

Chicago-Kent College of Law

Scholarly Commons @ IIT Chicago-Kent College of Law

All Faculty Scholarship

Faculty Scholarship

March 1998

The Internet as a Threat to Sovereignty? Thoughts on the Internet's Role in Strengthening National and Global Governance

Henry H. Perritt Jr.

IIT Chicago-Kent College of Law, hperritt@kentlaw.iit.edu

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/fac_schol



Part of the [International Law Commons](#), and the [Internet Law Commons](#)

Recommended Citation

Henry H. Perritt Jr., *The Internet as a Threat to Sovereignty? Thoughts on the Internet's Role in Strengthening National and Global Governance*, 5 Ind. J. Global Legal Stud. 423 (1998).

Available at: https://scholarship.kentlaw.iit.edu/fac_schol/498

This Article is brought to you for free and open access by the Faculty Scholarship at Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact jwenger@kentlaw.iit.edu, ebarney@kentlaw.iit.edu.

The Internet as a Threat to Sovereignty? Thoughts on the Internet's Role in Strengthening National and Global Governance

HENRY H. PERRITT, JR.*

INTRODUCTION

The Internet's potential for becoming the medium of a global marketplace and a forum for a collection of traditional and novel political activities is rapidly becoming reality. The growth in the use of the Internet has been one of the most interesting technological and political developments of the late twentieth century. This tremendous phenomenon has not, of course, escaped the notice of political leaders and commentators who analyze new developments for positive and negative influences. While generalizations are always dangerous, it is fairly safe to assert that most of the literature in which the exploration of cyberspace has been discussed asserts that the Internet threatens traditional political institutions and perhaps even the very concept of sovereignty itself. Walter Wriston, writing recently about the revolution of the Information Age, stated that "[s]overeignty, the power of a nation to stop others from interfering in its internal affairs, is rapidly eroding."¹ Many forces today, such as trade, global capital flows, and environmental degradation, are thought to undermine sovereignty.² The developing conventional wisdom seems to be that the Internet is joining the assault on sovereignty and will, perhaps more than any of the

* Dean, Illinois Institute of Technology Chicago-Kent College of Law; member of the bar, Virginia, Pennsylvania, District of Columbia, Maryland, and the United States Supreme Court. I appreciate the comments received on my attempts to deal with the ideas analyzed in this article from Stuart P. Ingis and John Scheib. I would also like to thank John F. Murphy, Joseph W. Dellapenna, John Hyson, Michael Mulroney, and Doris del T. Brogan for their input during a faculty colloquium at Villanova Law School on February 5, 1997. Brian Elias and Michael G. Barton, members of the 1998 class at Villanova Law School, also reviewed drafts and provided useful analysis. I would also like to thank Dean Alfred C. Aman, Jr. of the Indiana University School of Law, Bloomington for inviting me to participate in this written symposium on *The Internet and the Sovereign State: The Role and Impact of Cyberspace on National and Global Governance*.

1. Walter B. Wriston, *Bits, Bytes, and Diplomacy*, FOREIGN AFF., Sept.-Oct. 1997, at 172, 174.

2. For a recent collection of articles on the undermining of traditional notions of sovereignty, see Symposium, *The Decline of the Nation State and Its Effects on Constitutional and International Economic Law*, 18 CARDOZO L. REV. 903 (1996).

other globalization forces, contribute to relegating sovereignty and its traditional trappings to the ash heap of history.³

In this brief article, I would like to challenge this developing conventional wisdom by arguing that the Internet has the potential to strengthen national and global governance—thus enhancing sovereignty rather than destroying it. From the perspective of national governance, the Internet can be harnessed to promote the Rule of Law, which is critical for good governance of societies all over the world. Globally, the Internet can contribute to international cooperation by: (1) strengthening international law; (2) strengthening economic interdependence; (3) empowering non-governmental organizations and improving their abilities to contribute productively to the development of international regimes designed to deal with global problems; and (4) supporting international security mechanisms.

The liberal theory of international relations informs my argument that the Internet can strengthen national and global governance.⁴ The liberal tradition stresses the Rule of Law nationally and internationally, the need for peaceful settlements of disputes, the role of non-state actors in international relations, and the importance of collective security and other forms of multilateral security

3. Wriston, *supra* note 1, at 172, 175 (describing how “[i]nformation technology has demolished time and distance. . . . The information revolution is thus profoundly threatening to the power structures of the world . . .”).

4. The leading international legal academic on the liberal theory of international relations is Anne-Marie Slaughter of Harvard Law School. See Anne-Marie Burley, *Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine*, 92 COLUM. L. REV. 1907 (1992); Anne-Marie Burley, *Toward an Age of Liberal Nations*, 33 HARV. INT’L L.J. 393 (1992); Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT’L L. 205 (1993); Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT’L L. 1 (1995); Anne-Marie Slaughter, *The Liberal Agenda for Peace: International Relations Theory and the Future of the United Nations*, 4 TRANSNAT’L L. & CONTEMP. PROBS. 377 (1994); Anne-Marie Slaughter, *Liberal International Relations Theory and International Economic Law*, 10 AM. U. J. INT’L L. & POL’Y 717 (1995). Another international legal scholar who has been active in writing about liberal theory and international law and relations is David P. Fidler of Indiana University School of Law, Bloomington. See David P. Fidler, *Caught Between Traditions: The Security Council in Philosophical Conundrum*, 17 MICH. J. INT’L L. 411 (1996); David P. Fidler, *Challenging the Classical Concept of Custom: Perspectives on the Future of Customary International Law*, 39 GERMAN Y.B. INT’L L. 198 (1996); David P. Fidler, *LIBERTAD v. Liberalism: An Analysis of the Helms-Burton Act from Within Liberal International Relations Theory*, 4 IND. J. GLOBAL LEGAL STUD. 297 (1997); David P. Fidler, *War, Law and Liberal Thought: The Use of Force in the Reagan Years*, 11 ARIZ. J. INT’L & COMP. L. 45 (1994).

