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# The Bush Administration's Reaction to September 11: A Multilateral Voice or a Multilateral Veil?

By  
Michael M. Collier\*

## I. PREFACE

In April 2002, National Security Advisor Condoleezza Rice said that the attacks of September 11, 2001 could “shift the tectonic plates of international politics.”<sup>1</sup> Over a year later, the position of the United States in that shift remains unsettled. Before September 11, it appeared that the Bush administration intended to pursue a “go it alone” foreign policy. To what degree this unilateral strategy was geared toward strengthening global needs is debatable. What is certain is that September 11 forever shifted the ground for debating the Bush administration’s unilateral versus multilateral approach to issues relating to terrorism. With a loosely defined coalition against terrorism supporting the United States, distinguishing between unilateral pursuits and multilateral cooperation has become extremely complex. Contextual complexity continues to enshroud the U.S. response to terrorism. Acknowledging the limitations of an historical evaluation from such a short temporal remove, this article provides an informed focus for asking clear and cogent questions about the global and domestic ramifications of the Bush administration’s reaction to September 11.

Immediately after September 11, *pro-United States sentiment reached what is probably an all-time high*. The European Parliament proclaimed that “we are all Americans now.”<sup>2</sup> According to Howard Baker, “pledges of sympathy and support from our allies around the world, including messages of condolence from 197 countries and entities, 59 offers of disaster assistance, and 44 multilateral declarations of support” flooded the White House following September 11.<sup>3</sup> The Bush administration noted support from NATO, the EU, the U.N., the G8,

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1. National Security Advisor Condoleezza Rice, Address at the Johns Hopkins School of Advanced International Studies (Apr. 2002), transcript available at <http://www.ousa.org/RAM/Pnew/DDriceSAISspeech.htm> (last visited Mar. 2, 2003).

2. Rafaëlle Rivais, *Au Parlement Européen: Nous sommes tous des Américains*, LE MONDE, Sept. 14, 2001, at Int'l.

3. Howard Baker, Jr., U.S. Ambassador to Japan, *A Worldwide Coalition Against Terror*, INT'L HERALD TRIB., Sept. 26, 2001, § Asahi Shimbun, available at <http://usembassy.state.gov/tokyo/wwwham0015.html> (last visited Mar. 2, 2003).

the Organization of Islamic Conference, and numerous other groups.<sup>4</sup> Although these groups varied in their positions regarding the use of force, their initial support served as a catalyst for the United States to enact its own response to terrorism. The United States did not attempt this enactment alone.

From the ashes of September 11 arose a coalition of the world's most powerful nations. With twenty countries providing military troops,<sup>5</sup> the decision of whether or not to "go it alone" in Afghanistan was not one the United States had to make. The United States may have initiated the "war on terror," but the campaign manifested itself as a group effort. Widespread solidarity brought on by September 11 made the coalition against terrorism possible. Once formed, the coalition required continued solidarity to flourish. A month after the attacks, articles in the *New York Times* revealed the high priority the Bush administration placed on maintaining the rhetoric of international solidarity in order to sustain the integrity of the coalition.<sup>6</sup>

Immediately after September 11, nowhere was the rhetoric of solidarity stronger than within the United States. For a time, party lines effectively dissolved. In an unprecedented showing of nonpartisanship, Congress passed a measure authorizing the president

to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.<sup>7</sup>

The House of Representatives passed this measure 420-1, while the Senate passed it unanimously.<sup>8</sup> Domestically, a majority of citizens considered it patriotic to support the president in his plan to use force against al Qaeda and the Taliban. Patriotism flourished.

However, when *Le Monde* reported that "we are all Americans now,"<sup>9</sup> it failed to say for how long. Even before the State of the Union address in which Bush identified Iran, Iraq, and North Korea as the "Axis of Evil,"<sup>10</sup> many nations began questioning the U.S. vision for the war on terror.<sup>11</sup> Counter-hege-

4. *Id.*

5. Rockwell Schnable, U.S. Ambassador to the European Union, Speech to the European Parliament (Sept. 11, 2002), transcript available at <http://www.state.gov/p/eur/rls/rm/2002/13574.htm> (last visited Mar. 2, 2003).

6. See, e.g., Michael R. Gordon, *U.S. Tries to Sway Worldwide Opinion in Favor of War*, N.Y. TIMES, Nov. 6, 2001, at A1; David E. Sanger, *Taking on Another War, Against Mixed Messages*, N.Y. TIMES, Nov. 4, 2001, at B7; *U.S. Takes Steps to Bolster Bloc Fighting Terrorism*, N.Y. TIMES, Nov. 7, 2001, at A1.

7. Authorization for Use of Military Force, S.J. Res. 23, § 2(a) (2001); See *Congress Approves Resolution Authorizing Force*, Sept. 15, 2001, at <http://www.cnn.com/2001/US/09/15/congress.terrorism/> (last visited Mar. 3, 2003).

8. See *Congress Approves Resolution Authorizing Force*, *supra* note 7. Barbara Lee (D-CA) cast the only dissenting vote in the House. Two members of the Senate abstained from voting.

