President's constitutional authority to continue an American freeze on nuclear testing, but his Administration's zeal to find authority in an unratified international convention must surely be the high-water-mark of Globalist achievements in the United States, truly snatching a victory out of the CTBT's ashes. The unrepentant Americanists in the Senate, however, did take due note of the President's preference for the Vienna Convention over the Constitution.

D. Limiting the United States Under "Human Rights" Cover. Virtually all Americans celebrate their own individual freedoms, and are at least well-wishers for others around the world to enjoy the same freedoms, thus making "human rights" issues seemingly unexceptional items on the national agenda. But more is at work here, for the "human rights" rubric has been stretched in a variety of dimensions to become an important component of Globalists' effort to constrain and embarrass the independent exercise of both judicial and political authority by nation-states.

There appear to be two broad approaches. The first is to create a network of international agreements and "customary international law" that effectively take critical political and legal decisions out of the hands of nation states by operationally overriding their own internal decision-making processes. Employing this strategy goes well beyond the concept of "norm setting" embodied in the 1948 Universal Declaration of Human Rights, which by its terms does not purport to create any binding obligations. Instead, the Globalists' very conscious policy is to judicialize key decisions, thus removing from common political processes, and, in effect to supersede national constitutional standards with international ones. The recent example of efforts to extradite General Augusto Pinochet from the United Kingdom to Spain typifies this approach, which is being actively promoted, and in some cases followed, in other cases as well.

Critical to this effort is the concept of "universal jurisdiction," which has been stretched beyond recognition from its distant origins. Not even found in Black's Law Dictionary as recently as 1990 -- and thus an example of the unchecked, undemocratic speed with which global governance theories flourish -- "universal jurisdiction" as currently articulated provides a basis for politically sympathetic nation-states to "do the right thing" when the more conventional jurisdiction is unwilling or unable to take action, as in the case of Pinochet. Chile might or might not have made the correct decision not to prosecute Pinochet (a

decision, which in any event may change in the near future), but there are compelling arguments, grounded in elementary democratic theory, that argue that the decision is for the Chileans themselves to make.

Impatient with democratic inefficiency and "faulty" decisions, human rights groups seek to use universal jurisdiction and related concepts to advance their own value preferences. Although the anticipated birth of the ICC will in several respects pre-empt important substantive areas, the Statute of Rome's covered offenses are not unlimited, and therefore universal jurisdiction will remain an important cutting edge weapon against nation states unless and until the ICC's jurisdiction is expanded (campaigns to do so being already underway). Thus, economic "offenses" by "the common enemies of mankind" that do not readily fit within even within the Statute of Rome's sinuous language will still be subject to the creative interpretations available under universal jurisdiction theories, whether slow-witted national legislators ever vote on them or not.

The Globalists' second approach is specifically targeted against the United States, in an effort to bend our system into something more compatible with human rights and other standards more generally accepted elsewhere. This conscious effort at limiting "American exceptionalism" is consistent with the larger effort to constrain national autonomy because the United States as a whole is the most important skeptic of these efforts. Every time America is forced to bend its knee to international pressure, it sets a significant, and detrimental, precedent for all of the others.

Although there are a wide variety of examples, perhaps the most appropriate to consider is the American penchant for the death penalty for murder and certain other serious offenses. Through democratic decision-making processes, over long periods of time, American electorates have expressed broad, although certainly not universal, support for the death penalty. Under intense constitutional assault on the death penalty, both on substantive and procedural grounds, the general public in recent years has had to consciously confront the objections and inadequacies described in a range of Supreme Court decisions, and not simply adhere to the death penalty because of tradition or long-standing use. Americans in the last several decades have soberly examined the death penalty, and by and large reaffirmed it in a textbook demonstration of popular sovereignty at work.