actions.⁵ The “Internet as a threat to sovereignty” thesis seems to be informed intentionally or unintentionally by realism, which has been the dominant theory of international relations for a long time.⁶ Realism emphasizes the anarchic nature of relations among states conceived as abstract units, which is an approach that stresses the concepts of national sovereignty and power.⁷ From a realist perspective, the Internet easily looks like a threatening technological development. The problem is not, however, with the Internet but with the realist perspective. As I argue in this article, the Internet may be a threat to certain conceptions of sovereignty already targeted by liberalism for transformation. The liberal tradition of international relations theory provides a more helpful perspective from which to view the Internet and its impact on national and global governance. Liberalism probes beneath the shell of the state and holds that international relations are influenced by domestic political phenomena and the interaction of non-state actors across borders. The “Internet as a threat to sovereignty” argument—interpreted through the liberal tradition—should be a cause for celebration rather than of hand-wringing and angst on the part of liberal states and the international organizations they support.

I. THE INTERNET AS A THREAT TO SOVEREIGNTY

A. *The Argument that the Internet Erodes Sovereignty*

Information technology has been thought to erode the power of sovereigns since at least the time of James I of England, when the spread of the printing press alarmed the Church and the Crown.⁸ The first stirring of British parliamentary democracy found outlets through print media, allowing the old political order to be challenged by new ideas and forces. Later, the development of radio, telegraph, telephone, and then television technologies also confronted

5. My use of the liberal tradition is very general and does not attempt to deal with the many aspects of the tradition written about in the growing literature on this topic. For example, Fidler has argued that the liberal tradition contains within it three competing perspectives he calls “liberal realism”, “liberal internationalism”, and “liberal globalism.” See Fidler, *Caught Between Traditions*, *supra* note 4, at 430-46. For an application of liberal realism and liberal internationalism to the Helms-Burton Act, see Fidler, *LIBERTAD v. Liberalism*, *supra* note 4, at 339-51.

6. Slaughter, *Liberal International Relations Theory and International Economic Law*, *supra* note 4, at 721-22 (explaining realism as the dominant theory of international relations for two millennia).

7. *Id.* at 723 (noting that realists believe “that the primary actors are states, and define states as monolithic units identifiable only by the functional characteristics that constitute them as states.”).

8. See generally Edward W. Desmond, *Ichio Ozawa: Reformer at Bay*, *FOREIGN AFF.*, Sept-Oct. 1995, at 117 (arguing that the impact of information on state sovereignty has not been systematically explored).

those in power and privilege with new threats to their traditional status. The Internet joins a long historical heritage of new information technologies threatening to upset the existing nature of politics within nation-states.

What is often forgotten is that most of the new information technologies also offered sovereigns great potential to hold on to or even increase their power over their subjects. The exploitation of cinema, radio, and television technologies by twentieth-century fascist and totalitarian regimes is well-known. Less malevolently, new information technologies have also allowed governments to be more effective at shaping public opinion or regulating the economy, thus strengthening them rather than eroding their functions or legitimacy. Although telegraph, telephone, radio, and television technologies had revolutionary potential because they permitted political, economic, and cultural conversations to cross borders, until very recently (historically speaking) they remained confined in their uses to nation-states. While these technologies have now truly gone global, as evidenced by the famous "CNN effect" on political decisions in the United States and other countries, global scope does not necessarily mean that sovereignty is undermined. The "CNN effect" can be seen in sovereign reactions to specific and very emotive types of information. Sovereignty was not undermined but was rather reoriented to respond to information brought to decisionmakers by television. Two examples illustrate this point. As far as can be determined, CNN's broadcasts of the violence in Tiananmen Square did not undermine Chinese sovereignty—as the massacre and Chinese behavior thereafter amply demonstrate. While it is true that without television's access to the horrors of the war in Bosnia the international community would not have involved itself, the television pictures did not destroy Yugoslavian sovereignty nor the sovereignty of any nation responding to that tragedy.

The Internet may, however, be a different type of information technology that possesses characteristics that make it more dangerous to sovereignty than prior revolutions in print and electronic communications. Perhaps the most distinguishing feature of the Internet that makes it more threatening to sovereignty is that it is not susceptible to the same physical and regulatory controls as telegraph, telephone, radio, and television technologies. Telephone technology has historically relied on physical circuits that are easily controlled at national borders. Television, the latest of the radical leaps in information technologies prior to the Internet, uses radio frequencies with relatively short range. Broadcast television is still predominantly national in orientation. Cable television likewise relies on physical infrastructure that is easily controlled at national borders. Of the television technologies, only satellite television has

potential to explode dramatically the geographic limitations historically seen in television usage.⁹