9. Jean Marie Colombani, *Nous sommes tous Américains*, LE MONDE, Sept. 13, 2001, at A1.

10. President's State of the Union Address, 38 WEEKLY COMP. PRES. DOC. 133, 135 (Jan. 29, 2002).

11. See, e.g., Donald D. McNeil, Jr., *More and More, Other Countries See the War as Solely America's*, N.Y. TIMES, Nov. 4, 2001, at B1.

monic voices gained a stronger audience as Operation Freedom and Operation Anaconda failed to produce Osama bin Laden; Bush began threatening the use of force against Iraq for that country's alleged terrorist involvement; and the status of detainees at Guantanamo Bay generated controversy even within the executive branch.

The events of September 11 generated an initial wave of pro-U.S. support that caused a White House formerly dedicated to unilateralism to appear abundantly multilateral. In October 2001, Colin Powell said that, "[n]obody's calling [the United States] unilateral anymore. That's kind of gone away for the time being; we're so multilateral it keeps me up twenty-four hours a day checking on everybody; nobody accuses us of [being unilateral] anymore."<sup>12</sup> During the first phases of the military campaign in Afghanistan, Powell freely remarked about how multilateral U.S. anti-terrorist efforts had become. The plausibility of his assessments rested on the strength of the coalition. The multilateral focus of an initiative appears easy to maintain when dominant members of a coalition agree on its proper direction. However, widespread agreement within the coalition against terrorism did not remain its defining characteristic. As time passed, institutional decisions such as "unsigning" the ICC Treaty,<sup>13</sup> withdrawing from the ABM Treaty,<sup>14</sup> refusing the Kyoto Protocol,<sup>15</sup> and refusing to grant the detainees at Guantanamo Bay prisoner of war status<sup>16</sup> raised serious questions about Bush's dedication to multilateral solutions. Whether U.S. involvement in Afghanistan indicates a new openness to multilateral solutions, or a convenient occasion for pursuit of its own unilateral objectives, remains an open question.

Bringing the enormous impact of September 11 into focus poses a unique challenge given the incongruous and overlapping fragments of foreign and domestic policy generated by the event. These fragments make the multilateral nature of the U.S. response to September 11 difficult to isolate and more difficult to appraise. To facilitate an evaluation of the Bush administration's use of multilateralism to combat terror, the following article outlines the interplay of formal and informal international cooperation in that effort. In so doing, it assesses terrorist-related treaties favored by the Clinton administration, but disfavored by the Bush administration until after September 11. It then highlights varying forms and degrees of foreign support the United States received for its use of force in Afghanistan. In an effort to determine the White House's current approach to combating terrorism, Bush's National Security Strategy is ex-

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12. Secretary of State Colin Powell, Address at a Business Event in Shanghai, People's Republic of China (Oct. 18, 2001), at <http://usinfo.state.gov/regional/ea/apec/shanghai/wwwhpw1bus.html> (last visited Mar. 6, 2003).

13. See Jean Galbraith, *The Bush Administration's Response to the International Criminal Court*, 21 BERKELEY J. INT'L L. 683 (2003).

14. See Jeremy Ostrander, *Changing Direction on Non-Nuclear Arms Control? American Exceptionalism, Power, and Constancy*, 21 BERKELEY J. INT'L L. 495 (2003).

15. See Greg Kahn, *The Fate of the Kyoto Protocol Under the Bush Administration*, 21 BERKELEY J. INT'L L. 548 (2003).

16. See K. Elizabeth Dahlstrom, *The Executive Policy Toward Detention and Trial of Foreign Citizens at Guantanamo Bay*, 21 BERKELEY J. INT'L L. 662 (2003).

amined. Finally, the article poses questions about the rhetorical style versus the institutional form of Bush's multilateralism.

## II.

### THE UNITED STATES AND MULTILATERAL TREATIES RELATING TO TERRORISM

In the Bush White House, multilateral treaties were not endorsed as a means of combating terror before September 11. After September 11, the Bush administration reversed its position, encouraging the ratification of such treaties. This reversal brought the Bush administration's policy regarding key anti-terrorist treaties in line with that of the Clinton administration. However, just before instrumental anti-terrorist treaties were ratified, Bush radically altered their scope by un-signing the treaty which created the ICC. This interplay between the ratification and "unsigning" of international treaties traces the U.S. post-September 11 penchant for encouraging multilateral approaches while ensuring its own unilateral prerogatives. A brief history of treaties relating to terrorism provides a textual basis for evaluating the continuing role of the United States as a multilateral participant in the struggle against terrorism.

Before the attacks of September 11, the United States was already a party to a number of treaties relating to terrorism. The 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board an Aircraft marks the first in a series of anti-terrorist treaties.<sup>17</sup> Traditionally, treaties relating to terrorism originate in response to specific instances of terrorist activity and focus on combating or preventing that particular kind of terrorism. For example, growing instances of airplane hijackings resulted in three treaties dealing with the matter by 1971.<sup>18</sup> When the problem persisted into the 1980s, an existing treaty was amended to become more international in scope.<sup>19</sup> Additionally, when Palestinian terrorists hijacked an Italian cruise ship, the *Achille Lauro*, in 1985, a treaty on terrorism and maritime navigation ensued.<sup>20</sup> However, until September 11, no U.S. vessel had been hijacked since 1991. Correspondingly, the Senate had not ratified any terrorist-related treaties since 1991.

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17. Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 Stat. 2941, 704 U.N.T.S. 219, available at <http://untreaty.un.org/English/Terrorism/Conv1.pdf> (last visited Mar. 6, 2003).

