

2003

Between Empire and Community: The United States and Multilateralism 2001-2003: A Mid-Term Assessment

David D. Caron

Recommended Citation

David D. Caron, *Between Empire and Community: The United States and Multilateralism 2001-2003: A Mid-Term Assessment*, 21 BERKELEY J. INT'L LAW. 395 (2003).

Available at: <http://scholarship.law.berkeley.edu/bjil/vol21/iss3/1>

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of International Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

Between Empire and Community

The United States and Multilateralism 2001-2003: A Mid-Term Assessment

By
David D. Caron*

In President Eisenhower's inaugural address given on January 20, 1953, he referred numerous times to the United Nations and to the depth and importance of the United States commitment to the system of multilateral institutions created following World War II. Fifty years later, however, there is an almost constant barrage throughout the world of critical commentary on the U.S. government's approach to a wide variety of international issues. Certain words repeat in this torrent of opinion: Unilateralist (as opposed to multilateralist), Isolationist (as opposed to internationalist), Empire (as opposed to community), Power (as opposed to law). These terms usually are not particularly specified. Moreover, they arise in a wide variety of contexts. On one day, the point of discussion is climate change and the U.S. rejection of the Kyoto Protocol. On another day, the topic could be trade and vaccines, biological weapons, human rights or terrorism. In mid-March 2003, as this volume goes to press, the dominant multilateral discussion concerns the Security Council and the question of the use of force to disarm Iraq. To emphasize only that important question, however, is to overlook the wide range of multilateral institutions and settings in which the United States participates, and the ways in which that participation has been controversial over the last two years.

The basic underlying assertion in this muddy torrent is that the United States has changed its attitude and practice toward multilateralism dramatically over the first two years of President Bush's administration. The United States may have not been particularly internationalist in previous administrations, but something has happened, and that something is qualitatively different than that before.

With this context in mind, the University of California at Berkeley in the Fall of 2002 undertook a mid-Presidential term assessment of the position of the

* C. William Maxeiner Distinguished Professor of Law, University of California at Berkeley.

United States *vis-à-vis* “multilateralism.”¹ The purpose of the project was to further understand the transformations that are perceived to be taking place. This issue of the *Berkeley Journal of International Law* contains the sixteen individual studies that resulted. The work was presented to the public at the University’s School of Law on January 22, 2003—two years into the Bush Presidency.

The contributions in this study cover a wide range of topics. The group comprehensively surveyed the past two years in terms of how it was reported upon both within the United States and abroad by press outlets with both liberal and conservative reputations. The major initiatives and incidents of this period were identified, and the particular topics to be focused upon by individual contributions were agreed upon. Even as the authors took up their own points of focus, the participants in this project wrestled continuously, both together and individually, with foundational questions of what it means to be “multilateralist,” and how one might identify and possibly gauge such a quality.

As a general matter, each participant approached his or her topic in the following manner. First, acknowledging that there must be an appreciation of the legacy influencing the period to be assessed, there is an attempt to describe the momentum to events that existed as the Bush administration took office in 2001. Second, there is a careful history of the two years with particular reference to the multilateral aspects of the issue involved. Third, there is an evaluation in which, among other things, the stated objectives of this Administration are considered, and the extent to which the actions of this Administration met those objectives is assessed. All of the contributions were commented upon by at least four other members of the study group. There also was a strong effort to encourage objectivity in the various contributions to this study so as to avoid, as Ernst Hass described it, pre-analytical commitment. Ultimately, however, each participant controlled the content of his or her contribution.

I.

A FRAMING DEFINITION FOR MULTILATERALISM AND THE QUESTIONS PRESENTED

“Multilateralism” is a complex concept. It is an underspecified term used ambiguously for a variety of purposes. As a first cut, we can say that multilateralism is a political commitment, sometimes also a legal commitment, to a multilateral approach to addressing international problems. Moreover, a multilateral approach in most cases means negotiation in a multilateral forum. A narrower (and probably the most accurate) form of “multilateralism” is a commitment to the particular set of multilateral institutions set in motion after World War II.