This result enrages the Globalists. Peter Spiro, a Hofstra University law professor, argues that U.S. enforcement of the death penalty "is the area where American law 'most clearly is trespassing on crystallizing international norms.'"[21] In response, they have launched a multifaceted campaign -- entirely consistent with their larger effort to create binding worldwide "human rights" standards -- to internationalize whether and to what extent the United States will be able to employ the death penalty. For example, in the 1998 matter of whether Virginia could legitimately execute the convicted murderer Angel Breard, human rights groups rushed to the assistance of Breard and his native Paraguay, arguing that Virginia's failure to observe a provision of the Vienna Convention on Consular Relations in effect vitiated the conviction.[22] Secretary Albright endorsed the "human rights" view, and urged Virginia Governor James Gilmore to stay Breard's execution; her views were rejected. The Supreme Court also declined to issue a stay in litigation challenging the conviction, despite an admonition by the ICJ not to proceed while it considered the applicability of the Vienna Convention.

The Supreme Court said expressly that even had "Breard's Vienna Convention claim [been] properly raised and proven, it is extremely doubtful that the violation should result in the overturning of a final judgment of conviction without some showing that the violation had an effect on the trial. ... In this case no such showing could even arguably be made." [23] The Convention itself says that its subject is "consular relations privileges and immunities," and that their purpose "is not to benefit individuals but to ensure the efficient performance of functions by consular posts." [24] But, needless to say, Breard is not the final word, and litigation challenging various death penalty decisions, relying increasingly on "international law" arguments continue to be made in American courts.

In addition, international pressure is being applied through mechanisms such as the UN Human Rights Commission, through whose offices, for example, rapporteurs have recently investigated the United

States on issues such as religious persecution, violence against women, and, of course, the death penalty. Although one might wonder why these rapporteurs might not find more work to do in any number of other countries, we can predict with some confidence that the United States will be welcoming more and more such visitors. The mandate of the Senegalese death penalty rapporteur was supposedly limited to "extrajudicial, summary or arbitrary executions" -- which constitute, in the United States, the paradigm definition of a null cell -- but the vigilant rapporteur was not deterred.

His forty-page, single-spaced, heavily-footnoted report, moreover, disdains to conceal its basic objective: "The United Nations has gradually shifted from the position of a neutral observer ... to a position favouring the eventual abolition of the death penalty." [25] To advance that position, the helpful rapporteur recommended that our government "include a human rights component in training programs for members of the judiciary," a recommendation that someone, I trust, brought swiftly to the attention of Chief Justice William Rehnquist. The rapporteur also recommended, in light of his findings, that "the Special rapporteur on the independence of judges and lawyers" make a visit to the United States, and that our police receive "training on international standards on law enforcement and human rights."

Indeed. Most Americans will wonder how the UN arrived at such a position, so fundamentally different from our clearly-expressed democratic choice, without our knowing about it. They will also wonder how and when the United Nations ever came to believe it had the authority to make such judgments in the first place. The real agenda of the rapporteur and his allies, of course, is to leverage the stature and legal authority of the United Nations (such as they are), into our domestic debate, an effort most Americans would find fundamentally illegitimate. Yet this is precisely a case where the Globalist-Americanist debate is most vividly expressed. We consider this issue at greater length tomorrow in the panel discussing "Should International Human Rights Law Trump U.S. Domestic Law?"

E. NGOs on Parade. Finding national governments, especially the United States, unresponsive to their priorities, and democracy increasingly inconvenient, many non-governmental organizations (NGOs) find it more congenial to increase the role of "civil society" in international affairs. In the words of the Commission on Global Governance, "civil society" covers "a multitude of institutions, voluntary associations, and networks -- women's groups, trade unions, chambers of commerce, farming or housing co-operatives, neighborhood watch associations, religion-based organizations, and so on." [26] Although business groups are at least nominally included as part of "civil society," in practice they are decidedly unwelcome, and indeed the Commission warns darkly that "[s]ome NGOs serve narrow interests, and this pattern may intensify as the sector is seen to take on greater political importance. This caution goes hand in hand with the lament that trade unions "have declined somewhat" with "trends toward free market ideologies in labour relations." [27]

