

To what extent does the American Service-Members' Protection Act reflect an ideological divide between America and Europe over the importance of international law within the global community?

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MHIS305 America and Europe from Colonization to Coca-colonization: 1492 to the Present

« Nous sommes tous Américains »¹

Headline in *Le Monde*, 13 September 2001

"My job in Washington in essence became covering how all that support for America evaporated - and worse, how the world went from sympathy to resentment"²

Patrick Jarreau, former Chief of *Le Monde's* Washington DC Bureau,

11 September 2005

Following the September 11 attacks, European nations voted to declare the attack as one on the entire Western world.³ This trans-Atlantic solidarity failed to last, as long-standing differences in ideology could not be overcome by the one event.⁴ In this new paradigm of conservative interventionism, America and Europe differed over the role of international law in regulating the actions of nation states and preventing unilateral exertions of power. This conflict of ideology was reflected in the passing of the *American Service-Members' Protection Act*⁵ (ASPA) by Congress, a largely symbolic law that rejected the authority of the International Criminal Court⁶ and authorised any action to free American citizens indicted by

¹ Jean-Marie Colombari, "Nous sommes tous Américains," *Le Monde*, September 13, 2005, p. 1.

² Todd Richissin, "Broad support of the US after 9/11 has since faded over Iraq," *The Baltimore Sun*, September 11, 2005, p. 1.

³ Jenny Baxter and Malcolm Downing, *The Day that Shook the World* (Sydney: ABC Books, 2001), p. 10.

⁴ Rob Kroes, "European Anti-American: What's New?" *The Journal of American History* 93 (2006): p. 419.

⁵ *Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States (American Service-Members' Protection Act)*, Pub. L. No. 107-206, §§ 2001-2015, 116 Stat. 820, 899-909.

⁶ *American Service-Members' Protection Act*, s 2002(11).

the Court.⁷ The law gained the nickname, the ‘*Invade the Hague Act*’,⁸ and came to symbolise the rejection of international authority by the Bush administration and a statement of the deep bitterness within Washington towards European administrations that failed to support American leadership within the international community. *ASPA* does not foretell the ultimate decline of the American-European relationship, but rather demonstrated the ideological gap between the two powers and the deterioration in rational discourse.⁹

Relationship between the USA and Europe

It is first necessary to enunciate what America and Europe signify in this essay. America refers only to the United States of America, the boundaries and authority figures of which are easily established. Defining Europe is less straightforward. Europe cannot be taken to refer to the continent, as the countries are too diverse to be seen as a homogenous group. The European Union is a more specific group but this too has its limitations, as member states responded in drastically different ways to US exertions of power.¹⁰ In the context of this essay, Europe should be taken to signify ‘Old’ Western European powers. The main countries that shall be discussed are France and Germany.¹¹ This definition is preferable for several reasons. These countries are traditional European powers that to this day have global relevance and influence, especially through their economic and cultural influence within Europe.¹² They dominate global discourse surrounding Europe and concerning Europe’s international status, and their leaders still are able to shape these global discussions.¹³ Due to their common interests and political similarities, it is possible to discuss these nations as a modern, informal coalition that represents a particular ‘European’ perspective.¹⁴ This in turn shapes their responses to international institutions and American

⁷ *American Service-Members’ Protection Act*, s 2008(a).

⁸ Marc Weller, “Undoing the Global Constitution: UN Security Council Action on the International Criminal Court,” *International Affairs* 78 (2002): p. 705.

⁹ Tod Lindberg, “Introduction: The Limits of Transatlantic Solidarity,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 2.

¹⁰ Anne Applebaum, “‘Old Europe’ versus ‘New Europe,’” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 30.

¹¹ *Ibid.*, p. 27.

¹² Simon Bulmer and William E Paterson, “Germany in the European Union: Gentle Giant or Emergent Leader?” *International Affairs* 72 (1996): p. 14.

¹³ Applebaum, “‘Old Europe’ versus ‘New Europe,’” p. 32.

¹⁴ Wolfgang Ischinger, “Pax Americana and Pax Europa,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 87.

exertions of power. The split between 'Old' and 'New' Europe is in itself a complex issue, but shall not be addressed in this essay.