1. The work was undertaken in the context of a writing seminar under my supervision. The sixteen students involved are Laura Altieri, Alison Bond, Michael Collier, K. Elizabeth Dahlstrom, Allison Ehlert, Natasha Fain, Jean Galbraith, Patricia Hewitson, Kevin K. Ho, Greg Kahn, Amy McFarlane, Jesse S. Morgan, Jeremy Ostrander, L. Kathleen Roberts, Quynh-Nhu Vuong, and Ian L.G. Wadley.

The commitment to processes within multilateral international organizations does not mean that one does not act within that process in accordance with one's evolving perception of national interest. Most, if not all, states within a multilateral context act in their national interest, broadly or narrowly defined.

The crucial point to recognize is that, for the most powerful members of a community, *the commitment itself* to the multilateral approach arguably may not be in the national interest of such members. Therefore, one set of questions raised by this study involves an examination of the value of multilateral institutions to the most powerful members of the community, and the cost to such members of actions that undermine such institutions.

A second line of questions concerns the relationship of multilateralism to the exercise of power by the relatively stronger members of the community in question. The unilateralist approach in this line of questions can be seen as valuing action outside of institutionalized processes that might otherwise entangle what the relatively powerful assess as being in their national interest. In this sense, U.S. unilateralism is seen by neo-conservatives as a strategy to promote the discretion of the United States, where discretion is the manifestation of true sovereignty. Are bilateral and regional arrangements an expression of multilateralism or unilateralism? Are "coalitions of the willing" an expression of multilateralism or unilateralism? Can a more powerful member be selectively multilateral (that is, can it choose to be multilateral when multilateralism supports its interests, but unilateral when multilateralism is adverse to its interests) and not undermine the legitimacy and effectiveness of such multilateral institutions?

A third line of questions flows from an exploration of the alternatives to multilateralism. From a U.S. perspective, the move away from multilateralism can be seen as enhancing its discretion to act. But, although a multilateral institution may appear particularly directed at restraining the actions of the most powerful members of a community (for example, the debates in early 2003 within the Security Council concerning the use of force by the United States and others against Iraq), such institutions have other functions also. In particular, they also are a primary venue for international coordination and cooperation and provide a weak form of governance. To what extent does selective multilateralism by the most powerful weaken the governance potential generally for multilateral institutions? If they are undermined, what alternatives are envisioned or remain viable? This line of questions leads to a line of discourse emphasizing the power and hegemonic status of the United States. The alternative images of governance offered here are either anarchic or imperial.

II.

OBSERVATIONS ON THE THEME

The questions addressed by this study are foundational and pervasive. Although the contributions to this study address a significant range of events over the past two years, they of course do not address all of the possible areas in which multilateral action has been involved. Moreover, it is important to bear in

mind that the studies in this volume are only loosely integrated and that they, as a first step in this field, suggest an agenda for further research. These observations suggest that caution should be exercised in drawing conclusions on the theme. Nonetheless, a few observations may be offered.

First, the contributions in this study confirm the widespread belief that the United States, in both the executive and legislative branches, over the last two years has signaled a significantly decreased commitment to multilateralism in a variety of contexts. The contributions in the main also confirm that this trend existed prior to the Bush administration with the United States commitment to multilateralism overall waning since its post-World War II inception and peak.

A second observation is that, although the trend away from multilateralism precedes the Bush administration, the actions of United States over the past two years appear qualitatively different from those of the past in at least three ways:

