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How Donald Trump's bull-in-a-china-shop shtick is strengthening international law

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In his first 100 days, Donald Trump's presidency has ramped up feelings of anxiety in the political and legal arenas of America and beyond, particularly for those with an internationalist view of the world.

The first few executive orders have not had a wide-reaching practical effect, but seemed designed to set a policy agenda for his government; the orders passed so far have had a decidedly protectionist bent. The now-infamous order to restrict entry of nationals from select countries to the United States received widespread coverage, is the only order to create any real impact on the lives of those in the US.

Others, such as the withdrawal from the Trans-Pacific Partnership (TPP) and the undertaking to build a wall at the US-Mexico border, can be described more accurately as statements of intent rather than decisions with clear legal effects. Both formal agreement to the TPP and the funds required to build the wall along the border would require Congressional approval, meaning that the orders themselves do not create any real change. Trump does not seem particularly keen on forcing the issue of funding either, after removing it from the latest spending package before Congress.

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Similarly, his policies on international relations can be identified as expressions of intention without any concrete effect: they are more politically expedient statements than policy directives. Trump already said that he is willing to support whichever solution to the Israel-Palestine conflict that both Israel and Palestine support. Equally, he identified Taiwan as a separate entity to China, while supporting the One China policy.

Each of these confused policies demonstrates an approach to international relations which may create difficulties for international law, but there is evidence to suggest**** that Donald Trump's presidency may, in fact, strengthen the international rule of law.

Chocolate cake and missiles

Trump's first clear and effectual act in the international sphere was the decision to fire missiles on a Syrian air base, despite promises that he did not intend to involve the US in foreign wars. He cited personal reasons for the decision to strike, noting that the pictures of children affected by chemical weapons had a "big impact" on him. But his assertion that the missiles were authorised midway through a "beautiful piece of chocolate cake", and that they were headed for Iraq, somewhat undermines the strength of his feeling.

The US has yet to provide any legal justification for the attack, beyond telling Congress that it was in the "vital national security and foreign policy interest". Already, some scholars maintain it was perfectly lawful. Although the attack is contentious, it could be argued that Trump has not yet violated international law until a justification that does not meet the requirements of the use of force is put forward.

Through the use of force, President Trump has reopened the debate on humanitarian intervention and the justifications for using force to protect civilians. Although unintentional, Trump appears to be strengthening international law by increasing the focus on the legality of the use of such force, a fact his administration are clearly aware of by their branding of the attack as "measured".

Power of domestic courts

Trump's unintended contribution to the development of the international law does not end here. The discussion in US domestic courts also supports the development of international law. When the rules of international law are enforced by domestic courts against their own state, international law is strengthened. As we saw with judges in Hawaii and Maryland, in the case of Trump's infamous executive travel order, the US courts have wasted no time in unanimously rejecting his power to violate international law, albeit basing their reasoning on the Constitution.

In this way, Trump's power, and indeed, the power of any president, is clearly and firmly restrained by the application of the Constitution by the courts. Since the Constitution reflects many international

norms, including rights of due process and the prohibition on torture, certain elements of international law may be protected by the enforcement of constitutional provisions by the US courts. In fact, many parts of US domestic constitutional law reflect international law.

In the end, this method of enforcement may be a means of guaranteeing the enforcement of international norms at the domestic level. It may also prevent the erosion of specific international norms through the courts upholding these rules. It means, despite initial fears, Trump's presidency may actively demonstrate the importance of domestic courts in securing internationally respected norms, and identifying something of an inviolable minimum for individuals.

In the international sphere, this minimum would be regarded as the international rule of law: a rule which cannot be violated by anyone, regardless of their power. Some academics have already indicated that this is the beginning of the corrosion of legal norms in international law, but there is limited evidence to support the idea that Trump's presidency will have any significantly negative effect.



Americans were quick to protest against Trump's travel ban. Shutterstock

The revised travel ban, already thwarted by Honolulu federal judge Derrick Watson's temporary nationwide stay, expressed the intention of the government to prevent nationals of select countries – this time excluding Iraq – from future travel to the United States. However, as has been pointed out, the issue of religious discrimination has not yet been addressed and could present a big problem for the president at a full trial.

Trump's presidency was feared by many as the beginning of a period of chaos and confusion. However, the only concrete effect of his decisions has been felt in a Syrian military base. Even, then, his approach to Syria appears to be the continuation of a decades-old US foreign policy.

However, close attention to his acts and the court actions against his orders could mean that Trump's idealised "American exceptionalism" is an unintended contribution to the development of international law.



Syria **International law** **Donald Trump** **US Constitution** **Muslim Ban**