Iraq: At the Apex of Evil

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By Allison Ehlert*

In 1999, Hubert Vedrine, then Foreign Minister of France, coined a new term that has become popular among international relations commentators. 1 Discarding the term “super-power” as a Cold War anachronism, Vedrine described the United States as a hyper-puissance, or “hyper-power.” 2 No other country in the history of the world, Vedrine said, had amassed so much power so completely—militarily, politically, and culturally. 3 While it is tempting to conclude that the French Foreign Minister was expressing awe for the United States, his real purpose was to suggest that such an accumulation of power in the hands of one country presents dangers for all the rest. Vedrine feared the capacity of the United States to enforce its will on the world without reference to the opinions of its allies. France and the other “great powers,” Vedrine urged, must act as a counter-weight to the hyper-power. 4

Vedrine’s hyper-power concept captures an essential truth: At least according to conventional measures of national power, the United States is unsurpassed and is poised to remain so for a long time to come. 5 As the scholar Joseph Nye has noted, “not since Rome has one nation loomed so large above the others.” 6 But, as described above, Vedrine and others view the disproportionate nature of

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2. Id.
3. Id.
4. Id.

In the military arena, the United States boasts unparalleled technological prowess, achieved in large part by spending more on national defense than the combined spending of the next fifteen largest countries. Economically too, the United States is unrivalled thanks to strong growth in the 1990’s while other countries (e.g., Japan) were beset by recession. American economic values, such as free trade, have formed the basis of expanding global capitalism through regional agreements (e.g., the North American Free Trade Agreement (NAFTA)) and the establishment of the World Trade Organization (WTO). Finally, American diplomacy is vital to world peace. Whether in Bosnia, Kosovo, the Israeli-Palestinian conflict, or the recent spat between Spain and Morocco, American intervention has been indispensable to negotiations continued and agreements reached. See Brooks & Wohlforth, supra note 5, at 21-23; Fareed Zakaria, Our Way, THE NEW YORKER, Oct. 14 & 21, 2002, at 72, 74-75; The acceptability of American power, THE ECONOMIST, June 29, 2002, at insert, 8-10.
American power with consternation. They wish to supplant U.S. "unipolarity" with a "multipolar" global order in which power is more evenly distributed among countries. National power is thus both the source of U.S. influence on the world stage and the object of international concern.

The critical question, of course, is to what ends will the United States devote its hyper-power resources, and through what means will it accomplish its objectives? The Bush administration’s policy on Iraq is particularly illuminating with respect to this inquiry. In its determination to force a confrontation with Iraq over that country’s failure to disarm itself of weapons of mass destruction (WMD), the Bush administration has answered the first-part of the question with respect to objectives: In a post-September 11 world, the United States is not taking any chances, even if that means preemptively striking states identified as security threats. The Cold War era policies of containment and deterrence are no longer the hallmarks of American foreign policy.

The second part of the question—how the United States will accomplish its goals—asks whether the Bush administration will work primarily in concert with other states and global governing organizations, like the United Nations (multilateralism), or whether it will go its own way, unmoved by international objections to its actions (unilateralism). "Multilateralism" is difficult to define, but at minimum it entails the willingness of a state to surrender some of its freedom of action in order to obtain the added legitimacy that cooperation with other states brings. To act multilaterally to address global security threats, like Iraq, requires working through the U.N., because the founding purpose of that organization is to peacefully defuse such threats through collective action. Confronting Iraq without U.N. authorization would clearly amount to a unilateral act, even if the United States has the support of other countries.