18. *Id.*; Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 Stat. 1641, 860 U.N.T.S. 105, available at <http://untreaty.un.org/English/Terrorism/Conv2.pdf> (last visited Mar. 6, 2003); Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 Stat. 564, 974 U.N.T.S. 177, available at <http://untreaty.un.org/English/Terrorism/Conv3.pdf> (last visited Mar. 6, 2003) [hereinafter Civil Aviation Convention].

19. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplements the Civil Aviation Convention, Feb. 24, 1988, S. TREATY DOC. NO. 100-119 (1988), available at <http://untreaty.un.org/English/Terrorism/Conv7.pdf> (last visited Mar. 6, 2003).

20. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 26 I.L.M. 668, available at <http://untreaty.un.org/English/Terrorism/Conv8.pdf> (last visited Mar. 6, 2003).

For the United States, immediate necessity appears to be the impetus for ratifying treaties relating to terrorism. In the absence of immediate necessity, international treaties that broach any federalist issue are usually stifled by Congress. Since treaties relating to the extradition of terrorists or the freezing of their funds create international law that may be applied on a domestic level, issues of federalism are raised. Conservative legislators generally refuse to pass such treaties on the grounds that federal legislators lack authority or desire to implement international law that might co-opt existing state and domestic law.<sup>21</sup> Before September 11, federalist agendas proved dispositive in the case of treaties relating to terrorism.

For instance, President Clinton signed two treaties relating to terrorism: the 1997 International Convention on the Suppression of Terrorist Bombings (signed January 12, 1998)<sup>22</sup> and the 1999 International Convention for the Suppression of the Financing of Terrorism (signed January 10, 2000).<sup>23</sup> Congress did not ratify either convention until after September 11. The history of U.S. involvement with these treaties provides a textual backdrop on which to evaluate the Bush administration's altered reaction to multilateral approaches for combating terrorism.

The Bombings Convention promotes greater international cooperation in combating terrorism. It establishes universal jurisdiction to facilitate discovery, extradition and prosecution of terrorists. Article 2 of the Convention defines accountability for an offense. It stipulates that anyone who "unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility," with the intent to cause death, destruction, or economic loss is accountable for the offense within the parameters of the Convention.<sup>24</sup> Anyone who attempts such an act, serves as an accomplice, or is part of an offending group with a common purpose is also accountable under the Convention.<sup>25</sup> "[T]he Convention imposes binding legal obligations upon State Parties either to submit for prosecution or to extradite any person within their jurisdiction who commits an offense as defined in

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21. For a discussion of federalist issues regarding international treaties, see Lea Brilmayer, *Federalism, State Authority, and the Preemptive Power of International Law*, 1994 SUP. CT. REV. 295, 304, 332 n.109; Louis Henkin, *International Law as Law in the United States*, 82 MICH. L. REV. 1555, 1559 (1984); Harold Hongju Koh, *Is International Law Really State Law?* 111 HARV. L. REV. 1824, 1846-47 (1998). See also, LOUIS HENKIN, *FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION* 191, 197 (2d ed. 1996); Lori Fisler Damrosch, *The Role of the United States Senate Concerning "Self-Executing" and "Non-Self-Executing" Treaties*, 67 CHI.-KENT L. REV. 515, 530 (1991).

22. International Convention for the Suppression of Terrorist Bombings, Dec. 15, 1997, 37 I.L.M. 249, available at <http://untreaty.un.org/English/Terrorism/Conv11.pdf> (last visited Mar. 6, 2003) (entered into force May 23, 2001) [hereinafter Bombings Convention].

23. International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 39 I.L.M. 270, available at <http://untreaty.un.org/English/Terrorism/Conv.12.pdf> (last visited Mar. 6, 2003) (entered into force April 10, 2002) [hereinafter Financing Convention].

24. Bombings Convention, *supra* note 22, art. 2.

25. *Id.*

Article 2.”<sup>26</sup> It also binds State Parties to aid in the discovery and sharing of evidence regarding offenses defined in Article 2.<sup>27</sup> The Convention does not apply when an offense has no international character.<sup>28</sup>

The United States initiated negotiations for the Bombings Convention after the 1996 bombing in Dhahran, Saudi Arabia that killed seventeen members of the U.S. Air Force.<sup>29</sup> Following that incident were bombings by the Irish Republican Army, HAMAS, and terrorist bombings of U.S. embassies in Nairobi and Dar es Salaam.<sup>30</sup> While the United States had yet to feel the effects of a terrorist related bombing within its borders, the international community was less fortunate. President Clinton reminded the Senate of this fact as he wrote: “In recent years, we have witnessed an unprecedented and intolerable increase in acts of terrorism involving bombings in public places in various parts of the world.”<sup>31</sup> In an effort to combat these attacks, Clinton endorsed the Bombings Convention. He wrote to the Senate: “This Convention is a vitally important new element in the campaign against the scourge of international terrorism. I hope that all states will become Parties to this Convention, and that it will be applied universally.”<sup>32</sup>

In May 2001, the Bombings Convention entered into force.<sup>33</sup> Although key in the treaty’s initiation, the United States had yet to ratify it. Congress failed to share Clinton’s enthusiasm for the jurisdiction authorized by the treaty. Conservatives reiterated the idea that the United States should avoid entering into international conventions that might conflict with domestic laws and policies. Issues of federalism were an overriding concern. The incoming Bush administration did nothing to push for the treaty’s ratification. Since a number of articles prescribe domestic legislation or the application of particular domestic law,<sup>34</sup> the treaty reached a stalemate in Congress. Conservatives simply would not pass it. A similar fate befell the 1999 Convention for the Suppression of the Financing of Terrorism.