America and Europe dominate 'the West' and are united behind the same broad ideological agenda of democracy, rule of law and capitalism.¹⁵ The twentieth century saw a significant shift in the relationship, with the decline of European Empires through war, social upheaval and decolonisation resulting in America as the ascendant Western economic and political power. America took on a greater global role, especially post-1945 where economic support and military protection was vital in the rebuilding of Western Europe during the Cold War. America fostered close ties with Western Europe as part of an overall strategy of diminishing the importance of the Soviet Bloc.¹⁶ Present-day Europe remains America's most significant partner in the West, as the end of the Cold War led to a peaceful stability and strengthened multilateral ties.¹⁷

In the latter half of the 20th century, America proved to be an indispensable ally whose loans and military protection enabled the recovery of Western Europe and the development of strong, stable democratic systems.¹⁸ America resisted any attempts to diminish its capacity to influence Europe, as seen in 1973 when Secretary of State Kissinger described Europe as merely a regional power, a message that jarred with the views of European leaders, such as Georges Pompidou who saw themselves at the head of a global shift towards diplomacy and multilateralism.¹⁹ The creation of the European Union created the need for a uniquely European identity and temptation has been to define through differences to America.²⁰ European powers often see the emphasis on military power as a major flaw in American foreign policy, especially in the War in Terror, which contrasts with their internationalist perspective which prioritises investment, diplomacy and economic aid to dangerous areas.²¹

¹⁵ *Ibid.*, p. 84.

¹⁶ Ivo H Daalder, "The End of Atlanticism," in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 43.

¹⁷ William Wallace, "Europe, the Necessary Partner," *Foreign Affairs* 80 (2001): p. 16.

¹⁸ Daalder, "The End of Atlanticism," p. 41.

¹⁹ Wallace, "Europe, the Necessary Partner," p. 22.

²⁰ Garton Ash, "The New Anti-Europeanism in America," p. 129.

²¹ Daalder, "The End of Atlanticism," p. 53.

What attitudes exist towards international law?

The twentieth century saw the first meaningful steps to developing international laws that bind and regulate interstate relations, in the hope of normalising and stabilising the global community.²² The biggest challenge faced by international law was and continues to be the reluctance many nations have towards placing any checks on their sovereignty and ability to act in their perceived self-interest.²³ However, key developments such as the creation of the United Nations, the World Trade Organisation and the International Criminal Court have emerged from a collective will for global stability.²⁴

The different perspectives towards international law will be discussed in terms of “European” and “American” points of view. These labels do not indicate that the perspective is exclusively held in that place, but rather highlights trends on either sides of the Atlantic. The reasons why these labels are significant in the context of this essay are twofold. Firstly, a combination of geographical, historical and economic factors has led to the prevalence of different ideologies in the nations in question. Secondly, contemporary discourse around international law in the context of legislation, such as *ASPA*, was often simplistically reduced to America against Europe. This narrative was used by politicians and the media to explain diplomatic tensions, and America and Europe became caricatures of these ideological positions.²⁵

The “European” perspective celebrates the rise of international law²⁶ and accountability through rules and diplomacy, rather than traditional tools of international coercion such as military force. This brings a stability that is valued for the economic rewards it brings, through greater development, investment and global trade.²⁷ Effective action would require the assent and support of multiple states, enabling them to together counter the rising influence of non-state actors in the globalised world and prevent unilateral action.²⁸ This

²² Sergio Fabbrini, *America and its Critics: Virtues and Vices of the Democratic Hyperpower* (Cambridge: Polity Press, 2008), p. 144.

²³ Weller, “Undoing the Global Constitution,” p. 696.

²⁴ Peter Berkowitz, “Liberalism and Power,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 207.

²⁵ Timothy Garton Ash, “The New Anti-Europeanism in America,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 122.

²⁶ Walter Russell Mead, “American Endurance,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 174.

²⁷ Daalder, “The End of Atlanticism,” p. 43.

²⁸ *Ibid.*, p. 47.

attitude is attributed to Europe for two key reasons. Firstly, Europe has historically comprised of small, powerful and competing nations contained within a small landmass. Political and economic integration was ultimately successful in breaking cycles of warfare between the major nations.²⁹ The decline of European powers has led to their favouring of multilateral relations, as Europe must rely on group action to maintain relevance.³⁰ Secondly, European nations have seen and experienced the values of holding nation states accountable to certain irrefutable standards of human rights through international bodies.³¹ This internationalist perspective sees force as a final resort that should only be exercised in pursuit of civilian ends.³²

The “American” perspective, in contrast, values their ‘benign hegemony’ and the compliance of less dominant nations.³³ The focus is not to restrict on nations’ actions through legal means, but rather using unilateral and bilateral means to advance American interests throughout the world.³⁴ The reason why this ideology is described as “American” is due firstly to the focus on exceptionalism within their national discourse, which is the idea that the USA is uniquely placed within the international community to act unilaterally due to their economic and political dominance as well as their long history of democracy.³⁵ This leads to resistance to any attempts to place on America the same restrictions as on other nations.³⁶ America is a large and diverse nation, with many communities that are distant politically, culturally and physically from the political centre in Washington DC.³⁷ This distance leads to a lack of trust in authority and government bureaucracy, an ideology that carries through to perceptions of global authority structures. America is also isolated from other global powers, which shapes their attitude to intervention and rules within the international community.