1. Much of the commentary on the changing stance of the United States *vis-à-vis* multilateralism urges a change in tone, thereby suggesting that the only change in the past two years has been a change in rhetoric. This assumption appears to be unwarranted. Contributions in this study dealing with the arms control, the International Criminal Court and climate change areas, as examples, evidence not only a change in rhetoric, but also a withdrawal from process. There has emerged both a deeper and a wider lack of engagement. Even when the United States disagreed with a particular initiative prior to the last two years, it demonstrated continued commitment through day-to-day involvement in the development of that initiative, an involvement that resulted in better (i.e., more thought-out) instruments for the global community and instruments that the United States might be able to work within at some later date. Simultaneously, this deeper sense of withdrawal is not in isolated specific areas of multilateral affairs, but is instead present in an unprecedented array of subjects of international concern.
2. The role played by the current executive branch is particularly different from past patterns. Historically, the locus of the weaker commitment to “multilateralism” since at least World War II has been in the Congress. The executive branch in a sense stood between the Congress and the international community, mediating a constructively ambiguous coexistence between images of a powerful United States substantially unfettered and a powerful United States accepting of multilateral institutions. Criticisms of “multilateralism” were present before the current administration, but they were voiced primarily in the Congress, and even there they were contested.
3. At the outset of the Bush administration, its early stated distaste for “multilateralism” aligned with the corresponding pre-existing voice in the Congress. A consequence of the September 11, 2001 bombings was to neutralize those members of Congress who value more the multilateral aspects of U.S. foreign policy, leaving a very strong alignment between the executive and legislative branches. Simultaneously, however, the global scope of the U.S. response to the September 11 bombings has also pushed

the administration toward at least a stance of selective multilateralism. The prime example of such multilateralism by the United States was the Bush administration's efforts to secure a second resolution from the Security Council authorizing the use of force against Iraq. As pointed out in Allison Ehlert's contribution to this study, the Bush administration's negotiation of Security Council resolution 1441 in the fall of 2002 should be seen as a serious attempt to work within multilateral processes of the United Nations.²

Third, there does not appear to be evidence that the hostility of the Bush administration to multilateralism has changed or evolved over the first half of the term. It is plausible that the unilateralism exhibited in several fields by the Bush administration is similar to that exhibited within Congress because it developed and flourished in the domestic context prior to President Bush's election, when the limits of that approach were not appreciated. According to this argument, this belief in unilateral action, although perhaps exhibited in the beginning of the administration, might change as learning took place.

Within the areas reviewed in this assessment, there is not evidence of such learning having taken place over the first nine months of the Bush administration. It is more difficult to assess the question of learning over the remainder of the two-year period examined by this study. On balance, however, it appears that although dramatic shifts occurred after the September 11 attacks in a few instances, such as the U.S. payment of dues to the United Nations, its statements of support for multilateral peacekeeping and nation building and its efforts to secure Security Council authority for its use of force against Iraq, those shifts were specific responses to the September 11 attacks and not necessarily evidence of some broader set of lessons being incorporated into practice. This observation suggests that the unilateralist tendency of the current administration reflects deeply held and durable convictions, or, perhaps, that the administration is not engaged in a sufficiently self-reflective process of learning. It is also entirely possible that a mix of these explanations coexists in the current administration. Critics of the unilateralism of the Bush administration quote repeatedly to a very few members of that administration for their virulent and often clumsy anti-multilateralist rhetoric. These individuals in the administration likely have deeply held, even if unclear, sets of convictions. It is unclear, however, whether the other members of this administration are acting out deeply held convictions, or whether there is a more subtle learning process going on, that process having been greatly limited by the priorities imposed by the September 11 bombings.

Fourth, I do not see indications of what I term "aggressive multilateralism." By aggressive multilateralism, I mean the possibility that the United States, in opposing certain forms of multilateral action through unilateral action, is in fact at a deeper strategic level engaged in forging a new and stronger form of multilateralism. (President Reagan's refusal to pay U.N. dues as a lever to induce reform could be viewed as aggressive multilateralism, for example.) The contri-

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

butions indicate, however, that the United States is not merely disagreeing with a certain outcome of a multilateral approach, but also is generally withdrawing from trying to shape that outcome and, in some cases, from participating in the multilateral process in general. In the case of the preparatory committee negotiations for the International Criminal Court, the United States stood on the sidelines. Similarly, the U.S. delegation at implementation strategy meetings for the Kyoto Protocol on climate change chose to stand on the sidelines.

Likewise, there is no indication of the U.S. broader long-term strategy for world governance, other than a reinstatement of wider discretion for the United States, and possibly, although it is unclear, a similar measure of discretion for some other states. It is true that after the September 11 bombings, the United States undertook to build a coalition to fight terrorism and the world expressed support for that effort. But the United States did not seek to remake multilateralism into a more effective structure.