The Financing Convention targets those who fund terrorist activity by providing for their extradition and prosecution.<sup>35</sup> It also allows for the freezing of the assets of those suspected of funding terrorism. Anyone who, “directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” terrorist acts is an offender under the treaty. The Treaty expands the previous U.N. definition of terrorist activities by including

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26. Letter from President Clinton to the United States Senate, 35 WEEKLY COMP. PRES. DOC. 1711 (Sept. 8, 1999), available at <http://usinfo.state.gov/topical/pol/terror/99090904.htm> (last visited Mar. 6, 2003).

27. See Bombings Convention, *supra* note 22.

28. *Id.*

29. Letter from President Clinton to the United States Senate, *supra* note 26.

30. *Id.*

31. *Id.*

32. *Id.*

33. Bombings Convention, *supra* note 22.

34. *Id.*, art. 4, 5.

35. See Financing Convention, *supra* note 23.

actions causing death, injury, or intimidation of a population or government.<sup>36</sup> Those who attempt to commit an offense, are complicit, are accomplices, or are part of an offending group are also held accountable under the treaty.

State Parties to the treaty are required to make the offenses defined in Article 2 criminal under their domestic law; to aid in the investigations of those suspected of funding terrorism; and if the investigation warrants, to extradite or prosecute the offenders.<sup>37</sup> The treaty also calls for domestic legislation for freezing terrorist funds. "In addition, states parties must ensure that their domestic laws require financial institutions to implement measures that identify, impede, and prevent the flow of terrorist funds."<sup>38</sup> The treaty does not apply if the offense has no international character.<sup>39</sup>

Given the demands both treaties place on the domestic legislation and law of State Parties, the United States did not ratify either treaty until the events of September 11 precipitated overriding need for such treaties. When the executive office moved from Democratic to Republican rule, with the conservative predisposition for understanding international treaties to encroach upon issues of federalism and national autonomy, the executive and legislative branches seemed to be moving further away from the international jurisdiction proposed by the treaties. Then, the tide turned.

When U.S. airliners struck the World Trade Center, the Pentagon, and a pasture in Pennsylvania, the Bush administration diametrically shifted its stance toward the two treaties. On October 5, 2001, Bush sent Congress a proposal urging the House to promptly pass both treaties.<sup>40</sup> Before the terrorist attacks of September 11, the two treaties were lifeless on the Congressional floor. They did not register on the executive radar. Yet, within a year of the September 11 attacks both treaties were ratified.<sup>41</sup> The United States appeared to be endorsing a formal multilateral stance on terrorism for the first time in over a decade.

After September 11, the Bush administration began winning widespread international support for increased multinational cooperation for bringing terrorists to trial. Endorsing the two treaties signified U.S. willingness to be an active leader and participant in the fight against terror. However, the Bush administration's enthusiasm for combating terrorism through multilateral treaties soon waned.

Many in the international community agree that the International Criminal Court would provide the best forum for trying terrorists whose offenses fall within either of the treaties relating to terrorism.<sup>42</sup> This choice of forum poses

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36. *Id.*

37. *Id.*

38. *International Convention for the Suppression of the Financing of Terrorism Enters into Force*, U.N. Ass'n of the U.S (Apr. 22, 2002), at <http://www.unausa.org/policy/newsaction/alerts/info/dc042202.asp> (last visited Mar. 6, 2003).

39. Financing Convention, *supra* note 23.

40. Letter from President George W. Bush to the United States Congress, H.R. Doc. No. 107-139 (Oct. 29, 2001) available at <http://usinfo.state.gov/topical/pol/terror/01103002.htm> (last visited Mar. 6, 2003).

41. Both Treaties were ratified on June 26, 2002.

42. See Galbraith, *supra* note 13.



an obvious problem since the Bush administration “unsigned” the treaty that creates the ICC. Just over a month before both terrorist related treaties were ratified, the White House announced that it was not legally bound by Clinton’s signing of the Rome Statute of the International Criminal Court.<sup>43</sup> This unprecedented move by the Bush administration left the question of the proper forum for trying terrorists rife for the controversy it continues to spawn.<sup>44</sup>

Just as the United States appeared to be engaging in multilateral efforts against terrorism, it “unsigned” a treaty positioned to further those aims. Refusing to accede to the jurisdiction of the ICC, the Bush administration not only allowed for the impending debate over the status of detainees in Guantanamo Bay, but also raised concerns anew over U.S. dedication to multilateral solutions.

While the United States endorses the extradition and prosecution of terrorists, it appears to do so on its own terms. According to the White House, those terms are necessary to protect U.S. service members and civilians from politicized prosecutions within the ICC. Bush officials believe that such prosecutions are in potential violation of the U.S. Constitution.<sup>45</sup> These objections are similar to those that blocked terrorist related treaties before September 11. Once again, issues of federalism prevail.

