

Lawyers' Committee
on Nuclear Policy

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March 15, 2005

Senator Richard Lugar, Chairman
Senator Joseph Biden, Ranking Minority Member
Members of the Committee
U.S. Senate Foreign Relations Committee
Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Senator Lugar, Senator Biden, and Members of the Committee,

We write to express our opposition to the confirmation of John Bolton as U.S. permanent representative to the United Nations. The Lawyers' Committee on Nuclear Policy (LCNP) and Western States Legal Foundation (WSLF) each have more than two decades experience in analyzing international law matters related to disarmament and security. Based two blocks from the United Nations in New York City, LCNP closely follows Security Council and General Assembly deliberations. Based in Oakland, California, WSLF has consistently monitored Nuclear Nonproliferation Treaty review proceedings in New York and Geneva and often UN proceedings as well.

The most important reason Mr. Bolton is unsuited to be UN ambassador is his frequently and strongly expressed contempt for the United Nations and international law. The contempt is well-known, but the underlying reasoning deserves examination. In 1997, espousing the position that the United States is not legally bound to pay its UN dues, Mr. Bolton wrote, "Treaties are 'law' only for U.S. domestic purposes. In their international operations, treaties are simply 'political' obligations."¹ He contends that treaties do not impose true legal obligations on states because a coherent, legitimate and consistently applied international enforcement framework is lacking. In a 2000 article, he quoted a Supreme Court statement that a treaty "depends for the enforcement of its provisions on the interest and honor of the governments that are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war." He went on to a conclusion not reached or supported by Supreme Court cases: "This is not domestic law at work. Accordingly, there is no reason consider treaties as 'legally' binding internationally, and certainly not as 'law' themselves."²

Mr. Bolton's view of international law is wrong, unwise, and dangerous.

It is wrong because it fails to appreciate the normative expectation specific to legal obligations that their observance is mandatory, and because it underestimates the incentives for compliance and capacity for enforcement in the international sphere.³

It is unwise because it erodes international cooperation and compliance with norms. Other states do not enter into treaties with the United States believing that they are only political commitments that can be overridden based on U.S. interests. Noting that “a treaty is only another name for a bargain,” John Jay explained “that it would be impossible to find a nation who would make any bargain with us, which should be binding on them *absolutely*, but on us only so long and so far as we may think proper to be bound by it.”⁴ Mr. Bolton said something not altogether dissimilar regarding North Korea, remarking that it is “hard to see how we can have conversations with a government that has blatantly violated its agreements.”⁵

Mr. Bolton’s view of international law is dangerous because its consequences can go beyond erosion of practical relationships and reach into the realm of nihilism and chaos.

Mr. Bolton is also unsuited to be UN ambassador because as Undersecretary of State for Arms Control and International Security he has been closely identified with multiple assaults on treaty regimes that protect the security of Americans and people around the world. Indeed, he appears to have been the principal architect of the Bush administration’s policy of hostility towards treaties and international law, and seems also to have taken a personal joy in executing the policy. Among the assaults:

Verification protocol for the Biological Weapons Convention (BWC): After seven years of negotiations, in the summer of 2001, under Mr. Bolton’s leadership the State Department announced that the United States would not continue with efforts to create a protocol establishing a verification regime for the existing ban on biological weapons. The negotiations then were suspended, as other states did not want to go forward without the United States. Mr. Bolton reportedly told colleagues about the protocol, “It’s dead, dead, dead, and I don’t want it coming back from the dead.”⁶ Adding insult to injury, in November 2001, just hours before the fifth BWC review conference ended, Mr. Bolton shocked and embittered the assembled diplomats by needlessly introducing a surprise proposal to formally terminate the process for negotiations on the protocol or any less comprehensive instrument.⁷ The United States later dropped its insistence on this point. It defies comprehension that the United States held to its position on a verification protocol following September 11 and the anthrax attacks, which surely illustrate the need for international monitoring of weapon-applicable biological research.⁸ In 2002, Mr. Bolton spent political capital on charges that Cuba has a biological weapons program. The charges were disputed at the time, and a 2004 U.S. intelligence assessment failed to back them up.⁹

Strategic Offensive Reductions Treaty (SORT) and the Nuclear Nonproliferation Treaty (NPT): Mr. Bolton helped negotiate the 2002 agreement with Russia on reductions of strategic nuclear weapons. The “treaty” is little more than a confidence-building measure; it contains no provisions for verification or transparency regarding the reductions. This approach abandoned a practice of verification that was central to the entire history of U.S.-Soviet/Russian arms control, and breached commitments to principles of verification, transparency, and irreversible arms control and disarmament approved by the United States and other states participating in the 2000 Review Conference of the Nuclear Nonproliferation Treaty.¹⁰ SORT is wholly consistent with Mr. Bolton’s long-standing rejection of verified treaties as an important tool in addressing what is still the gravest problem faced by the world, the risk of use of nuclear explosives in war or terrorism. At a 2004 meeting, Mr. Bolton arrogantly brushed aside other countries’ concerns about whether the United States is meeting the obligation of good-faith negotiation of nuclear disarmament under Article VI

of the NPT as specified by the 2000 commitments. He said, “We cannot divert attention from the violations we face [by Iran and North Korea] by *focusing on Article VI issues that do not exist.*”¹¹ Mr. Bolton thus ignored that the viability of the nonproliferation regime depends on balanced compliance with both nonproliferation and disarmament obligations. Moreover, he has employed belligerent rhetoric regarding both North Korea and Iran that seems inconsistent with U.S. policy and realistic mechanisms for inducing compliance with nonproliferation norms.