Multilateral action and growth has often followed catastrophe. The strengthening of the group of multilateral treaties and institutions concerned with nuclear safety that took place following the nuclear release at Chernobyl is an example of this effect. The U.S.-led action in Afghanistan on the heels of the September 11 attacks was an important achievement. The startling part, however, was what was *not* done or even attempted. In my view, the Bush administration could have remade international arms controls institutions specifically and possibly the United Nations generally if it had made the attempt. Instead, as several of the contributions make clear, the current administration chose to increase its discretion to use force with little attention to, or even at the cost of, institutional arrangements to further the same objectives. A particularly striking example of this tendency was the choice of the Bush administration—only one month after the September 11 bombings—to forestall and eventually scuttle an international protocol for inspections to enforce the Biological Weapons Convention that had been negotiated for seven years and was near completion. Even as the Bush administration undertook a war against terrorism and found it necessary to curtail some civil liberties within the United States, it affirmatively acted against an inspection regime for biological weapons. It has been suggested that perhaps President Bush's demand in the fall of 2002 that the United Nations act on Iraq might turn out to usher in a new age of multilateralism. Aggressive multilateralism, however, is about changing and strengthening the structure itself, and in this sense, it is qualitatively different from successfully demanding a particular resolution from the present structure.

A fifth observation is that unilateralist actions of the past two years have had not only intended, but also unexpected, consequences. Two examples:

1. *The Enemy of my Enemy is my Friend*. In the area of climate change, the United States indicated that it would not join, and subsequently did not participate meaningfully in the implementation negotiations for Kyoto Protocol. The Bush administration, in brief, stated that the substantial economic costs for the U.S. economy of the then-draft Protocol were not in the national interest, and that emission reductions could instead be achieved

through economic growth and voluntary restrictions on emissions. We need recall that prior to this shift by the Bush administration away from multilateral climate change negotiations, a prime concern of the negotiating parties was how to involve and avoid substantial growth of emissions in developing economies such as those of India and China. The important point then becomes that after this shift, we find India citing with approval, the rhetoric and position adopted by the United States. This administration has freed the United States from certain restraints, but in doing so, it has strengthened the position of other states to resist any limits on their greenhouse gas emissions, it being generally agreed that such foreign emissions will cumulatively injure the United States.

2. *Solidifying the Other.* If a U.S. objective in withdrawing from certain multilateral processes was to not only free itself from restraints but also to undermine such efforts, then it appears that in at least several instances this strategy may have had precisely the opposite result. For example, it was widely thought that the Kyoto Protocol implementation agreement was unlikely to be concluded, so difficult were the interests to be balanced. However, the Bush administration's withdrawal from further negotiations, and its subsequent refusal to reconsider this decision, despite repeated requests from its European partners, appears to have solidified the joint determination of particularly Europe to conclude such an agreement, eventually doing so in 2002. Similarly, following the U.S. unambiguous rejection of the process aiming at the International Criminal Court, one senior Department of Defense official predicted to me that the rest of the world will not wish to bear the cost of that institution, and that ratifications of the Rome Treaty will dribble in slowly, and the International Criminal Court will die a slow death. Instead, the deepening opposition of the United States to the ICC in both the Executive and Legislative branches, if anything, is widely viewed as having accelerated the deposit of a sufficient number of ratifications to bring the Rome Treaty into force far earlier than anyone had anticipated.

A sixth and final observation is that discretion through unilateralism is much more difficult to achieve than one might at the outset conclude. In the case of the International Criminal Court, the United States has found it necessary, as Jean Galbraith describes in her contribution, to practice "aggressive unilateralism" so as to ensure that U.S. nationals are never brought before the International Criminal Court.³ Moreover, as war with Iraq looms, it is important to note that the United States has indicated that various Iraqi individuals may be tried for war crimes. Interestingly, the United States does not have a problem in suggesting trials that invoke universal notions of legitimacy even as it opposes the central court internationally agreed upon to carry out such trials. Under one account, the United States is considering trying some of these individuals before U.S. military tribunals even as the bulk of the world community seeks to establish the International Criminal Court as the legitimate final arbiter of such trials.

