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INTRODUCTION: GLOBAL CHALLENGES AND THE ROLE OF INTERNATIONAL LAW

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It is hard to imagine a more important or timely topic than the one chosen by the Georgetown Journal of International Law for this symposium: "The United States and International Law: Confronting Global Challenges." Whether one focuses on critical national security issues, international trade, protecting human rights, or helping to rebuild war-torn societies, decisions made by U.S. officials take place in a global context. In this context, international law affirms basic rules and standards, which can help to protect U.S. interests and values, and international institutions frequently play a significant role in coordinating the support and resources of many states to meet common challenges.

Throughout its history, the United States has played a major role in shaping international rules and institutions. The United Nations and other key post-World War II institutions, such as the World Bank and the International Monetary Fund, alliances such as NATO, and the new World Trade Organization, all bear the imprint of America's critical shaping contribution. Working through these institutions has generally served to enhance U.S. influence and effectiveness in pursuing a wide range of military, political, and economic goals, and agreed international rules have contributed to order and stability in a difficult world.¹ At the same time, the United States—as a global power with unique security challenges—has at times shown a certain ambivalence towards some international rules and institutions. Particularly after the terrorist attacks of September 11, 2001, but earlier as well, some American officials have regarded international rules and institutions as constraining more than empowering in addressing urgent challenges.²

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¹ See HEDLEY BULL, THE ANARCHICAL SOCIETY 139-42 (1977) for a discussion of how international law contributes to order in the international system.

² Some of the Bush Administration's positions regarding the Geneva Conventions, disputed by other government lawyers, human rights advocates, and legal scholars, are a recent example of this ambivalence. See, e.g., Memorandum for the President from White House Counsel Alberto R. Gonzales, Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict
Yet international law has and can play a significant, positive role as the United States confronts global challenges in a number of substantive areas, including security, international trade, and human rights. In examining these issues, this symposium will explore a number of common themes and questions: What are the major international rules and institutions concerning the use of force, trade, and human rights, and how do they affect U.S. decision-making in these areas? What stake, or national interest, does the United States have in these rules and institutions and in strengthening them for the future? Do the rules need to be changed, or updated significantly, in light of new global challenges—particularly the attacks of September 11—and if so, how? Finally, are critical institutions such as the United Nations or the World Trade Organization structured adequately for the challenges ahead, or do they need to be reformed?

As the United States confronts difficult security and economic challenges in the years ahead, it is helpful to remember that these challenges are diverse and interrelated. They include core national security priorities, such as protecting the country from future terrorist attacks; working to prevent the proliferation of weapons of mass destruction in dangerous hands; shoring up alliances; and working for greater stability in critical parts of the world, including the Middle East. The challenges are also economic: preserving U.S. prosperity and maintaining stable trading relationships, while also addressing the desperate needs of developing countries around the globe, where problems of disease, poverty, and instability are often rampant and cause enormous daily suffering. Transnational threats also confront the United States and many other countries. These include terrorism, trafficking in dangerous substances—and in desperate human beings—and global health challenges such as AIDS and other diseases, all of which require

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sustained cooperation with other countries in order to be addressed effectively.

As the United States works to protect its interests and to advance and promote its fundamental values, including democracy and human rights, it will need to work closely with allies and partners. Indeed, Professor Joseph Nye of Harvard University has argued that in facing the challenges ahead, the United States operates on a complex three-level chess board in which power is distributed in different ways. The top level is the level of military power, in which the United States is predominant and is likely to continue to be for quite some time. The middle level is economic power, which is multi-polar, with the United States, Europe, and Japan representing two-thirds of the world product and with China emerging as a fourth major power. Other states counterbalance U.S. power on this level, and the United States must negotiate with equals such as the European Union. The bottom level is the realm of transnational relations—transactions and threats that cross borders often without full control by governments. Here, the actors are diverse, and the United States needs considerable cooperation from other states to address the challenges on this level effectively.

Nye's basic point is that U.S. decision-makers must consider all three levels in taking effective action. If we focus on the level of military power alone, and potentially antagonize allies on the other levels, we will be less effective in addressing the many security and other challenges we face in the years ahead. Although the United States may sometimes need to act alone, it also needs to build and sustain strong alliances and partnerships in order to protect U.S. interests and values over the long-term. The United States needs to work with allies, for example, in countering terrorism and in strengthening the rules governing the use of force in the face of new threats.

This symposium will touch on all three levels of this chessboard, exploring the international law and institutions that are part of the context for U.S. decision-making on each level as the United States confronts critical security, economic, and transnational challenges today and in the years ahead.

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