²⁹ Kalypto Nicolaidis, “The Power of the Superpowerless,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 106.

³⁰ *Ibid.*, p. 98.

³¹ Paul Betts, “Germany, International Justice and the Twentieth Century,” *History and Memory* 17 (2005): p. 57.

³² Nicolaidis, “The Power of the Superpowerless,” p. 113.

³³ Russell Mead, “American Endurance,” p. 165.

³⁴ Daalder, “The End of Atlanticism,” p. 45.

³⁵ Gilles Andreani, “Imperial Loose Talk” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, edited by Tod Lindberg (Abingdon: Routledge, 2005), p. 67

³⁶ Russell Mead, “American Endurance,” p. 160.

³⁷ Fabbrini, *America and its Critics*, p. 33.

The American Service-Members' Protection Act

On the 2nd August 2002, President George W Bush signed into law the *American Service-Members' Protection Act*, a Bill that was introduced into Congress by Senator Jesse Helms and Representative Tom DeLay, both Republicans.³⁸ The law's purpose was to reject the *Rome Statute*, which established the International Criminal Court (ICC), and any assertions that it would apply to US citizens,³⁹ as well as authorising 'any means necessary' to rescue any US personnel taken under the authority of the *Rome Statute*.⁴⁰ As the law was reactionary, it is first necessary to discuss the international treaty with which it is concerned.

The *Rome Statute* is the treaty that created the ICC, a body which exists to prosecute crimes against humanity.⁴¹ The ICC is unique as its jurisdiction is exclusively confined to individuals, rather than states, who have contravened crimes that concern the international community such as genocide, war crimes or other serious violations of human rights. The ICC only has jurisdiction to try individuals when the state in question is unable or unwilling to do so.⁴² Generally, treaties only are applicable to the signatories, and America refused to sign the *Rome Statute*. However, the ICC in given jurisdiction over crimes committed within signatory nations, regardless of the nationality of the perpetrator. The American government saw this clause as a violation of their sovereignty and the rights of their citizens.⁴³

The *Rome Statute* was seen as objectionable on three key grounds. Firstly, the ICC would have the ability to convict US citizens for offences that are not supported by US legislation, secondly, it threatens sovereign decision making processes, such as the viability of participating in overseas operations, and finally the ICC is not subject to checks and balances, which undermines the preeminent role of the UN Security Council.⁴⁴ ASPA was articulated in patriotic terms as a policy designed to protect American servicemen and women serving overseas, a popular message electorally.⁴⁵ Jesse Helms, the US Senator who proposed the bill and spoke in favour of it, appealed to beliefs in American exceptionalism in

³⁸ *Congressional Record*. 107th Congress: S9854.

³⁹ *American Service-Members' Protection Act*, s 2002(8).

⁴⁰ *American Service-Members' Protection Act*, s 2008(a).

⁴¹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998.

⁴² *Rome Statute*, article 17(1)(a).

⁴³ Weller, "Undoing the Global Constitution," p. 697.

⁴⁴ *Ibid.*, p. 697-698.

⁴⁵ *Congressional Record*. 107th Congress, S9854.

order to justify the law.⁴⁶ He spoke at length of his mistrust of the international community, the expansion of which he saw as a direct threat to American interests.⁴⁷ *ASPA* in effect gave the President the discretion to invade a peaceful ally, given the ICC is located in the Netherlands. *ASPA* was passed at a time in which European and American relations were cooling, as the European powers expressed their deep reservations about intervention in Iraq and American indifference to international law.⁴⁸