It is no exaggeration to say that, in United Nations circles, the demands of "civil society" to participate in decision making on a level functionally equivalent to national governments are all but conceded. [28] The UN's "millennium web page," for example says "[O]rganizations of the United Nations system, civil society organizations and other institutions are arranging a number of millennium-related events." [29] Next month, the "Millennium Forum" of NGOs will convene at UN headquarters in New York "to present a comprehensive and coherent opinion to world leaders" when the 2000 General Assembly convenes. [30] This Forum is the result of yet another suggestion by the Commission on Global Governance, pending the acceptance of its recommendation to establish a "world assembly through direct election by the people," for the UN to convene an annual "Forum of Civil Society." Such a Forum would consist of "300-600 organs of global civil society," and identifying those chosen "is a matter that civil society itself should canvass." The Commission asserts that "[I]t would be both functionally and symbolically desirable for the Forum to meet in the Plenary hall of the General Assembly in the run-up to the Assembly's annual session." Although saying modestly that the Forum "could not take decisions for the Assembly, but it can help the Assembly to decide -- by informing its discussions and influencing its conclusions," the Commission's real target is that "[t]he Forum process will also strengthen the capacity of civil society to influence the governments of member-states of the UN on issues on the Assembly's agenda -- and those off it." [31]

The effort to enhance the extra-national clout of NGOs is very much a complement to efforts by human rights groups to judicialize, on an international basis, various issues, thus removing them from the purview of national politics. "Civil society" also sees itself as beyond national politics, which is one of the reasons its recent successes have such profoundly anti-democratic implications. Unless "civil society" simply means all groups and individuals with opinions and interests on public policy (a completely circular and singularly unenlightening definition), which it almost certainly does not, the term is intended to convey an alternative to national governments as vehicles for decision-making. Ironically, for Americans, such rhetoric seems to appeal to the libertarian and conservatives sides of the political spectrum, with its anti-statist resonance. To say the least, however, this appeal is false and misleading.

Yet it is precisely the detachment from governments that makes international "civil society" so troubling, at least for democracies. Within each democratic nation-state, political interests compete for governmental power, i.e., the legitimate, constitutional authority that flows from victory to implement their preferred policies. In the international context, that includes the authority to negotiate on behalf of the entire nation, including opposing political forces that were defeated in democratic elections. "Civil society," by contrast, provides a second opportunity for intra-state advocates to re-argue their positions, thus advantaging them over their opponents who are either unwilling or unable to reargue their cases in international fora. It also provides them at least the possibility of external lobbying leverage, to force domestic policy results they could not have otherwise achieved.

Even the geography of international conferences reinforces the point, as NGOs increasingly crowd the meeting halls, participating as functional equals to nation-states. In this parallel universe, governments see political factions that are obscure minorities within their own countries emerging as powerful actors in complex global negotiations. Close observers and advocates of "civil society" often cite the Landmines Convention as an important turning point in the international role of NGOs. "The International Campaign to Ban Landmines 'broke all the rules on how on how international diplomacy is practiced,' said Jessica Matthews, president of the Carnegie Endowment for International Peace. It will be remembered 'as a landmark undertaking,' she said." [32] Jody Williams, the acknowledged leader of the Campaign, and co-winner of the Nobel Peace prize for her work, was a not-untypical NGO participant, originally "a Washington-based activist against U.S. policies in Central America in the 1980s." [33]

Civil society's "second bite at the apple" raises profoundly troubling questions of democratic theory that its advocates have almost entirely elided. Some assert, for example in the environmental area, that businesses troubled by the outcome of the Kyoto Conference on Climate Change should mobilize themselves to participate in "civil society" the same way NGOs currently do, and that business is also entitled to have "second bite." While almost certainly highly predictive of precisely what commercial entities will do to protect their interests, this response only raises new problems, not the least of which is the further undermining of national decision-making systems based on constitutionalism and popular sovereignty, such as exists in the United States. We consider these effects in our panel later today on "What Are the Implications of Growing Global Governance for American Democracy?"