Taking the objections even further, U.S. Secretary of Defense Donald Rumsfeld announced that “the ICC could well create a powerful disincentive for U.S. military engagement in the world.” He went on to say that this “could be a recipe for isolationism.”<sup>46</sup> Rumsfeld indicated that participation in the ICC may cost the international community the advantage of the U.S. military in the “war” on terror.

The Bush administration’s reasons for ratifying the treaties relating to terrorism stand in sharp contrast with the reasoning it offers for unsigned the ICC treaty. While the White House evaluates both the treaties relating to terrorism and the ICC in light of a pervading terrorist threat, the conclusions it reaches regarding a multilateral approach are in direct opposition. Juxtaposing Bush’s stance on the treaties relating to terrorism with his stance regarding the ICC provides one of the better documented accounts of the White House’s complex approach to multilateral solutions to terrorism.

The potentially bifurcated stance of the United States on combating terrorism through international treaties raises questions regarding the administration’s dedication to multilateral solutions. Evaluating the Bush administration’s stance on international treaties provides an excellent textual basis for beginning to un-

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43. The United States notified the U.N. on May 6, 2002 that it was not bound by its signature on December 31, 2000. See Rome Statute of the International Criminal Court, U.N. Doc. A/CONF/183/9, note 6, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp#N6> (last visited Mar. 6, 2003).

44. See Galbraith, *supra* note 13.

45. Press Release, U.S. Dept. of Defense, Secretary of Defense Donald Rumsfeld Statement on the ICC Treaty (May 6, 2002), at [http://www.defenselink.mil/news/May2002/b05062002\\_bt233-02.html](http://www.defenselink.mil/news/May2002/b05062002_bt233-02.html) (last visited Mar. 6, 2003).

46. *Id.*

derstand the U.S. position in global efforts against terrorism. However, putting text into context requires an examination of the multilateral institutions that place such treaties into force. Like the treaties themselves, the role of these institutions was cast in an ambiguous light by the Bush administration's response to September 11.

### III.

#### THE USE OF FORCE AGAINST TERROR: THE POLITICS OF AUTHORIZATION AND MAINTENANCE

When the United States fell victim to the attacks of September 11, the world answered immediately. NATO, the EU, the U.N., and numerous heads of state responded with support for the United States and its self-proclaimed war against terrorism. Though the initial response was great and the support virtually ubiquitous, the scope of anti-terrorist measures often remained vaguely defined. Examining the formal response of NATO and the U.N., along with the coalition against terrorism, provides an international framework for understanding multilateral efforts against terrorism after September 11.

On September 12, 2001, NATO invoked Article V for the first time in its fifty-two-year history.<sup>47</sup> Article V stipulates that an attack against one of the members of NATO "shall be considered an attack against them all."<sup>48</sup> Therefore, each party "will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."<sup>49</sup> Upon invoking Article V, NATO Secretary General George Robertson emphasized that NATO would only provide military support for the United States if the culprits of the September 11 attacks were found to be foreign nationals.<sup>50</sup>

While NATO's immediate invocation of Article V did not institute direct military action, it did facilitate the building of a military coalition. The European Union also facilitated the formation of a coalition. EU Commission President Romano Prodi joined NATO's condemnation of the attacks. He added: "In the darkest days of European history America stood close by us and today we stand close by America."<sup>51</sup> This statement, coupled with the invocation of Article V, characterizes the political and sentimental outreach extended to the United States immediately after the attacks. The importance of NATO's formal support of the United States is linked directly to the symbolic dimension of invoking Article V. Even though NATO would take no military action without careful deliberations from the U.N. Security Council, definitively acknowledg-

47. *NATO to Support U.S. Retaliation*, Sept. 12, 2001, at <http://www.cnn.com/2001/WORLD/europe/09/12/nato.us/> (last visited Mar. 3, 2003).

48. North Atlantic Treaty, Apr. 4, 1949, art. 5, para 1, 63 Stat. 2241, 34 U.N.T.S. 243, available at [http://www.nato.int/docu/basic\\_txt/treaty.htm](http://www.nato.int/docu/basic_txt/treaty.htm) (last visited Mar. 6, 2003).

49. *Id.*

50. See *NATO to Support U.S. Retaliation*, *supra* note 47.

51. *Id.*

ing its willingness to act if necessary constituted a powerful statement. Similarly, the EU's reference to historical allegiance with the United States marked no explicit commitment to arms, but strongly indicated that such a commitment was available. The combined statements of NATO and the EU exemplify the dynamic between form and symbol that makes post September 11 support for the United States easy to identify, but difficult to quantify.

The U.N.'s initial reactions to the September 11 attacks did not make quantification of support for the United States much clearer. In immediate response, the U.N. issued Security Council Resolution 1368.<sup>52</sup> Resolution 1368 "[u]nequivocally condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001."<sup>53</sup> To combat terrorism the Resolution encourages international cooperation within the bounds of the U.N. Charter, and especially through existing anti-terrorist conventions. However, as the United States had not yet ratified the most relevant anti-terrorist Conventions,<sup>54</sup> such an approach offered complications. Given this situation, the U.N. primarily offered the United States intangible support such as sympathy and outrage.