Significance for the American-European Relationship

One of the key questions raised by *ASPA* is its purpose. Given the USA was already not a signatory to the *Rome Statute*, a law highlighting their opposition was largely unnecessary. The rationale for the most controversial section, the extraction or 'Invade the Hague' clause, has even less practical necessity. The likelihood of America ever attacking mainland Europe in order to extract one single war criminal is very low, assuming an American citizen ever committed a serious crime against humanity on foreign soil. Given the lack of practical application, *ASPA*'s function is mainly symbolic of American attitudes towards international law and limits on American power. It represents the rejection of international authority, the assertion of American exceptionalism and a gesture of bitterness and frustration towards European nations who were seen to actively undermine American attempts to pursue their self-interest.⁴⁹ The symbolic nature of *ASPA* was furthered established by the reception it received in Europe. It was not seen as a serious threat of invasion, but rather a statement of ideology that showed the extent to which Washington was hostile to the ICC. The law was seen to highlight the cognitive dissonance between America claiming to be for justice and their opposition to a body that would make individuals more accountable for crimes against humanity.⁵⁰

Despite all the economic and political incentives to work together towards common goals, as expressed in forums such as the North Atlantic Treaty Organisation (NATO) and the Organisation for Economic Cooperation and Development (OECD), America and Europe at the time that *ASPA* was passed were far from united. The absence of a clearly defined,

⁴⁶ *Congressional Record*. 107th Congress, S9855.

⁴⁷ *Ibid*.

⁴⁸ Peter H. Merkl, *The Distracted Eagle: The Rift between America and Old Europe* (Abingdon: Routledge, 2005), p. 40.

⁴⁹ Garton Ash, "The New Anti-Europeanism in America," p. 131.

⁵⁰ Ignacio Ramonet, "Adieu Liberté," *Le Monde Diplomatique*, January 2002, p. 1.

common enemy led to a lack of unity in foreign policy.⁵¹ The key issue that divided the two powers was their differing perspectives on the meaning of their partnership,⁵² which echoed their broader attitudes towards international law. America saw its goals as being automatically the goals of Western nations everywhere,⁵³ which is especially evident in the rhetoric used by the Bush Administration in regards to the War on Terror.⁵⁴ The surprise and resentment of the American government when Europe rejected their 'benign hegemony'⁵⁵ was severe, although these differing attitudes towards global leadership had been decades in the making. Europe viewed the relationship very differently, and saw the partnership as one of equals where their shared responsibilities to the global community should lead to shared leadership and influence.⁵⁶

The statement that America had the authority to invade the Netherlands at whim if the international community attempted to defy their wishes seemed to confirm in European suspicions of the undesirable effects of American hegemony. The American claim of moral superiority and pre-determined hegemony over all other powers inspired resentment,⁵⁷ and their failures inspired the same sense of *schadenfreude* that was directed to the British Empire's troubles during the Boer War.⁵⁸ The unilateral actions of America were contrasted with a greater emphasis on international law, with prominent European intellectuals calling on America to 'make law, not war'.⁵⁹ In France, this attitude played into their own nationalistic sentiments of their political and military influence in a world where their economic influence had been surpassed not only globally, but regionally by Germany.⁶⁰ In Germany, pacifism had been firmly embraced after a century of aggression, repression and division⁶¹ and this, alongside their national experience of the Nuremberg Trials, shaped their warm attitudes towards international law generally and the *Rome Statute* in particular.⁶²

⁵¹ Garton Ash, "The New Anti-Europeanism in America," p. 128.

⁵² William Wallace, "Europe, the Necessary Partner," *Foreign Affairs* 80 (2001): p. 17.

⁵³ Andreani, "Imperial Loose Talk," p. 68.

⁵⁴ George W Bush, "State of the Union Address," (speech, Washington DC, January 29, 2002) The White House. <http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>.

⁵⁵ Wallace, "Europe, the Necessary Partner," p. 20.

⁵⁶ Daalder, "The End of Atlanticism," p. 47.

⁵⁷ Andreani, "Imperial Loose Talk," p. 69.

⁵⁸ Wallace, "Europe, the Necessary Partner," p. 27.

⁵⁹ Ulrich Beck quoted in Merkl, *The Distracted Eagle*, p. 2.

⁶⁰ Merkl, *The Distracted Eagle*, p. 11.

⁶¹ Ischinger, "Pax Americana and Pax Europa," p. 83.

⁶² Merkl, *The Distracted Eagle*, p. 13.

What is clear is that the reasons behind European opposition to unilateral American power went beyond the conclusion of many neo-conservative Republicans that Europeans simply hated America.⁶³ What are obscured by *ASPA* are the rational bases for American objections to the *Rome Statute*, grounded in concerns surrounding threats to the rule of law and sovereignty, ideas which are hidden by the assertion of American authority to use whatever means to achieve their goals, regardless of international rules.