Indeed, the "civil society" idea actually suggests a "corporatist" approach in to international decision-making that is dramatically troubling for democratic theory because it posits "interests" (whether NGOs or businesses) as legitimate actors along with popularly elected governments. The corporatist model already exists in the International Labor Organization, with its separate memberships for governments, business associations and trade unions. At the national level, Mussolini was the principal theoretician advocating the replacement of a messy structure of political parties with interest group governance. As the British historian David Mack Smith wrote, Mussolini called corporatism "the single most essential component of fascism." [34] Mussolini would smile on the Forum of Civil Society. Americanists do not.

F. Limitless Globalist Vistas of Substantive Policy. In the 1960's, '70's, and '80s, acolytes of what became known as the New International Economic Order ("NIEO") [35] and the New World Information and Communication Order ("NWICO") [36] proposed vast multilateral redistributionist and regulatory schemes that would have dramatically transformed both the world economy and global governance. Consistent with their often-Marxist philosophical inclinations, and stemming in no small measure from

active Soviet measures, "Third World" governments eagerly embraced the "North-South" conflict, with its promise of increased flows of concessional assistance, the free transfer of technology from developed countries, and "codes of conduct" for international businesses. The UN's Conference on Trade and Development ("UNCTAD") was an especially fertile source for these proposed regulations as was the UN Educational, Cultural and Social Organization ("UNESCO") on NWICO matters.

"Codes of conduct" were a particular focus of Third World activity, because they were seen as shortcuts to the direct transfer of resources and know-how from multinational corporations to the governments of less developed countries.[37] These regulations ranged from the Andean Foreign Investment Code,[38] the UNCTAD Code of Conduct on Liner Conferences,[39] UNCTAD's proposed Code of Conduct on the Transfer of Technology,[40] the proposed Code of Conduct for Transnational Corporations,[41] the Convention on the Law of the Sea,[42] and many others.

Although negotiations on many of these proposals dragged on endlessly, the undeterred regulators pressed on. Although nearly two decades passed before the Law of the Sea Convention entered into force, its underlying theory that the seabed was a part of "the common heritage of mankind," became fixed in the Globalist mindset, and spread to many other fields. For example, the ever-creative Group of 77 decided that "technology" was "part of the universal human heritage," thus ensuring that all nations "have the right of access" to it.[43] In 1981, the World Health Organization ("WHO") adopted a Code on the Marketing of Breast Milk Substitutes by a vote of 118-1, the Reagan Administration casting the sole dissenting vote. Regulations of pharmaceuticals and various chemical products were much discussed well into the 1980's.

Although some regulatory schemes were adopted and some were not, the "code of conduct" approach largely failed in its larger objectives because the developed world and the Reagan Administration in the United States in particular simply refused to play the game. As a consequence, international regulatory efforts faded in the 1980's and '90's, largely because they had failed to produce the expected bonanza of "free" resources and technology that the Third World had been expecting. However, the underlying statist, regulatory impulse itself had not only not disappeared, but it has seized the opportunity to resurrect itself as part of the larger impulse toward global governance that emerged during the Twentieth Century's last decade.

Although space constraints permit only brief mention of a few contemporary issues, there should be no doubt that, bagpipe-like, the field of substantive international regulatory policy is simply waiting for the breath of Globalist inspiration to expand again. Ever since the 1992 Conference on Environment and Development (the "Rio Summit"), the environment has seen the largest increment of regulatory initiatives, including the 1997 Kyoto Protocol on Global Warming.[44] But others are also hard at work. WHO, for example, has progressed from breast-milk substitutes, and is currently considering adopting a Framework Convention on Tobacco Control.[45] The ILO is still negotiating conventions on labor standards, and the Clinton Administration has been hard at work attempting to persuade the Senate to ratify the extensive legislative backlog of existing conventions, several of which have been pending for decades. In short, for virtually every area of public policy, there is a Globalist proposal, consistent with the overall objective of reducing individual nation-state autonomy, particularly that of the United States.