The Internet—an international network of computers and computer networks connected to each other, sharing a common name and address space—differs from earlier advances in information technologies because it combines global reach with extremely low barriers to entry. Governments have far more difficulty imposing border controls on the Internet because it relies on packet switching rather than circuit switching.¹⁰ The difficulty in imposing border controls on Internet communications is compounded by the low barriers to entry—anyone with a laptop computer, access to an Internet service provider, and appropriate software can publish and read in cyberspace. The Internet relies on already existing physical communication infrastructures, making it unnecessary to expend huge amounts of money to communicate globally. The ease with which people can participate in cyberspace activities enabled the Internet to grow exponentially with virtually no governmental oversight. This growth has created a cyber-culture that celebrates freedom and distrusts traditional political institutions trying to come to grips with the implications of this profound electronic revolution in information technology. No such transnational culture developed in the early days of the telegraph, radio, or television. Cyberspace most closely resemble medieval merchants who developed substantive rules and practices to regulate transnational trade—the *lex mercatoria*—outside traditional political institutions.

Commentators have seen in the Internet a threat to sovereignty because the Internet challenges the three historic functions of the state: providing national security, regulating economic activities, and protecting and promoting civic and moral values.¹¹ In short, the Internet threatens the government's ability to

9. See, e.g., *MED-TV: Kurdish Satellite Television* (visited Feb. 13, 1998) <<http://www.med-tv.be/med>> (describing satellite channel that broadcasts to Kurdish communities all over Europe, North Africa, and the Middle East); *The Chinese Channel Limited* (visited Feb. 13, 1998) <<http://www.chinese-channel.co.uk/faq-e.htm>> (describing Chinese satellite broadcasting channel, including instructions for reception).

10. Border controls on the Internet are not impossible to develop and implement, as Singapore and China's efforts illustrate. See generally Henry H. Perritt, Jr., *Packet Borders*, (visited Feb. 13, 1998) <http://www.law.vill.edu/vls/student_home/courses/computer-law/BORDERS2.HTM> (discussing enforcement of borders through Internet protocol routers).

11. See generally *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-18 (1936) (explaining that the United States' power to act as a sovereign nation is defined "not in the provisions of the Constitution, but in the law of nations."). From the sovereign's power to protect itself is derived the power to exclude harmful influences, including undesirable aliens, from the sovereign's territory. See *id.* at 318; *United States v. Montoya de Hernandez*, 473 U.S. 531, 544 (1985). It also includes the power to prohibit the export of its currency, national treasures, and other assets. See *United States v. Oriakhi*, 57 F.3d 1290, 1296-97 (4th Cir. 1995) (upholding border search that revealed heroin in an outbound container).

control power, wealth, and morals within its territory. Terrorist groups, extremist political factions, religious cults, freedom fighters, human rights advocates, and other types of groups hostile to traditional governmental functions and policies are using the Internet to strengthen their respective causes and increase the threat to the security of the nation. The Internet might be seen as a subversive's paradise—the ideal environment for polarization and extremism in politics. A terrorist group no longer has to hijack an airliner in order to attract television coverage to publicize its cause. Now it can simply plug in and disseminate its message in cyberspace.

The increasing use of cyberspace to conduct both national and global commerce also can be seen as a threat to the sovereign state's historical control over economic activity.¹² The very nature of the Internet makes it hard for some countries, like the United States, to apply old models of economic regulation to electronic commerce. The current controversies about individual states claiming jurisdiction to tax or haul into court Internet merchants located in other states illustrate the economic regulatory problem the Internet poses.¹³ Collecting tax revenues, protecting consumers from fraud,¹⁴ and simply knowing the size and nature of cyber-commerce are all problems the Internet creates for national governance. In addition, the nature of economic power is shifting from physical assets to information resources. Wriston argues that "[i]n an economy that consists largely of information products, the government's power to tax and regulate erodes rapidly. Our laws and systems of measurement are becoming artifacts of another age."¹⁵

As the well-known controversies about cyberporn demonstrate,¹⁶ the Internet also challenges the traditional state role of protecting civic and moral values of the society. The American Communications Decency Act is one example of a government worried by the abuse of the Internet by purveyors of

12. See, e.g., Wriston, *supra* note 1, at 176-77.

13. See, e.g., *Interactive Services Association Task Force Calls for "Fair, Uniform and Simple" State Taxes on Internet and Online Services*, Business Wire, Nov. 7, 1996, available in LEXIS, Nexis Library, TXTLNE File.

14. Recently, concerns have been raised about the frauds perpetrated through telemarketing. See, e.g., Barry Meier, *Telemarketing Fraud Case is Tentatively Settled*, N.Y. TIMES, May 1, 1991, at D7. Protecting consumers from fraud on the Internet confronts, however, the unique nature of the Internet that often places the con-artists beyond the reach of prosecutors.