ASPA demonstrated in the minds of many European observers that the caricature of a gun-toting, irresponsible America had become the dominant political reality across the Atlantic.⁶⁴ The rhetoric that Europeans hated America because Americans ‘were for freedom’⁶⁵ seemed to be at odds with the rejection of ICC, a body set up to preserve life and freedom for persecuted peoples. In particular, French objections were removed entirely from the context of international law and realpolitik consequences and reduced to “resentment of our power, hatred of our success... (or) self-loathing – having failed in modernity... find their one satisfaction in hating modernity.”⁶⁶ The framing of discussions surrounding international law as hysterical accusations of conspiracies against American sovereignty shows the departure from real, practical diplomatic compromises. The deterioration of the discussion surrounding international affairs to personal insults and grandiose statements of national power harmed the ability of the Americans and the Europeans to realistically work towards resolving the tensions between their ideologies at their most basic and rational level.⁶⁷

American frustration with Europe was not new. In 1999 Peter Rodman, a former White House official, said to Congress: “Rather than joyfully falling in step behind our global leadership, [European governments] are looking for ways to counter our predominance”.⁶⁸ As the Bush administration prepared to invade Iraq, it viewed the lack of support of the French and German governments as cowardice, with neo-conservatives going so far as to draw parallels to the appeasement of Nazi Germany in the late 1930’s.⁶⁹ The severity and

⁶³ Ischinger, “Pax Americana and Pax Europa,” p. 85.

⁶⁴ Andreani, “Imperial Loose Talk,” p. 73.

⁶⁵ George W Bush in Merkl, *The Distracted Club*, p. 31.

⁶⁶ Charles Krauthammer in Merkl, *The Distracted Club*, p. 31.

⁶⁷ Steven Erlander, “Anatomy of a Breakdown,” in *Beyond Paradise and Power: Europe, America and the Future of a Troubled Partnership*, ed. Tod Lindberg (Abingdon: Routledge, 2005), p. 15.

⁶⁸ Wallace, “Europe, the Necessary Partner,” p. 20.

⁶⁹ Merkl, *The Distracted Eagle*, p. 6.

insult of this claim, given the German and French experiences of the war, was enormous. This rhetoric also played into a much longer historical narrative of a weak continent that was contrasted with the youthful manliness of America,⁷⁰ a perception that gained new traction and popularity at this time.⁷¹ American resentment is provoked by two key elements; the idea that Europe owes them some debt of allegiance and American exceptionalism. Americans often play into their success in the 20th century and point to both World Wars as instances where they 'saved' Europe.⁷² *ASPA* was often discussed as a direct threat to US servicemen and women which this played directly into the narrative of resentment and shirked responsibility. Secondly, American exceptionalism leads to the conclusion that their actions should not be constrained by other nations.⁷³ It is not clear that the US is willing or capable to follow through on such threats, but the statement itself reflected a wider trend towards grand statements of American moral and political authority that shifted the discourse towards such symbolic gestures.⁷⁴

Conclusion

The similarities that bind the European and American alliance together still far outweigh the differences between the two.⁷⁵ Problems associated with the management of this relationship should not distract from the underlying necessity of a strong economic and political alliance between Western powers.⁷⁶ The rhetorical and symbolic gestures of dissatisfaction and frustration are counter-productive, and reinforce stereotypes that echo in the public discourse and artificially diminish the relevance of the relationship. It was easy for politicians to capitalise off of existing prejudices, and thus opposition to American interests could be discussed simply in terms of European resentment and still be readily accepted. *ASPA* was one such gesture, which fed into narratives of American exceptionalism domestically and of American hostility globally. It could not serve to dismantle the American-European relationship, but it articulated clearly just how far the two powers had diverged when it came to their willingness to accept international law. It is not harmful but

⁷⁰ Andreani, "Imperial Loose Talk," p. 77.

⁷¹ Garton Ash, "The New Anti-Europeanism in America," p. 122.

⁷² *Ibid.*, p. 123.

⁷³ Claudia Aradau and Rens van Munster, "Exceptionalism and the 'War on Terror,'" *British Journal of Criminology* 27 (2006): p. 688.

⁷⁴ Michael J Mazarr, "George W Bush, Idealist," *International Affairs* 79 (2003): p. 510.

⁷⁵ Philip H Gordon, "Bridging the Atlantic Divide," *Foreign Affairs* 82 (2003): p. 83.

⁷⁶ Daalder, "The End of Atlanticism," p 57.

necessary to acknowledge political realities such as differences in ideology so as to see progress within the American-European alliance. *ASPA* reflected how threats and self-aggrandisement jeopardised these efforts, and the fact that both actors are too rational to put aside such a vital relationship should not excuse symbolic and potentially damaging gestures.

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