The Bush administration’s rhetoric on Iraq has been charged with threats to act unilaterally. Nonetheless, the administration’s brazen eagerness to exert American power against Iraq has been constrained by an international diplomatic architecture that cannot be ignored—even by the world’s only hyper-power. As of this writing (February 2003), it is not yet clear whether the United States will use military force in Iraq, and if so, whether an attack will carry a U.N. imprimatur. But of the events that have taken place thus far, it is evident that the Bush administration’s capacity to act has been limited by the interna-

9. John Van Oudenaren, What is 'Multilateral'?, Pol’y Rev., Feb.-Mar., 2003, at 33, 34 (stating that "political rhetoric has tended to obscure the fact that there is no consensus in either the academic or policymaking communities about how multilateralism should be defined.").
10. See U.N. Charter, June 26, 1949, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, entered into force Oct. 24, 1945. The Charter’s Preamble states that the purpose of the organization’s founding is, inter alia, "to save succeeding generations from the scourge of war" and "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.").
tional security norms and multilateral institutions that the United States led the world in creating following World War II.

Parts I and II of this article recount the development of Bush administration policy on Iraq from January 2001 through January 2003. These sections of the article also evaluate the administration's success in achieving its Iraq-related goals and offer an assessment of the degree to which the administration has pursued a multilateral track. Part III summarizes the analysis herein presented and suggests questions that remain to be answered.


When George W. Bush ascended to the presidency in January 2001, neither he nor members of his new administration indicated that they intended to dramatically invigorate American policy on Iraq. In fact, the subject of Iraq rarely arose in the 2000 election campaign and even when it did Governor Bush and his opponent, Vice President Al Gore, articulated indistinguishable views: Both candidates favored the return of weapons inspectors; both vowed to work with Iraqi opposition groups to unseat Saddam Hussein; and both promised retaliation if Saddam Hussein's regime sought to develop or acquire weapons of mass destruction (WMD). President Bush largely ignored Iraq during the first several months of his administration and instead focused on seemingly fresher and more exciting foreign policy objectives like improving relations with Russia and Mexico, and persuading international allies to support (or at least acquiesce to) a controversial missile defense program. Even National Security Advisor Condoleezza Rice, regarded as the president's most trusted foreign policy advisor, reportedly viewed Iraq as a minor issue.

Those who preferred a more assertive approach to dealing with Saddam Hussein feared that, if anything, the administration's initial pronouncements on Iraq signaled a slackening, and not a shoring up, of the American position. These critics bemoaned the administration's primary policy innovation on Iraq in 2001—an overhaul of the economic sanctions regime (described infra)—as evidence of weakening American resolve.

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14. See Seymour M. Hersh, The Iraq Hawks, THE NEW YORKER, Dec. 24 & 31, 2001, at 58, 59. Hersh quotes a former government official as stating that Rice's "feeling was that Saddam was a small problem—chump change—that we needed to wall him into a corner so we could get on with the big issues: Russia, China, NATO expansion, a new relationship with India and, down the road, with Africa."
15. In addition to objecting to the Bush administration's revised sanctions proposal, some Iraq hawks worried that the administration was abandoning the U.S. commitment to returning weapons
Although neither candidate Bush nor President Bush had shown interest in implementing a more robust policy on Iraq, the decision to endorse a modified (i.e., less encompassing) sanctions program was indeed surprising. After all, the membership of the president’s administration constituted the single, impossible to overlook, clue that Iraq still could find itself in the proverbial hot seat. Several architects of the 1991 Persian Gulf War had assumed posts of even greater authority in the new administration, including Vice President Dick Cheney, Secretary of State Colin Powell, National Security Advisor Condoleezza Rice, and Deputy Secretary of Defense Paul Wolfowitz. Donald Rumsfeld, a fully-credentialed Iraq hardliner, joined them as Secretary of Defense. Some of these key advisors, most conspicuously Paul Wolfowitz, long regretted the first President Bush’s decision to stop short of removing Saddam Hussein from power and were on the look-out for an opportunity to correct this error. The morning of September 11, 2001 opened the way for Wolfowitz and his fellow Iraq stalwarts to persuade the president that safeguarding national security required an end to Saddam Hussein’s regime.