Even in the field of international trade, traditionally the domain of classic "inter-national" agreements such as the General Agreement on Tariffs and Trade ("GATT"), replaced in 1995 by the World Trade Organization ("WTO"), the Globalists have not been quiet. Indeed, as most recently demonstrated by the "battle in Seattle" at the WTO ministerial meeting, and earlier exemplified in the labor and environment "side agreements" to the North American Free Trade Agreement ("NAFTA"), NGOs have begun to crowd into the trade field. Attracted by the success, growth and stability of the international trade process (although it is hardly free from its own difficulties), the NGOs will undoubtedly seek to interject their various priorities into trade negotiations for the foreseeable future. Whether and to what extent international trade should (or can) be considered separately from other issues of global governance will be discussed in our April 5 panel "Are Trade Agreements Different?"

Other substantial international institutions are also the subject of new reexamination, although in some cases the Globalists appear to be in intellectual disarray. The recently released report of the Meltzer Commission,[46] for example, which considered the roles and responsibilities of the International Monetary Fund, the World Bank Group and its regional development bank partners, and the Bank for International Settlements, takes a decidedly more limited view of their appropriate international functions. The surprising breadth of the majority endorsing the Meltzer Commission recommendations perhaps indicates that in more mature pastures of international organization, a greater measure of realism is beginning to prevail. Even here, however, it is certain that the Globalists will not suffer the Meltzer Commission proposals gladly.

In many respects, the European Union of the 1990's and the next decade has replaced the Third World (and its NIEO and NWICO) as the leading source of substantive Globalist policy. Faced with sweeping international economic change, European Globalists have found that the international power of their states is too insignificant, their currencies too weak, and their social-democratic welfare systems too expensive to withstand. The European reaction, especially on the left, has been to aggregate state power through the EU mechanism, precisely the opposite of the instinctive Americanist inclination to do precisely the opposite. For the Europeans, there is also a strong economic logic to an integrated continental market, as they have observed in the United States, but these compelling, indeed powerful, business reasons are also tinged with a discernable anti-Americanism, a desire to have "state" strong enough to be a separate "pillar" in the world.

As political elites in Europe grow increasingly comfortable in ceding large areas of national "competencies" to EU mechanisms in Brussels, they have also felt more comfortable in propounding worldwide solutions consistent with the direction of EU policy. Thus, not content alone with transferring their own national sovereignty to Brussels, they have also decided, in effect, to transfer some of ours to world-wide institutions and norms, thus making the EU global governance's "mini-me" in the present debate. We consider the broader subject in our next panel, "Is EU Policy Eroding Sovereignty for Non-Member States?"

IV. CONCLUSIONS

Globalism, in effect, represents a kind of worldwide cartelization of governments and interest groups. Even though its proponents purportedly abjure "global government" as such (at least rhetorically, and only for now), the consequence is, for all practical purposes, the same.

Should we, therefore, take global governance "seriously"? Sadly, the answer is "yes," not only today but far into the foreseeable future. It is far past the point when the unrestrained and uncritical acceptance of Globalist slogans ("global solutions for global problems") can be allowed to proceed. The costs to the United States -- reduced constitutional autonomy, impaired popular sovereignty, reduction of our international power, and limitations on our domestic and foreign policy options and solutions -- are far too great, and the current understanding of these costs far too limited to be acceptable.

Whether we are ready or not, the debate over global governance, fought out at the confluence of constitutional theory and foreign policy, is the decisive issue facing the United States internationally. We hope this conference will contribute to that debate.