15. Wriston, *supra* note 1, at 177.

16. See generally, Fred H. Cate, *Cybersex: Regulating Sexually Explicit Expression on the Internet*, 14 BEHAV. SCI. & L. 145 (1996).

pornography threatening the moral fiber of the nation.¹⁷ The German government's efforts to shut down neo-Nazi propaganda on the Internet in Germany evidence another government's attempt to protect cherished national values.¹⁸ Fears about losing national identity and other cultural values animate French opposition to the increasing popularity of the Internet.¹⁹ In other contexts, governments—like China's or Singapore's—see the threat to values as cultural imperialism or as ideologically hostile, which justifies their attempts to regulate the Internet within their territories on cultural or ideological grounds.²⁰

B. The Argument that the Internet Undermines International Cooperation

The unique attributes of the Internet may also make it a threat to international cooperative efforts. Internet regulation is a global problem, like environmental degradation in the ozone depletion or global warming contexts, because no one country can adequately deal with the problem on its own. Thus, international cooperation is necessary. However, the jurisdictional conundrums the Internet creates in a federal system like the United States appear at the international level as well. Traditional international legal rules on jurisdiction do not fit the Internet context well.²¹ As a state perceives threats to its security, economy, or values from Internet activity, it may try to prescribe laws that prohibit the threatening activity in question. German law prohibits hate speech and defines hate speech very broadly.²² Applying this law to Internet communications originating in the United States would create a conflict with U.S. Constitutional Law, which protects speech that would fall under the

17. Communications Decency Act of 1996, Pub. L. No. 104-104, 110 Stat. 133-145 (codified as amended at 47 U.S.C. § 223 (1934)).

18. *America Online Added to German Investigation*, RICHMOND TIMES DISPATCH, Feb. 4, 1996, at A4.

19. Roger Cohen, *For France, Sagging Self-Image and Esprit*, N.Y. TIMES, Feb. 11, 1997, at A1.

20. See generally Chris O'Malley, *Reining in the Net*, POPULAR SCI., Aug. 1996, at 22, available in LEXIS, Nexis Library, ARCNWS File; *Singapore Sets Limits on Providers of Access*, THE RECORD (New Jersey), March 6, 1996, at A12, available in LEXIS, Nexis Library, ARCNWS File.

21. International law recognizes three types of jurisdiction in both civil and criminal contexts: jurisdiction to prescribe, jurisdiction to adjudicate, and jurisdiction to enforce. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 401(a)-(c)(1986).

22. GRUNDGESETZ [Constitution] [GG] ch. I, art. 5 (F.R.G.), reprinted in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, Vol. VII (A.P. Blaustein & G.H. Flanz eds., 1971)

German prohibition.²³ International legal rules on prescriptive jurisdiction are not very helpful in providing a way to resolve this potential clash of legal systems. While Germany could justify its application of its hate speech law to the American-originating Internet communication under the “effects doctrine”,²⁴ the exercise of the jurisdiction must also be reasonable under international law.²⁵ International law currently provides us with no way to decide whether the American or the German position on the issue deserves deference. Traditional international law on jurisdiction, thus, does not facilitate international cooperation on international regulation. The only way to break such potential deadlocks is to have states either harmonize their Internet regulation laws so no conflicts arise or conclude a treaty setting out which jurisdiction would prevail in disputes. The range of important interests and values that the Internet affects makes the prospects for such harmonization or universal choice-of-law approach unlikely. International governance of Internet issues, thus, appears to be a chimera. Given all the political, economic, and cultural threats posed by the Internet, the obstacles to international governance of Internet issues appear to feed deeper controversies and tensions among states, contributing to a worsening climate in international relations.

C. A Closer Look at Sovereignty, National Governance, and the Internet

The argument that the Internet undermines sovereignty sounds plausible. One needs, however, to step back from this argument and look more closely at its elements. At times the rhetoric about the Internet loses touch with historical sensibilities. While the Internet may be a revolutionary phenomenon, it does not make all human knowledge about politics irrelevant. Human beings have been building political institutions, refining philosophical approaches to politics, and struggling to accommodate competing human aspirations and new technologies

23. See generally *National Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977) (per curiam); Ronald Dworkin, *The Dragon as Despot China's Placeman in Hong Kong Isn't Keen on Free Speech: It Is a Western Value Contrary to the Public Good*; Ronald Dworkin *Deconstructs Beijing's Bluster*, THE GUARDIAN (London), May 22, 1997, at 19; Samuel Walker, *Our System Better Than Germany's*, OMAHA WORLD HERALD, Sept. 1, 1996, at 9B.

24. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 21, §402(1)(c) (describing how a state has jurisdiction to prescribe law with respect to “conduct outside its territory that has or is intended to have substantial effect within its territory.”).

25. *Id.* §403(1). “[A] state may not exercise jurisdiction to prescribe law with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable.” *Id.*

for thousands of years. Political theory remains relevant to interpretation of dramatic changes in the world.

First, the “threat to sovereignty” argument utilizes an abstract notion of sovereignty—a concept of sovereignty that seemingly applies in all countries in the international system and that is used by realism in explaining international relations. As the history of information technology makes clear, the sovereigns that have been threatened by new forms of communication have been those sovereigns with absolute or autocratic powers. In the twentieth century, fascist and totalitarian governments attempted to determine the information that reached their citizens by controlling print, radio, and television media. The sovereignty of liberal democracies, on the other hand, was enhanced by freedom of speech and freedom of the press in all communications media. Based on this fundamental historical observation, is it reasonable to argue that the Internet threatens the sovereignty of liberal states and non-liberal states equally? Asking this question immediately avoids the realist paradigm of international relations theory because it invites a look beneath the formal, abstract concepts of the state and sovereignty. New information technologies threaten sovereigns that depend on maximum internal political, economic, and cultural control over their peoples. In societies where power is already dispersed between the government and the citizens, new information technologies do not and cannot pose a similar threat to sovereignty. For non-liberal governments, the Internet probably does seem like a unique threat to their abilities to control the politics, economics, and culture within their territories. No longer can totalitarian regimes ensure themselves a safe environment by controlling the newspapers, radio, and television stations because the World Wide Web remains beyond their control and manipulation. As Wriston put it, “[i]nstead of validating Orwell’s vision of Big Brother watching the citizen, the third revolution [in history] enables the citizen to watch Big Brother.”²⁶