Relations with international organizations: Mr. Bolton effectuated the controversial removal of Jose Bustani as director general of the Organization for the Prohibition of Chemical Weapons.¹² Of the 98 countries which voted on the matter, only 48 supported the U.S. position; seven countries opposed, and 43 abstained. Mr. Bolton is now spearheading the so far unsuccessful U.S. effort opposing a third term for the highly regarded Mohamed ElBaradei as director general of the International Atomic Energy Agency.¹³ This history of antagonism towards the heads of international organizations, and the many important countries which support them, would certainly diminish Mr. Bolton’s ability to be an effective UN ambassador.

Rome Statute of the International Criminal Court (ICC): Mr. Bolton took the lead in the Bush administration’s unprecedented step of notifying the United Nations that the United States does not intend to ratify the Rome Statute, a treaty it had signed. He commented that it “was the happiest moment of my government service.”¹⁴ This action was followed by a campaign against the ICC on several fronts, including a first adopted, but later rebuffed annual U.S. proposal for a Security Council resolution exempting personnel in UN authorized operations from ICC jurisdiction.

Finally, Mr. Bolton is the wrong choice to represent the United States regarding critical matters facing the United Nations in coming months. Mr. Bolton is not the right person to assume the position of permanent representative to the Security Council when the Council is considering a referral of the Sudan situation to the ICC as part of a package of measures to address the ongoing atrocities. Also on the agenda for the United Nations this year is consideration of significant proposals for reform, among them establishment of a Peace-building Commission that would assist failed states, and reorganization of the Security Council. Mr. Bolton’s contempt for other countries and for the United Nations is illustrated by a 2000 radio interview in which he said that “[i]f I were redoing the Security Council today, I’d have one permanent member because that’s the real reflection of the distribution of power in the world,” the one permanent member being the United States.¹⁵ His rhetoric and positions have been so extreme that the nomination has given rise to what we trust are ill-founded rumors around the United Nations that it is a first step towards U.S. pullout. His consequent inability to establish rapport and inspire trust in the UN context make him highly ill-qualified to ensure that the interests of the American and other peoples are well served in reform efforts.

Politically, the nomination of Mr. Bolton amounts to a slap at the whole rest of the world, reversing any gains from President Bush’s fence-mending expedition to Europe. Neither Secretary of State Condoleeza Rice or Karen Hughes as Undersecretary for Public Diplomacy and Public Affairs will be able to repair the damage. But the Senate could, by refusing to approve the nomination.

In closing, we urge the committee to reaffirm the United States' commitment to the rule of law in international affairs and to decline to recommend confirmation of John Bolton as the U.S. permanent representative to the United Nations. Please let us know if we can assist your deliberations in any way.

Very truly yours,

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¹ John R. Bolton, "U.S. Isn't Legally Obligated to Pay the U.N.," Wall Street Journal, November 17, 1997.

² John R. Bolton, "Is There Really 'Law' in International Affairs," 10 *Transnational Law and Contemporary Problems* (spring 2000) 1, at 4. The Supreme Court statement quoted by Mr. Bolton is from *Edye v. Robertson*, 112 U.S. 580, 598 (1884).

³ See Nicole Deller, Arjun Makhijani, and John Burroughs, eds., *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties* (Apex Press, 2003), at 132-140.

⁴ *The Federalist No. 64* (1788) (emphasis in original).

⁵ Philip Shenon, "North Korea Says Nuclear Program Can Be Negotiated," New York Times, November 3, 2002.

⁶ Jim Lobe, "Bush Appoints Right-Wing Extremist to UN Post," Inter Press Service, Terra Viva UN Journal, March 7, 2005.

⁷ Jenni Rissanen, "Left in Limbo: Review Conference Suspended On Edge of Collapse," Disarmament Diplomacy (January-February 2002).

⁸ See Nicole Deller and John Burroughs, "Arms Control Abandoned: The Case of Biological Weapons," 22 *World Policy Journal*, no. 2 (summer 2003).

⁹ Steven R. Weisman, "'In Stricter Study, U.S. Scales Back Claim on Cuba Arms,'" New York Times, September 18, 2004.

¹⁰ See *Rule of Power or Rule of Law, supra* at 27-28, 30-33.

¹¹ Statement by United States Under Secretary of State for Arms Control and International Security John R. Bolton to the Third Session of the Preparatory Committee for the 2005 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, "The NPT: A Crisis of Non-Compliance," New York, April 27, 2004 (emphasis supplied), online at www.reachingcriticalwill.org/legal/npt/prepcom04/usa27.pdf.

¹² Any Bourrier, "'A chemical coup: US forces resignations at agencies,'" *Le Monde Diplomatique*, July 2002.

¹³ Dafna Linzer, "U.S. Alone in Seeking Ouster: 15 Countries Rebuff Effort to Unseat Head of Nuclear Agency," Washington Post, January 22, 2005.

¹⁴ Glenn Kessler and Colum Lynch, "Critic of UN Named Envoy," Washington Post, March 8, 2005.

¹⁵ "The World According to Bolton," Editorial, New York Times, March 9, 2005.