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

III.

THE CONTRIBUTIONS

It is a time of challenge. This study is released in early 2003 as the norm against the proliferation of nuclear weapons has been called into question by North Korea's withdrawal from the Non-Proliferation Treaty, a concern foreshadowed in the contribution of Patricia Hewitson.⁴ It is released as the world community contemplates the use of force by the United States against Iraq. Allison Ehlert discusses Iraq in her contribution,⁵ while Jeremy Ostrander points out that the United States has strongly opposed work on an international inspection program for biological weapons, which in effect leaves the recourse to force as a primary policy option in the future.⁶ Even as the United States contemplates the use of force, on its own initiative, the Bush administration has reversed its position dramatically on the need for some involvement of the United Nations and the international community to assist in aspects of nation building in Afghanistan. Quynh Vuong chronicles the changing course on peacekeeping and nation-building;⁷ while Alison Bond follows the money and describes how September 11 bombings removed the ideological logjam that blocked U.S. payment of dues for decades,⁸ although major accounting disagreements remain. Even as the Bush administration seeks to build a coalition to disarm Iraq, many of the states it courts as allies are dismayed by the treatment of detainees in Guantanamo as recounted in the contribution by Elizabeth Dahlstrom,⁹ and by the aggressive unilateralism of the United States *vis-à-vis* the newly created International Criminal Court.

To emphasize only these coming security milestones, however, would be to overlook the daily challenges around the world to the dignity of individuals and the integrity of the environment. The famine looming in Southern Africa, as one example, is a stark reminder of the depth of social and economic problems facing much of the world. Amy McFarlane examines in her contribution the changing posture of the United States to development assistance, and explores what she sees as its current inclination toward bilateral rather multilateral efforts.¹⁰ The "multilateralism" of the U.S. steel tariffs and the promotion of a free trade agreement for the Americas are considered in contributions by Kevin Ho and

4. See Patricia Hewitson, *Nonproliferation and Reduction of Nuclear Weapons: Risks of Weakening the Multilateral Nuclear Nonproliferation Norm*, 21 BERKELEY J. INT'L L. 405 (2003).

5. See Ehlert, *supra* note 2.

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

7. See Quynh-Nhu Vuong, *U.S. Peacekeeping and Nation-Building: The Evolution of Self-Interested Multilateralism*, 21 BERKELEY J. INT'L L. 804 (2003).

8. See Alison Bond, *U.S. Funding of the United Nations: Arrears Payments as an Indicator of Multilateralism*, 21 BERKELEY J. INT'L L. 703 (2003).

9. 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).

10. See Amy McFarlane, *In the Business of Development: Development Policy in the First Two Years of the Bush Administration*, 21 BERKELEY J. INT'L L. 521 (2003).

Laura Altieri respectively,¹¹ while Natasha Fain and Kathy Roberts, discuss the implications of post September 11 actions on perceptions of the United States as champion and violator of human rights, at home and abroad respectively.¹² In addition, as new findings are digested as to the accelerated rates of sea ice cover lost in the Arctic and glacial retreat in Greenland, the United States continues in what Greg Khan describes in his contribution on climate change and the Kyoto protocol as a “non-lateral” stance.¹³

The two final contributions, by Ian Wadley on the regional environmental initiative of the U.S. State Department and Jesse Morgan on law enforcement in regard to money laundering, could be placed in the environment and security groupings above.¹⁴ Both also share, however, the idea that there exists in these two areas the possible emergence of a transnational, primarily U.S., alternative to multilateralist arrangements.