Events in Serbia bear these observations out. The current struggle in Serbia reflects the threat that the Internet can have in circumventing the Serbian government’s suppression of freedom in the media. The Serbian government shut down Radio B92, the popular Serbian opposition radio station, and

26. Wriston, *supra* note 1, at 172.

jammed other forms of opposition communications.²⁷ Serbian opposition forces continued to send information and news freely to the world through the Internet, not only in text-based formats like e-mail and the World Wide Web, but through Internet distribution of audio files.²⁸ These Internet communications kept the opposition message alive within Serbia and before the rest of the international community. As the Serbian experience shows, the Internet permits political opposition groups and movements in repressive states to flourish more easily because of the decentralized nature of the Internet itself, which makes it very difficult for such governments to control and censor political thought, speech, and action.

To assess the nature of the threat the Internet poses to sovereignty, sovereignty has to be put into its proper political contexts rather than viewed as some monolithic concept valid in all circumstances. The Internet may very well be a direct threat to certain types of conceptions about sovereignty—those that rely on maximum, centralized control over the life of a people. For other conceptions of sovereignty, like the one informed by liberal political philosophy, the Internet may complicate the task of national governance, as American struggles with the domestic regulation of the Internet suggest. However, complicating the task of national governance is not the same as undermining sovereignty. Questions of domestic Internet regulation in the United States do not fundamentally alter either the nature of American government or the character of American power in the international system. As with other information technology developments, liberal governments can use the Internet to strengthen liberal governance. The explosion in public information web servers in the United States from a handful in 1992 to 875 at the federal level alone in 1996 demonstrates the Internet's potential as an engine of open government.²⁹

27. See Wendy Grossman, *Digital Diplomacy a Two-Edged Sword: The Speed of Technology can Work to the Detriment of International Relations, but the Internet Could Have a Part to Play in Resolving Human Conflict*, DAILY TELEGRAPH (London), April 22, 1997, at 8 (discussing the challenges technology presents to diplomatic relations and the importance of harnessing this technology for humanitarian purposes). See also Bob Schmitt, *An Internet Answer to Repression*, WASH. POST, Mar. 31, 1997, at A21.

28. Schmitt, *supra* note 27 (describing the radio stations efforts to bypass government censors by transmitting broadcasts over the Internet to be rebroadcast via foreign radio stations).

29. The author was responsible for the creation of the Center of Information Law and Policy's Federal Web Locator, (visited April 1, 1998) <<http://www.cilp.org>>, which began indexing federal agency Web servers in 1991, and has expanded the number of servers, which now number more than 875.

D. A Closer Look at International Governance and the Internet

Moving to the question of the alleged threat posed by the Internet to international cooperation, one has to keep in mind that controversies concerning the international legal rules on the jurisdiction to prescribe long predate the Internet. Questions about the legitimacy of national laws attempting to regulate economic behavior in other countries because of an "effect" felt in the legislating state have been around for decades, as the problems with American attempts to prescribe domestic antitrust law extraterritorially demonstrate.³⁰ In addition, raging debates about the propriety of national laws and international law on prescriptive jurisdiction take place today without any reference to the Internet, as the Helms-Burton controversy indicates.³¹ The Internet, thus, belongs in a very large basket of issues that has created problems in international relations in connection with prescriptive jurisdiction.

More importantly, international cooperation on Internet regulation is not necessarily impossible. International treaties have been crafted and have worked well for older technologies. One of the first multilateral treaties was the Universal Postal Union, which continues to perform good service in assuring the free flow of the mails across national boundaries. The International Civil Aviation Organization (ICAO) administers a variety of international treaties that assure open access by air to most countries.³² Finally, the International Telecommunication Union (ITU) continues to function effectively as a treaty framework for conventional telecommunications and some newer technologies such as direct satellite broadcast.³³ While some matters could not be resolved in a treaty framework (for example, German hate speech laws and American constitutional principles), much could be agreed upon, particularly with regard to establishing international norms to limit consumer fraud, and determining which countries should have jurisdiction to adjudicate allegations and enforce judgments concerning Internet consumer fraud.

We should also not forget the potential of private self-regulation within the cyberspace community. As noted earlier, medieval merchants developed the *lex*

30. Courtney G. Lytle, *A Hegemonic Interpretation of Extraterritorial Jurisdiction in Antitrust: From American Banana To Hartford Fire*, 24 SYRACUSE J. INT'L L. & COMM. 41 (1997).

31. See, e.g., Raj Bhala, *Fighting Bad Guys with International Trade Law*, 31 U.C. DAVIS L. REV. 1, 37-85 (1997); Fidler, *LIBERTAD v. Liberalism*, *supra* note 4, at 317-20, 329-31.

32. See generally The International Civil Aviation Organization, *ICAO's Aims* (visited April 1, 1998) <<http://www.cam.org/~icao/aimstext.htm>>.

33. See The International Telecommunication Union, *What is ITU?* (visited April 1, 1998) <<http://www.itu.int/aboutitu/whatitu.htm>>.

mercatoria largely as a private set of rules for conducting business across borders. The rules of the *lex mercatoria* were self-enforced: to be able to do business meant having to obey the rules. Cyberspace self-governance could be centered on the domain naming system, with the sanction for disobedience being the elimination of the violator's domain name. Potential also exists for combining treaty-based regulation with forms of private regulation of the Internet. The successful ICAO and ITU regimes rest on treaty obligations but depend greatly on industry input for the development and enforcement of the rules.