Expressing "its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism," the U.N. stopped short of explicitly articulating its role in the use of force against the September 11 terrorists.<sup>55</sup> It elected "to remain seized of the matter."<sup>56</sup> On September 12, 2001, the General Assembly followed the U.N. Security Council's condemnation of the attacks, but also failed to comment explicitly on the impending use of force against the attackers.<sup>57</sup>

On September 28, 2001, the U.N. Security Council adopted Resolution 1373.<sup>58</sup> The Resolution calls for anti-terrorist measures extremely similar to those contained in the Bombings Convention and the Funding Convention.<sup>59</sup> For example, both the Resolution and the Treaties criminalize the funding of terrorists, and facilitate the sharing of evidence in criminal investigations surrounding terrorist acts. The U.N. Security Council decided that under Chapter VII of the U.N. Charter, all States should, *inter alia*, follow the anti-terrorist measures prescribed in Resolution 1373. The Resolution also creates the Counter-Terrorism Committee (CTC).<sup>60</sup> The CTC is comprised of all members of the U.N. Security Council. U.N. member states must report to the CTC on their progress in meeting the obligations set out in the Resolution. The CTC reviews the reports and offers its recommendations. Again, the Resolution does

52. SCOR Res. 1368, U.N. SCOR, 4370th mtg., U.N. Doc. S/Res/1368 (2001), available at <http://www.state.gov/p/io/rls/othr/2001/4899.htm> (last visited Mar. 3, 2003).

53. *Id.*

54. See Bombings Convention, *supra* note 22; Financing Convention, *supra* note 23.

55. SCOR Res. 1368, *supra* note 52.

56. *Id.*

57. G.A. Res. A/Res/56/1, U.N. GAOR, 56 Sess., U.N. Doc. A/Res/56/1 (2001), available at <http://www.un.org/documents/ga/docs/56/agresolution> (last visited Mar. 3, 2003).

58. SCOR Res. 1373, U.N. SCOR, 4385th mtg., U.N. Doc. S/Res/1373 (2001), available at <http://www.un.org/Docs/scres/2001/sc2001.htm> (last visited Mar. 3, 2003).

59. *Id.* See Bombings Convention, *supra* note 22; Financing Convention, *supra* note 23.

60. SCOR Res. 1373, *supra* note 58.

not specifically address the use of force in Afghanistan despite the imminence of the issue.

On the same day Resolution 1373 was adopted, the United Nations Association director Malcolm Harper sent a letter to Tony Blair concerning the emerging coalition against terrorism. He wrote, "we are deeply concerned lest the international response to [September 11] may fail to maintain the highest standards of international law." He went on to add:

We believe that such aerial military action should only be authorized (explicitly and by the U.N. Security Council) as a very last resort if those indicted for terrorism are sheltered by any country or group in defiance of the Council's demands and if all other measures have been exhausted.<sup>61</sup>

The message of such letters is markedly more definite in its resistance to the quick use of force against terrorists in Afghanistan than that contained in either U.N. Resolution on the matter.

Amid an international outpouring of pro-United States sentiment, the U.N. Resolutions did not provide a clear directive in the use of force in Afghanistan. It is difficult to pinpoint the exact influence Resolutions 1368 and 1373 had in the coalition against terrorism's decision to use force. At least in the short term, the overwhelming alliance of the EU, NATO, and other nations with the United States seems to have overshadowed U.N. mechanisms for handling armed conflict. On October 7, John D. Negroponte informed the U.N. that:

In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that the United States of America, together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defen[s]e following the armed attacks that were carried out against the United States on 11 September 2001.<sup>62</sup>

And so the United States and its coalition allies proceeded to use force with indefinite regard to the U.N.'s Resolutions. The reference to Article 51 of the U.N. Charter invokes the "right of individual or collective self-defen[s]e if an armed attack occurs against a Member of the United Nations, until the U.N. Security Council has taken measures necessary to maintain international peace and security."<sup>63</sup> This indicates that the United States did not understand Resolutions 1368 and 1373 to maintain international peace and security. It also reveals the U.S. impatience with U.N. mechanisms for defining and pursuing international peace and security.

Acting to use force against terrorists in Afghanistan, the United States did not require the direct consent of the U.N. because it already had the overwhelming consent of a multi-state coalition. This circumstance gives rise to the question of whether the use of force with the consent of many states is multilateral

61. Letter from Malcolm Harper, United Nations Association Director, to Tony Blair (Sept. 27, 2001), at <http://www.una-uk.org/Comment/blairletter.html> (last visited Mar. 3, 2003).

62. Letter from John D. Negroponte, U.S. Representative to the United Nations, U.N. SCOR, U.N. Doc. S/2001/946 (2001) available at <http://www.un.int/usa/s-2001-946.htm> (last visited Mar. 3, 2003).

63. U.N. CHARTER art. 51, available at <http://www.un.org/aboutun/charter/> (last visited Mar. 3, 2003).

even though it apparently defies the intent of the United Nations. The answer to this question depends on the manner in which one defines multilateralism.

#### IV.

##### COALITIONS OF THE WILLING: THE U.S. APPROACH TO COMBATING TERRORISM AFTER SEPTEMBER 11

The Bush administration's response to terrorism is rooted in an ideology, which provides for multilateral cooperation, but does not require it. The primary locus and justification for Bush's anti-terrorism policies is national security. With U.S. security at the epicenter of anti-terrorist efforts, Bush's overriding directives for the war on terror are predominantly domestic, yet tempered with global allowances. Institutions and coalitions offer valuable multilateral mechanisms through which the war against terrorism may be pursued, but Bush remains clear that the United States will carry on its war absent these mechanisms should they falter.<sup>64</sup> Similarly, Colin Powell states that "[m]ultilateralism cannot become an excuse for inaction."<sup>65</sup> Willingness to "go it together" if possible and "go it alone" if necessary characterize the current U.S. policy regarding terrorism.