1 Commision on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (Oxford: Oxford University Press, 1995).

- 2** The Co-Chairman were Ingvar Carlsson of Sweden and Shridath Ramphal of Guyana.
- 3** Ingvar Carlsson and Shridath Ramphal, foreword to *Our Global Neighborhood*, xvi-xvii.
- 4** *Ibid.*, xvii (emphasis added).
- 5** Barber Conable and Adele Simmons.
- 6** See, for example, William Kristol and Robert Kagan, "A Foreign Policy for Candidate Dole," *Foreign Affairs* 75 (4): 18 (July/August 1996).
- 7** Carlsson and Ramphal, foreword to *Our Global Neighborhood*, xix.
- 8** In that crisis, the United States did in fact assemble a "sheriff's posse" of like-minded nations, obtained Security Council authorization for the use of force -- but no UN supervision or control -- and expelled Iraq from Kuwait. That the Globalists consider this example of America's international role to be in contrast to "law and collective will" tells us much about their prejudices.
- 9** See, for example, Richard N. Haass, *Intervention: The Use of American Military Force in the Post-Cold War World* (Washington, D.C.: Carnegie Endowment for International Peace, 1994), 144.
- 10** Reuters, "Annan Visits Macedonia To Discuss Refugees," *International Herald Tribune* (Hong Kong), 20 May 1999, p. 4. col. 6.
- 11** Michael Littlejohns, "'Significant' Rise in Wars, Disasters," *Earth Times*, 16-30 September 1999, p. 22, col. 1.
- 12** My own view is that the NATO air campaign was bad policy, but that it was emphatically legitimate under "international law." See John Bolton, "Clinton Meets 'International Law' in Kosovo," *Wall Street Journal*, 5 April 1999, p. A23, col. 3.
- 13** U.S. Senate Committee on Foreign Relations, *Field Hearing on Implementation of United Nations Reform*, 21 January 2000 (Stenographic transcript), 69.
- 14** For a debate on the merits of the ICC proposal, see Council on Foreign Relations, *Toward an International Criminal Court?* (New York: Council on Foreign Relations Press, 1999).
- 15** Madeline H. Morris, "High Crimes and Misconceptions: The ICC and Non-party States," *Law and Contemporary Problems* 63 (forthcoming).
- 16** Commission on Human Rights, *The Human Rights Situation Involving Kosovo*, Report submitted by Mary Robinson, Geneva, April 30, 1999, OHCHR/99/04/30/A.
- 17** See, e.g., Charles Truehart, "War Crimes Court Is Looking at NATO," *Washington Post*, 29 December, 1999, p. A20, col. 5; Steven Lee Myers, "Kosovo Inquiry Confirms U.S. Fears of War Crimes Court," *New York Times*, 3 January 2000, p. A6, col. 1.
- 18** See Philip Shannon, "Clinton Still Firmly against Land-Mine Treaty," *New York Times*, 11 October 1997, p. A6; David J. Scheffer, "International Judicial Intervention," *Foreign Policy*, Spring 1996, p. 48, 51 ("The ultimate weapon of international judicial intervention would be a permanent international criminal court. ... In the civilized world's box of foreign policy tools, this will be a shiny new hammer to swing in the years ahead.").

19 Steven Mufson, "For U.S., Fallout Will Be Fading Influence," Washington Post, 14 October 1999, p. A1, col. 4.

20 Bill Gertz, "Albright says U.S. bound by nuke pact," Washington Times, 2 November 1999, p. A1, col. 2. The Secretary's spokesman went even further, stating: "We believe that so long as the president ... expresses his intention to seek advice and consent pending whatever time frame he chooses, customary international law applies." The spokesman clarified that "other countries actually care about international law, even if some in the United States don't."

21 Quoted in Lyle Denniston, "States' Legal Role Grows Globally," Baltimore Sun, 1 June 1998, p. 2A, col. 1. Professor Spiro speculates that other nations may retaliate against the death penalty through the World Trade Organization.

22 United Nations, Vienna Convention on Consular Relations, 24 April 1963, TIAS no. 6820. Also, see generally David Cole and Richard J. Wilson, "Defying World Law in the Angel Breard Case," Legal Times, 27 April 1998, p. 23, col. 1, and John R. Bolton "We Gave Angel Breard Justice," Legal Times, 4 May 1998, p. 27, col. 1.