International cooperative efforts on Internet regulation are already underway. The World Intellectual Property Organization (WIPO) adopted a treaty extending copyright protection to new forms of transmission facilitated by the Internet.³⁴ WIPO is considering other proposals for another treaty to extend copyright-like protection to computer databases.³⁵ The Organization for Economic Cooperation and Development (OECD) has been considering a variety of proposals for improving digital commerce.³⁶ The Group of Seven industrialized nations also convened meetings in 1996 to discuss principles for international regulation of the Internet.³⁷ The European Commission has generated White Papers and discussion papers regarding Internet regulation in the European Union,³⁸ the control of obscenity and child pornography in new

34. WIPO Copyright Treaty, Dec. 20, 1996, <<http://www.wipo.org/eng/diplconf/distrib/94dc.htm>>.

35. WIPO, *Report: Information Meeting on Intellectual Property in Databases, Sept. 17-19, 1997* (visited April 2, 1998) <http://www.wipo.org/eng/meetings/infdat97/db_im_6.htm>.

36. See The Organization for Economic Cooperation and Development, *Electronic Commerce: Opportunities and Challenges for Government (The "Sacher Report")* (visited Dec. 4, 1997) <<http://www.oecd.org/dsti/sti/it/ec/act/sacher.htm>>; The Organization for Economic Cooperation and Development, *Measuring Electronic Commerce*, OECD/GD(97)185 (visited Dec. 4, 1997) <http://www.oecd.org/dsti/sti/it/ec/prod/e_97-185.htm>. See also OECD, *Dismantling the Barriers to Global Electronic Commerce* (visited Dec. 4, 1997) <<http://www.oecd.org/dsti/sti/it/ec/prod/dismantl.htm>> (describing the main themes, potential solutions, and organizations that may help implement solutions).

37. See G7 Electronic Commerce Workshop, *G7 Project "A Global Marketplace For SME's" Electronic Commerce Workshop 13-14 March 1997, Brussels, Belgium Final Report* (visited April 1, 1998) <<http://www.ispo.cec.be/ecommerce/workshop.html>>; G7 Electronic Commerce Workshop, *Electronic Commerce Workshop Report, April 22-23 1996 Brussels, Belgium* (visited April 1, 1998) <<http://www.ispo.cec.be/g7/projects/FINALREO.html>>; G7 Electronic Commerce Workshop, *European Electronic Commerce Initiatives* (visited April 1, 1998) <<http://www.ispo/cec/be/ecommerce/invencom.htm>>.

38. See generally Europe's Way to the Information Society, An Action Plan, Communication from the Commission to the Council and the European Parliament and to the Economic and Social Committee and the Committee of Regions, COM(94)347 final.

media,³⁹ and copyright issues in connection with the Internet.⁴⁰ In Fall 1997, the Council of Europe held a ministerial conference on human rights and new technologies, which focused on privacy, activities harmful to human dignity (*e.g.*, hate speech), and the use of the Internet to promote open government and freedom of information.⁴¹ All this cyber-diplomacy weakens the argument that the Internet poses grave threats to traditional forms of international cooperation.

Perhaps even more important is the Internet's potential to help develop new forms of international cooperation. Anne-Marie Slaughter has recently argued that what is happening in today's international system is not the death of the state but rather its disaggregation into functional parts that network globally to deal with governance issues.⁴² Slaughter writes that these functional "parts—courts, regulatory agencies, executives, and even legislatures—are networking with their counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order."⁴³ While not the sole source of transgovernmentalism, the Internet fits directly into this conception of what is happening to international relations and supports the idea that the Internet is not an enemy but an ally of old and new forms of international cooperation.

II. THE INTERNET'S POTENTIAL TO STRENGTHEN LIBERAL CONCEPTIONS OF NATIONAL AND GLOBAL GOVERNANCE

Rather than posing a serious threat to sovereignty and international cooperation, the Internet actually represents a powerful tool to strengthen national and global governance from the perspective of liberal theory.

A. National Governance: Enhancing the Rule of Law through the Internet

As suggested earlier, liberal governments can use the Internet as a powerful engine of open government by providing the citizenry with more information about the operation of the government and the effectiveness of laws. In such

39. See generally Green Paper on the Protection of Minors and Human Dignity, COM(96)483 final.

40. See generally Commission Green Paper on Copyright and Related Rights in the Information Society, COM(95)382 final.

41. See Council of Europe: Summit Meeting for Setting a New Agenda, EUR. REP., August 2, 1997, available in WESTLAW, 1997 WL 13046240. See also *Second Summit of the Council of Europe 10-11 October 1997 in Strasbourg* (visited April 1, 1998) <<http://www.coe.fr/summit/edecplan.htm>>.