A. Smart Sanctions

In February 2001, Colin Powell traveled to the Middle East for the first time as U.S. Secretary of State. While there, he announced that the United States would work through the U.N. to restructure the economic sanctions imposed against Iraq to permit the importation of more civilian goods. Nicknamed “smart sanctions,” the proposal promised to loosen sanctions against products that could not be used for military purposes, as well as some “dual-use” products that could have weapons applications (e.g., chlorine, which has both a civilian use in water purification and a military use in manufacturing chemical inspectors to Iraq (Saddam Hussein removed the inspectors in 1998). The (momentary) disquiet was brought on by Vice President Cheney’s comments in a Washington Times interview to the effect that the inspections component of containing Iraq “may not be as crucial” if a more effective sanctions regime could be instituted. Spokespersons for both the vice president and the State Department quickly rejected the implications of the vice president’s remarks and affirmed that the administration continued to support weapons inspections. See Ben Barber, State maintains Iraq inspections are still priority, Wash. Times, Mar. 6, 2001, at A1; Bill Sammon, Cheney softens demand for Iraqi inspections; Baghdad weapons program no longer held ‘crucial’, Wash. Times, Mar. 6, 2001, at A1.

Id. See also, Press Interview with Colin L. Powell, U.S. Secretary of State and Amre Moussa, Foreign Minister of Egypt, Cairo, Egypt (Feb. 24, 2001) at http://www.state.gov/secretary/rm/2001/933pf.htm (last visited Feb. 21, 2003) (Secretary of State Powell remarking that the Egyptian Foreign Minister and he “also discussed the need to relieve the burden on the Iraqi people whilst strengthening controls on Saddam Hussein’s efforts to develop weapons of mass destruction and the means for their delivery’’); Press Interview with Colin L. Powell, U.S. Secretary of State, Aboard Aircraft En Route to Brussels (Feb. 26, 2001) at http://www.state.gov/secretary/rm/2001/953pf.htm (last visited Feb. 21, 2003) (Secretary of State Powell further describing his conversations with Middle Eastern leaders about modifying sanctions against Iraq).
weapons), while at the same time tightening monitoring and compliance with the remaining sanctions to eliminate illegal smuggling.  

The sanctions regime was erected originally through U.N. Security Council Resolution 661, passed four days after Iraq invaded Kuwait in August 1990. Thereafter, Security Council Resolution 687, which formalized the 1991 cease-fire agreement ending the Persian Gulf War, authorized the continued maintenance of the sanctions regime. The express terms of Resolution 687 state that once Iraq fully complies with the weapons inspections by destroying its arsenal of chemical and biological weapons and long-range ballistic missiles, as well as its capacity to reproduce such weapons (including nuclear weapons), the sanctions will be lifted. Ostensibly, the sanctions were intended to enforce the weapons inspections, but in reality they probably functioned as the primary deterrent to Saddam Hussein's acquisition of materials with which to revive his weapons of mass destruction programs. As Kenneth Pollack, a member of President Clinton's National Security Council staff, has acknowledged, "the sanctions were always the greatest impediment to Iraqi military reconstitution, particularly to rapid progress on Iraq's nuclear weapons program," and as such "were always more important than the inspections." It is likely that the sanctions also were intended to hasten the ouster of Saddam Hussein by precipitating a coup.

At the start of the Bush administration, the sanctions regime had been in place for nearly eleven years. Between 1991 and 1998, Iraq obfuscated on weapons inspections, and in 1998 it barred the inspectors altogether. Thus, according to the terms of Security Council Resolution 687, Iraq's freedom of trade could not be restored.

Although sanctions remained formally in effect, international support for their continued maintenance eroded considerably in the late 1990's, and, consequently, so did their usefulness in compelling Saddam Hussein to relinquish his weapons designs. Iraq's Middle Eastern neighbors, particularly Jordan, Syria, Iran, and Turkey, circumvented the sanctions through the smuggling of Iraqi