Nowhere is the Bush administration's vision for the post-September 11 United States articulated more clearly than in the National Security Strategy.<sup>66</sup> Published just over a year after the attacks of September 11, the report provides a revealing account of how the United States wishes to situate itself in a world plagued by terrorism. The National Security Strategy is a paradigm of the Bush administration's all-pervasive ideology. The report defines an enemy, an overarching morality, and a set of political and military goals. It continually asserts the importance of international cooperation while pledging unwavering allegiance to U.S. values. An examination of the report provides a lesson in the Bush administration's version of multilateralism.

The National Security Strategy employs a rhetoric of equivocation to harmonize national and international agendas by grouping them together as one. The text notes that "[t]he U.S. national security strategy will be based on a distinctly American internationalism that reflects the union of our values and our national interests."<sup>67</sup> Proclaiming that "the distinction between domestic and foreign affairs is diminishing," the report proceeds to identify "a single sustainable model for national success: freedom, democracy, and free enterprise."<sup>68</sup> This model is set forth as the "common goal of freedom" and any country not following it is understood to be in conflict with international welfare.<sup>69</sup> By de-

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64. NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2002), available at <http://www.whitehouse.gov/nsc/nss.html> (last visited Mar. 3, 2003).

65. *Threats and Responses; Powell on Iraq: 'We Reserve Our Sovereign Right to Take Military Action,'* N.Y. TIMES, Jan. 27, 2003, at A8.

66. NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, *supra* note 64.

67. *Id.*, art. 1.

68. *Id.*, introduction.

69. *See id.*

fining international interests in terms of national values, the report provides an arena for solidarity and the rules that must be followed within that arena.

Identifying an enemy which the great powers of the world must align against bolsters the rhetoric of solidarity. "The enemy is terrorism."<sup>70</sup> According to the Bush administration, "[t]oday, the world's great powers find ourselves on the same side—united by common dangers of terrorist violence and chaos."<sup>71</sup> In this schema, terrorism functions as a catalyst for solidarity. Solidarity is necessary to make "distinctly American internationalism" function as multilateral. So long as international cooperation with U.S. values is a byproduct of global terrorism, the Bush administration adheres to the tenets of its own multilateral construct. If other countries fail to follow "the only path to peace and security," which is action against terrorism,<sup>72</sup> then multilateral cooperation with those countries fails to be desirable for the United States since it would then be opposed to the "common goal of freedom."<sup>73</sup>

The National Security Strategy also expresses allegiance to multilateral institutions. The United States is "committed to lasting institutions like the United Nations, the World Trade Organization, the Organization of American States, and NATO as well as other long-standing alliances."<sup>74</sup> However, that commitment is always conditional because multilateral institutions cannot bar the United States from taking actions against terrorists that it deems necessary. For example, it is doubtful that the U.N. would allow preemptive strikes against a state suspected of terrorist activity. Yet, according to the National Security Strategy, the United States "will not hesitate to act alone, if necessary, to exercise our right of self defense by acting preemptively."<sup>75</sup> In the event that preemptive action is not authorized by the U.N., the United States might still find it to be multilateral since "coalitions of the willing can augment" institutions such as the U.N.<sup>76</sup> It may be that coalition support is all that is required for an action to be multilateral.

The United States prefers to act multilaterally, especially if multilateral action mirrors unilateral objectives. The National Security Strategy defines multilateralism in a way that aligns multilateral and unilateral objectives whenever possible. This allows the United States to pursue would-be unilateral objectives while professing to follow a multilateral route. Recent U.S. proposals to NATO constitute a prime example of this dynamic at work.

The NATO summit in November 2002 epitomized the U.S. desire to chart its own international course and then implement that course through a multilateral institution. The summit's primary goal was to redefine the role of NATO.<sup>77</sup> Secretary Rumsfeld proposed a plan whereby NATO would organize a rapid

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70. *Id.*, art. 3.

71. *Id.*, introduction.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*, art. 3.

76. *Id.*, introduction.

77. Patrick E. Tyler, *In Search of a Mission*, N.Y. TIMES, Nov. 20, 2002, at A1.

response force to combat terrorism immediately, wherever it might surface.<sup>78</sup> Clearly, this sort of anti-terrorism force is in line with the military strategy set forth in Bush's National Security Strategy. While some members of NATO backed the plan, others expressed serious reservations about institutional implementation of the marked U.S. initiative.<sup>79</sup>

Ironically, both skepticism and support for Rumsfeld's plan arose from a common source—the massive deployment of military force in Afghanistan by the United States. By providing the military power for invading Afghanistan, the United States relegated NATO forces to the periphery. Even though NATO invoked Article V on behalf of the United States, the United States relied instead on coalition support. This rendered NATO's cooperation of questionable importance. After the United States shouldered the initial military load in the name of the coalition, there seemed little doubt that NATO had entered a phase of obscurity from which it must reemerge to be effective. However, in the face of future international conflicts, should the United States again choose to provide the overwhelming portion of military might and bypass multilateral institutions in favor of coalition allies, NATO might be cast into the shadows once more. By enacting its own vision for combating terrorism, the Bush administration appears to have gained leverage over multilateral institutions thanks to coalition support. This leverage may now allow the Bush administration increasing power to implement its particular initiatives through multilateral institutions. In order to preserve their viability, multilateral institutions may now be forced to legitimize plans that a coalition would follow despite institutional support.