42. Anne-Marie Slaughter, *The Real New World Order*, FOREIGN AFF., Sept.-Oct. 1997, at 183, 184.

43. *Id.* at 184.

countries, the Rule of Law already exists but can be supported and enhanced by liberal use of the Internet to disseminate public information. The Internet has an even more interesting role to play in helping the Rule of Law develop in countries making the transition from Soviet-style communism or centrally-planned economies to democratic, free market systems. For such countries, the Internet can be a giant reservoir of legal models, judicial decisions, legal practices, and advice on legal reform issues. The Internet can serve the function of a Rule of Law virtual library for countries making the transition to liberal governance. Long before the Internet existed, John Dawson argued that the wide availability of legal texts and materials promoted the unification of legal systems.⁴⁴ The Internet provides a powerful unification device by making laws and legal materials of all types widely available for reference, adoption, or adaptation. The importance of this virtual Rule of Law library is perhaps greatest in connection with developing constitutional law in transition countries, where the accumulated wisdom of judicial reasoning from existing constitutional democracies can inform the evolution of new constitutional orders.⁴⁵

The Internet has great potential to help transition countries not only establish democracy and the Rule of Law but also preserve them. Freedom of information is an essential feature of responsive government. In the past, freedom of information meant a right in the press and the public to obtain information from governments upon request.⁴⁶ In the age of the Internet, freedom of information means much more: it means the possibility of accessing virtually the entire stock of public information generated by governments at the click of a mouse button.⁴⁷ Such access is significant not only for the convenience of citizens and their elected representatives who can get information more quickly, but also for governments that can disseminate information more cheaply. Even small countries like Croatia and Slovenia can

44. See JOHN P. DAWSON, *THE ORACLES OF THE LAW* (1968).

45. See generally *The Venice Commission* (visited Feb. 5, 1998) <<http://manhattanpublishing.com/primary/venice.html>> (discussing the activities of the European Commission for Democracy through Law, which is a Council of Europe body that promotes the development of an information infrastructure for constitutional courts by publishing opinions and building a conceptual topology or thesaurus to index opinions according to their subject matter). ECEULnet helps the Venice Commission publish its work on the World Wide Web.

46. See, e.g., Freedom of Information Act, 5 U.S.C. § 552 (1996).

47. See Henry H. Perritt, Jr., *Sources of Rights and Access to Public Information*, 4 WM. & MARY BILL RTS. J. 179 (1995).

make their government information widely available even though they might not be able to afford a similar dissemination of printed documents.

Thus, the Internet has tremendous potential to strengthen the conception of sovereignty favored in the liberal political tradition. To the extent the Internet helps democratic opposition forces undermine the sovereignty of repressive governments, such “threats to sovereignty” are to be welcomed, not feared.

B. The Internet's Potential to Enhance Global Governance

Just as the Internet can play a powerful role in strengthening national governance along the liberal conception, it can also support international cooperation as envisaged by liberal international relations theory. First, the Internet can support the development of the international Rule of Law in the same way that it supported the domestic Rule of Law. Second, the Internet can contribute to the development of economic interdependence between states and peoples. Third, non-state actors in the form of international non-governmental organizations can enhance their role in international relations through use of the Internet. Finally, peacekeeping and collective security operations can be strengthened by using the Internet's communications capabilities.

1. Strengthening International Law

A major tenet in liberal international relations theory is the need for international law to govern the relations between independent states. As with domestic law, the Internet offers great potential to serve as an easily accessible repository of international legal texts for governments and NGOs to utilize in their respective activities. The potential is perhaps particularly important in the area of international human rights because international human rights law can also be incorporated in domestic constitutional and statutory interpretations, producing a legal unity between domestic and international law. Greater availability of international legal texts—both treaties and international judicial decisions—will increase the opportunities for more awareness about international rules and their importance in international relations. Such availability is needed. The Internet is already making inroads toward curing this inadequacy. Many Internet sites now provide access to hundreds of

international treaties on all subjects of international law.⁴⁸ New international organizations are also leading the way in terms of Internet dissemination of international legal materials. The World Trade Organization, for example, makes decisions from panels established under its Dispute Settlement Understanding available on its Home Page, which assures universal dissemination of a growing body of case law on the most important set of international legal rules on trade.⁴⁹

The Internet may also make the treaty process more efficient by improving communications between delegations and facilitating better document management. As international regimes become more complex in interstate attempts to deal with complicated global problems, more sophisticated data management techniques through the Internet will help treaty negotiators do their job more efficiently. In this way, the Internet can support traditional efforts at international cooperation through "virtual diplomacy"—a new type of global interactive institution for international relations that has tremendous implications for international law.

2. Strengthening Economic Interdependence

Another key objective of liberalism in international relations is to create economic interdependence between states and peoples. The Internet contributes to this liberal project by enhancing the development of global markets for products, services, information, and capital. As states and their citizens become more vested in the smooth operation of global markets, prospects for peaceful settlement of disputes improve because the economic costs of political disruption are too great for any side to bear. Economic interdependence, therefore, feeds into the development of international law and international dispute resolution because markets demand Rule of Law behavior and the efficiency the Rule of Law brings to dispute settlement. This dynamic also encourages states to join international institutions that support global trade and investment, such as the World Bank and the World Trade Organization. Such participation in international institutions helps stabilize international relations and promotes rule-based behavior and political cooperation and discourse.

48. See, e.g., *The United Nations Multilateral Treaties Deposited with the Secretary General* (visited April 1, 1998) <http://www.un.org/Depts/Treaty>.

49. See *WTO Dispute Settlement* (visited Feb. 3, 1998) <<http://www.org/wto/dispute/dispute.htm>>.

Fears about the Internet eroding governmental powers over the economy again reflect abstract thinking about sovereignty. Under the liberal tradition, it is a positive achievement to reduce the power of the government over the economy and place that power in the hands of private citizens, who will trade and invest internationally, creating economic interdependence that provides a foundation for world peace. More than any other previous revolution in information technology, the Internet plugs powerfully into the economic interdependence project of the liberal tradition.