23 140 L. Ed. 2d 529, 538 (1998).

24 United Nations, Vienna Convention on Consular Relations, 24 April 1963, TIAS no. 6820.

25 Bacre Waly Ndiaye, United Nations Commission on Human Rights, Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories, Report of the Special Rapporteur submitted pursuant to Commission on Human Rights resolution 1997/61, 23 December 1997, pp. 6, 35, 36.

26 Commission on Global Governance, Our Global Neighborhood, 32.

27 Ibid., 32-33.

28 AEI will publish a major study on the role of NGOs later this year, the first comprehensive such study ever undertaken. See Marguerite Peeters, Hijacking Democracy: The Power Shift to the Unelected (forthcoming).

29 United Nations, Millenium Assembly Website, available at <http://www.un.org/millennium/>

30 Techeste Ahderom, "Activism in the Millennium," Earth Times, 16 March 2000, p. 27, col. 1. Adherom is Co-Chair of the Millennium Forum.

31 Commission on Global Governance, Our Global Neighborhood, 259-60 (emphasis added).

32 Dana Priest, "U.S. Activist Receives Nobel Peace Prize for Land Mine Campaign," Washington Post, 11 October 1997, p. A1.

33 Ibid. Williams was subsequently fired from her job at the Vietnam Veterans of America Foundation in March 1998, in a dispute about her role in the anti-landmine effort. See Carlyle Murphy, "The Nobel Prize Fight," Washington Post, 22 March 1998, p. F1, col. 1.

34 David Mack Smith, Modern Italy: A Political History (Ann Arbor: University of Michigan Press, 1997), 342.

35 See UN General Assembly Resolution 3201(S-VI) (1974). A companion Resolution 3281 (XXIX)(1974) was entitled the "Charter of Economic Rights and Duties of States."

36 See, for example, International Commission for the Study of Communications Problems, *Many Voices, One World: Toward a More Just and More Efficient World Information and Communication Order* (Paris: UNESCO, 1980).

37 See generally Raymond J. Waldmann, *Regulating International Business through Codes of Conduct* (Washington, D.C.: AEI Press, 1980), and Carol C. Adelman, ed., *International Regulation: New Rules in a Changing World Order* (San Francisco: ICS Press, 1988).

38 Andean Common Market Commission, *Common Rules Governing the Treatment of Foreign Capital, Trademarks, Patents, Licenses and Royalties*, Decision 24, 31 December 1970.

39 United Nations Conference on Trade and Development, *The Regulation of Liner Conferences*, 1972, New York, TD/104/Rev.1.

40 Originally endorsed in UNGA Resolution 3202(S-VI) (1974), in connection with the General Assembly's endorsement of the NIEO in Resolution 3201.

41 See United Nations Commission on Transnational Corporations, *Draft United Nations Code of Conduct on Transnational Corporations*, 2 June 1983, New York, UN Document E/C.10/1983/S/5, and Waldmann, *supra*, Appendix C.

42 United Nations, *Convention on the Law of the Sea*, 7 October 1982, UN Document A/CONF.62/122.

43 Lawrence Juda, "UNCLOS III and the New International Economic Order," *Ocean Development and International Law Journal* 7 (3-4): 221, 248 (1979).

44 See Jeremy Rabkin, *Why Sovereignty Matters* (Washington, D.C.: AEI Press, 1998), 80-92.

45 For background on the FCTC, see WHO's web site at <http://www.who.int/toh/fctc/fctcintro.htm>. The Department of Health and Human Services recently issued a notice of comment period and public meeting on the FCTC; see 65 Fed. Reg. 10094, 25 February 2000.

46 Report of the International Financial Institution Advisory Commission, Submitted to the U.S. Congress and the U.S. Department of the Treasury, 8 March 2000.