Calling the U.S. agenda an international agenda is a simple rhetorical strategy. It has also proven an effective strategy. By setting forth common goals based on a common enemy, the Bush administration has harnessed coalitions as a vehicle for multilateral action. The ability of coalitions to displace established multilateral institutions causes those institutions to be more subservient to countries powerful enough to build such coalitions. So far the United States is the only state able to form a coalition as substantial as the coalition against terrorism. This gives the United States a privileged role in defining and implementing multilateral efforts against terrorism.

## V.

### A MATTER OF PERSPECTIVE: THE STYLE AND FORM OF THE BUSH ADMINISTRATION'S MULTILATERALISM

Whether September 11 constituted a true shift in the Bush administration's foreign policy, it undeniably shifted the framework for assessing that policy. The coalition against terror generated a great deal of solidarity-related rhetoric. Does this rhetoric of solidarity and consent constitute a multilateral mechanism for deploying force against terrorists? Or does the institution of the U.N. provide the only mechanism for implementing the multilateral use of force?

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78. *Id.*

79. *Id.*

The answer to these questions, along with the definition of multilateralism, may lie somewhere in between the poles of voluntary and institutional international cooperation. If the coalition was built more on rhetoric than form, its formative influence in the sphere of foreign policy nonetheless remains substantial. Whether the transition from rhetoric to reality served to mask pursuits that the United States would have followed unilaterally without the coalition may be less consequential than the appearance of international cooperation the coalition generated. According to Tony Judt, "What gives America its formidable international influence is not its unequaled capacity for war but the trust of others in its good intentions."<sup>80</sup> The coalition was founded in large on good intentions. It is still too early to tell where those good intentions will ultimately lead. U.S. willingness to follow a path of good intentions if escorted by numerous and powerful allies comes as little surprise. U.S. enthusiasm for using force against terrorism without a coalition behind it remains to be seen.

Whether multilateralism in the Bush White House is a matter of style or form, the response to September 11 indicates that each affects the other. September 11 revealed that the form offered by the U.N. is not always enough to hinder the United States from pursuing its aims if a large international coalition is behind it. However, in the absence of such consent, the United States still feels compelled to turn to the U.N. This is evidenced by the vigor of the current debate in the U.N. regarding the use of force against Iraq.<sup>81</sup> Even as the United States threatens to go it alone in the name of combating terror, its hesitancy to do so without U.N. support is telling.<sup>82</sup>

There are indications that the United States needs international cooperation in order to win its war against terrorism. States other than the United States accomplished roughly seventy percent of the freezing of terrorist funds.<sup>83</sup> Although the United States may have the military might to act unilaterally, such action could prove more costly than beneficial if it offends too many U.N. members. While the rhetoric of solidarity has shaped multilateral initiatives in favor of the United States immediately following September 11, its ability to accomplish enduring multilateral reform remains unproven. The strategy of equating American values with international values is only flexible to the point where the

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80. Tony Judt, *Its Own Worst Enemy*, N. Y. REV. OF BOOKS, Aug. 15, 2002 at 12, 16.

81. See Allison Ehlert, *Iraq: At the Apex of Evil*, 21 BERKELEY J. INT'L L. 731 (2003).

82. At the time of writing this article, the conflict with Iraq had yet to begin. Immediately before publication of the article, the United States, England, and Australia formed a "coalition of the willing" that overthrew the regime of Saddam Hussein. The role of the U.N. in the political and economic reconstruction of post-conflict Iraq is being debated.

The fact that three large states took military action against another country under the rubric of a coalition and despite U.N. protests adds pertinence to the question of what is and what is not multilateral. As with the coalition against terrorism's use of force in Afghanistan, the use of force in Iraq occurred at the behest of a U.S.-led coalition and without U.N. consent. Continued success of U.S.-led military coalitions increases the possibility that the United States will be able to implement its own objectives via multilateral institutions. If the United States is free to use coalitions to accomplish the goals that once required the cooperation of multilateral institutions, institutions such as the U.N., may be compelled to validate U.S. plans in order to preserve their systemic efficacy.

83. Thomas Omestad, *My Way—or the Highway?*, U.S. NEWS AND WORLD REP., Dec. 30, 2002, at 74.



two can be brought in line—beyond that lies the breaking point. Invading Afghanistan in search of Osama bin Laden proved an occasion where U.S. and international objectives were compatible. Whether this unique occurrence will set a new precedent for multilateralism remains to be seen.

For now, the Bush administration's stance on multilateralism appears to be organic—it lives and dies according to the global climate. Perhaps this fluctuation is less the result of changes in White House policy than the circumstances through which that policy is evaluated. If the United States is multilateral when other countries follow, does that mean that the United States is multilateral *because* other countries follow? The response to September 11 adds a new urgency to this question. The answer depends on whether the U.S. role in the use of force against terrorism constitutes a multilateral voice, or a multilateral veil.