3. *Empowering Non-State Actors*

The Internet also finds synergy with the liberal tradition by its empowerment of non-state actors both in the market context and in the context of NGOs. NGOs are increasingly important in both the formulation of rules of international law, as NGO participation in international environmental lawmaking illustrates, and in the enforcement of rules of international law, as the experience of Amnesty International in the human rights context demonstrates. The Internet promises to enhance both of these NGO roles in international law because it facilitates NGO participation in treaty-making efforts and strengthens the ability of the NGOs to monitor state compliance with international law and to expose the transgressors publicly.

The increasing importance of NGOs in international legal dynamics contains two interesting aspects, both of which find energy in the Internet. First, the latest revolution in information “technology has broken governments’ monopoly on the collection and management of large amounts of information and deprived governments of the deference they enjoyed because of it.”⁵⁰ Second, non-state actors—armed with the power of ideas and information—can become institutions in their own right in international relations. The roles now played by NGOs in contemporary international relations are striking.⁵¹ While the Internet is not responsible for all the growth in the influence and prestige of

50. Jessica T. Matthews, *Power Shift*, FOREIGN AFF., Jan.-Feb. 1997, at 50, 51.

51. *See id.* at 53 (noting that “NGOs deliver more official development assistance than the entire U.N. system (excluding the World Bank and the International Monetary Fund). In many countries they are delivering services . . . that faltering governments can no longer manage.”).

NGOs, the Internet forms part of the story and promises to play an even larger role in the future.⁵²

4. Improving International Security Mechanisms

The liberal tradition has long supported the use of multilateral responses to threats to international peace and security. The Internet will prove useful in achieving this objective. First, the Internet helps states and international organizations monitor more accurately the state of affairs in troubled countries or regions because of information flows available in cyberspace. Second, states and international organizations can enhance the prospects for multilateral action against security threats by using the Internet to build support for economic sanctions or military intervention. The Internet also allows non-state actors to contribute to the building of support for action against dangerous states. Non-state actors in the form of student groups have led an Internet campaign to punish the dictatorship in Myanmar for its human rights abuses by organizing economic boycotts of companies doing business in Myanmar.⁵³

The Internet can also help facilitate multilateral military operations undertaken by international organizations. Compatibility and interoperability of communications and information systems are crucial to the success of multinational military operations. The Internet offers many features that would fulfill such multinational military needs. Given that most recent multilateral military operations have involved peacekeeping or peace-building, the integration of NGOs and other non-state actors into the mission has proven important, and the Internet can help facilitate such an integration. Finally, the Internet can also be useful for collecting and disseminating intelligence and other data important to the fulfillment of a multilateral military operation. Much in the same way that economies have shifted from physical assets to information products, military power today increasingly involves collecting, analyzing, and communicating vast quantities of information swiftly and

52. See *id.* at 51 (stating that "[t]he most powerful engine of change in the relative decline of states and the rise of nonstate actors is the computer and telecommunications revolution . . .").

53. See generally William Glaberson, *A Guerilla War on the Internet*, N.Y. TIMES, April 8, 1997, at B1. See also Free Burma Coalition (visited Feb. 3, 1998) <http://danenet.wicip.org/fbc/update_071497.html>.

effectively.⁵⁴ Collective security and other forms of multinational security operations must not only recognize this fact but also utilize the Internet's potential in these military areas.

The Internet will also be important in building new international security structures. The expansion of the North Atlantic Treaty Organization (NATO) will involve both political and military integration of the new member countries into the existing political and security frameworks of NATO. The Internet may be a valuable resource in these complex integrative efforts by facilitating communications and data exchange as well as making available information to the general public about the progress of NATO expansion. Russian fears of NATO expansion may also be addressed through the Internet by general information availability and direct, regular communications with the Russians about the status of NATO expansion.

III. LIBERALISM, THE INTERNET, AND THE FUTURE OF INTERNATIONAL RELATIONS

My argument that the Internet offers great promise to national and international governance is expressly based on the acceptance of the liberal vision of domestic and international politics. This vision is not universally accepted, even after the death of communism.⁵⁵ The debate about cyberspace and national and global governance may be less a debate about the Internet as a phenomenon than the latest manifestation of a deeper problem involving great disagreement in the international system about the proper nature of the state and the relations between states. Largely because it is informed by the realist theory of international relations, the Internet as a "threat to sovereignty" argument currently popular, cannot begin to explain the fundamental philosophical differences that still haunt the international system and drive attitudes about the role of the Internet nationally and globally. Cyberspace has not escaped the vortex of politics at the domestic or international level.

54. Wriston, *supra* note 1, at 178.

55. See, e.g., SAMUEL HUNTINGTON, *THE CLASH OF CIVILIZATION AND THE REMAKING OF WORLD ORDER* 59 (1996).

CONCLUSION

In short, thinking about the role of cyberspace in national and global governance forces renewed consideration of the underlying assumptions we have about the nature of the state and international relations and about the construction of images of the world preferred. Liberalism gives a vision of cyberspace that is fitting not only because of the global spaces for individual freedom of expression the Internet provides but also because the liberal tradition gives meaning and purpose to cyberspace that resonates with the better angels of human nature.