IV. CONCLUSION

The contributions to this study document a startling movement by the United States away from multilateralism over the past two years. Although the Bush administration has selectively engaged with some multilateral processes as a part of its “war on terror” since the September 11 bombings, it is critical to recognize that the movement away from multilateralism predated the bombings and ranges broadly across the spectrum of multilateral activity. Previous administrations in the main chose to maintain images of a powerful United States both substantially unfettered and multilaterally committed. Maintenance simultaneously of both images admittedly is a difficult task. The current administration over the past two years has chosen to turn away further from the already selective multilateral commitment of past administrations. In one sense, the current administration’s approach is an easier and simpler one. It might also be thought of by members of this administration as more honest, and more in keeping with demands of realism in international relations. But as with many things, the simple approach turns out to be precisely that: simple. Neo-realism is attractive as theory because it is parsimonious; that is, it offers an elegantly simple and helpful way of understanding a complex world. It is, however, a grievous error in

11. See Kevin K. Ho, *Trading Rights and Wrongs: The 2002 Bush Steel Tariffs*, 21 *BERKELEY J. INT’L L.* 825 (2003); Laura Altieri, *NAFTA and the FTAA: Regional Alternatives to Multilateralism*, 21 *BERKELEY J. INT’L L.* 847 (2003).

12. See Natasha Fain, *Human Rights Within the United States: The Erosion of Confidence*, 21 *BERKELEY J. INT’L L.* 607 (2003); L. Kathleen Roberts, *The United States and the World: Changing Approaches to Human Rights Diplomacy Under the Bush Administration*, 21 *BERKELEY J. INT’L L.* 631 (2003).

13. See Greg Kahn, *The Face of the Kyoto Protocol under the Bush Administration*, 21 *BERKELEY J. INT’L L.* 548 (2003).

14. See Ian L.G. Wadley, *U.S. and Them: Hubs, Spokes, & Integration with Reference to Transboundary Environment and Resource Issues*, 21 *BERKELEY J. INT’L L.* 572 (2003); Jesse S. Morgan, *Dirty Names, Dangerous Money: Alleged Unilateralism in U.S. Policy on Money Laundering*, 21 *BERKELEY J. INT’L L.* 771 (2003).

my view to then think that the world is in fact so simple or that its complexity may be addressed simply.

The administration's turn away from multilateralism is a turn away from "soft power;" that is, the power of good will, legitimacy, and community. The turn away from soft power reflects a questioning of the value of such power and an assessment that price of such power is an unacceptable drag on the exercise of one's sovereign discretion. Ironically, for an administration whose world view is said to prize common sense and realism, its wide-ranging embrace of unilateralism and turn away from soft power arguably runs in the opposite direction. A realist will tell you that it is hard to be a realist. Realism rests on the premise that general and unspecified deep convictions can, and often do, blind one to what is in the national interest. To see what is in the national interest requires a flexible and piercing mind not clouded by romanticism or the linguistic categories of the day. The irony is that the dogmatically anti-multilateralist members of this administration appear to be as guilty of wooly thinking as the internationalists against whom they purport to do battle. The unfortunate consequence of this conservative idealism is that this Administration, through actions such as those chronicled in this issue, has squandered a high measure of good will and soft power that the United States had accumulated over many years through great labor, and gained through the tragedy it suffered in September of 2001. Neither unilateralism or multilateralism are necessarily good. Rather they are approaches to furthering the national interest in both the short and long term, in both a narrow and more inclusive sense. Both approaches have great potential utility and a nation that abandons either deprives itself of a potentially valuable tool for pursuing the national interest.

The articles in this study bring across quite richly the complexity of "multilateralism" in practice. Complexity normally makes the drawing of lessons difficult. However, the extent to which the United States has turned away from multilateralism over the past two years is so pronounced that the observations offered in this volume are evident despite the "noise" of complexity. The articles in this volume confirm this administration's hostility to multilateralism generally. They indicate radical transformations that should be of concern to all. The choice of this administration has been to preserve U.S. interests by increasing its discretion to act even if that increase requires the dismantling or undermining of multilateral institutions arrangements or norms. This choice is even more profound if one considers what this administration could have done. The move toward unilateralism can be justified in crucial areas such as self defense if the multilateral is dysfunctional or a sham, and no doubt some in this administration viewed themselves as presented with this situation. But the degree of sympathy and global support that existed after September 11 could have been used by this administration *not only* to justify acting in a primarily unilateralist manner, but also to fundamentally rebuild and strengthen the multilateral institutions. Although the opportunity to engage multilaterally will present itself again, it cannot be said when the opportunity to *transform* multilateralism will arise again.