



ABIDING BY THE INTERNATIONAL RULE OF LAW: THE UNITED STATES AND THE FUTURE OF INTERNATIONAL TREATIES

-- *SPEAKING NOTES* --

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Good morning ladies and gentlemen. I'm very glad to be here with you. I'm John Magnus of TRADEWINS LLC and also of Miller & Chevalier Chartered. Having told you where I work, I need to add that nothing in my remarks reflects the views of either firm, or of any clients.

I am also presently the Policy/Government Affairs Officer of the ABA Section of International Law; some of what I have to contribute to your discussion here, I have learned while serving in that role.

I have just a few points to make, to feed into (and speed us toward) the Q&A which I'm sure all of us on the panel eagerly anticipate.

1. I'm very **impressed by what you are doing** here at this meeting and by what I have learned of your organization more generally. Keeping the UN vibrant and popular -- helping America and the world at large get the most out of this essential institution -- is a tough job. There are a lot of other banners under which nations can cooperate, and there is a very poor baseline level of public understanding -- especially in the United States -- about international law and international institutions. Politicians, an educated bunch, do not always "get it," and even when they do, the political space within which they can exercise enlightened leadership is tight and shrinking. Your work helps to keep that space from disappearing.
2. These are **difficult times** when it comes to securing Congressional action on agreements that have been negotiated by the Executive Branch. I use the term "agreements" because, for perspective, I plan to touch on both treaties submitted for advice and consent in the Senate and other types of agreements to which a different sort of congressional action is relevant.
3. The **broad political environment** is, I am sure, familiar to you. There are of course honest, legitimate differences of view on basic questions -- what America's place is and should be in the world, what legal commitments we as a nation should and should not willingly take on, which institutions should be utilized for which purposes, and so on. And then there are the competitive considerations faced by

any government but perhaps especially by ours which does not use a parliamentary system -- the view that by delivering action desired by the Executive Branch on an agreement, legislators are giving the President a “victory” that s/he may not “deserve” or that may have future electoral consequences.

While much of our foreign policy moves forward inside a trench that was dug years ago, and from which we are unlikely to depart, the areas in which our foreign policy consensus is today broken down are broader than most of us can ever recall witnessing. Political realignment is in the air, and in Congress many either believe their power will be enhanced by this November’s results (and so are disinclined to take meaningful votes now) or fear an adverse result and are in a hunkered-down, risk-averse mode.

It is no surprise that in such an environment, Congressional action on international agreements is proving hard to obtain. The interesting questions are: which parts of this situation are temporary, what can be done in the remainder of the current Congress despite the adverse terrain, and more broadly what can be done (beyond just waiting) to create a smoother landing strip for agreements that will be submitted to Congress in the future.

4. It is useful to **compare the situation of treaties with that of trade agreements**. There are items in both categories that are in a sort of political limbo. At the risk of over-simplifying slightly:

- On treaties, the primary hold-up appears to be on the Republican side of the Senate, and concentrated mainly in the more conservative portion of the Senate Republican caucus.
- On trade agreements, where both chambers are involved, the primary hold-up appears to be on the Democratic side, and concentrated mainly in the more liberal portion of the Democratic caucus.
- In both categories, centrist-internationalist leadership in both parties has shriveled to the point where it is no longer carrying the day, except on small-bore or non-controversial items such as tax treaties in the Treaty context or the Peru FTA in the Trade context.

5. The **challenge of improving this situation is daunting**. It would be nice if voters understood things better, demanded coherence and responsible leadership on international law issues, and punished fecklessness and demagoguery. In the real world, a lot of education has to be done, advocacy has to be carried out (including at the grass roots level), and we will need a certain amount of good luck as well. This pertains to individual initiatives (such as the UN Convention on the Law of the Sea) as well as the branding and reputation of institutions (such as the UN itself).

6. Tackling this as a “rule of law” issue is difficult. In some cases, the question is precisely about what obligations we want to undertake, rather than about respecting obligations we have willingly undertaken. There is a Rule of Law argument for acting on pending treaties, but it involves several steps and some considerable nuance -- an argument about allowing legal obligations to take on a larger role in our foreign policy than we have previously found desirable. Perhaps this is a theme we can explore during the Q&A.

I appreciate your attention this morning and look forward to your questions.