22. Id. at § C and § E.
23. See KENNETH POLLACK, THE THREATENING STORM: THE CASE FOR INVADING IRAQ 213 (2002); see also, Eric D.K. Melby, Iraq in ECONOMIC SANCTIONS AND AMERICAN DIPLOMACY 120, 122 (Richard N. Haass, ed., 1998) (Melby argues that although the imposition of economic sanctions has not compelled Saddam Hussein to cooperate with the weapons inspectors, it has been successful in preventing him from pursuing his military ambitions.)
24. Even if Iraq complied with its disarmament obligations, the United States feared that lifting the sanctions would enable Saddam Hussein to renew his military ambitions. Hussein is considered too dangerous a figure to permit this to happen, as revealed by former Secretary of State Madeleine Albright's assertion that "we do not agree with the nations who argue that if Iraq complies with its obligations concerning weapons of mass destruction, sanctions should be lifted." Patrick and Andrew Cockburn, The Politics of Weapons Inspection in THE SADDAM HUSSEIN READER 431 (Turi Munthe, ed., 2002).
oil.\textsuperscript{25} The United States and the United Nations turned a blind eye to these transgressions through much of the 1990's because they brought Iraq only an estimated $300-$350 million in illegal revenues annually, too meager a sum for Mr. Hussein to revitalize his weapons programs.\textsuperscript{26} In recent years, however, increasing international defiance of the sanctions regime has funneled considerably more illegal money to the Iraqi dictator, as well as forbidden military technology. By 2002, Iraq took in an estimated $2.5-$3 billion in sanctions-busting revenue.\textsuperscript{27} Even more reflective of the crumbling sanctions regime was the eagerness of U.N. Security Council members—the very states charged with enforcing U.N. resolutions that mandated Iraqi disarmament—to advance their own economic self-interest by promoting trade relations with Baghdad.\textsuperscript{28} Russia and France, in particular, had negotiated billions of dollars worth of supply contracts with Iraq in anticipation of the eventual lifting of sanctions.\textsuperscript{29} Of the five permanent members of the Security Council, Russia has cultivated the closest ties with Iraq.\textsuperscript{30} In 2001, Russian companies signed contracts with Iraq valued at $2.3 billion, exclusive of lucrative agreements to tap into Iraq's plentiful oil fields.\textsuperscript{31} Moreover, in early 2001, it was disclosed that China, another permanent member of the Security Council, had nearly completed construction of a fiber-optic communications system for Iraq that could have been used to target the British and American pilots who patrol the no-fly zones over northern and southern Iraq.\textsuperscript{32} Thus, even before the Bush administration arrived in Washington,

\textsuperscript{25} Pollack, supra note 23, at 213-16. See also, Can sanctions be smarter?, The Economist, May 26, 2001, at 25 [hereinafter Can sanctions be smarter?] (further describing how other Arab states profited from the sanctions imposed against Iraq and asserting that "Jordan's shaky economy would probably have collapsed without" the illegal procurement of Iraqi oil.). For more on Iraq's illicit trade with other Middle Eastern states, see Kenneth Katzman, The Library of Congress, Iraq: Compliance, Sanctions, and U.S. Policy 11-13 (2002).

\textsuperscript{26} Pollack, supra note 23, at 214.

\textsuperscript{27} Id.

\textsuperscript{28} Id. at 216-18 and 224-25.

\textsuperscript{29} See Daniel Byman, A Farewell to Arms Inspections, Foreign Aff., Jan.-Feb. 2000, at 119, 132 (arguing that the most significant impediment to a robust sanctions regime against Iraq "is the efforts by France, Russia, and other defenders of the Baath [the Iraqi ruling party] to readmit Iraq into the community of nations without requiring it to adhere to international norms").

\textsuperscript{30} See Stephen Sestanovich, Dual Frustration: America, Russia and the Persian Gulf, The Nat'l Int., Winter 2002-2003, at 153, 154. Sestanovich contends that Russia tacitly cooperated in Iraq's obfuscation of the weapons inspection process, which led to the abolition of UNSCOM (the United Nations Special Commission), the original vehicle through which the inspections were carried out, and its replacement by UNMOVIC (the United Nations Monitoring, Verification and Inspection Commission). According to Sestanovich, by championing Iraq's interests in the Security Council, Russia reaped contract rewards from Iraq, both under the oil-for-food program and in oil development agreements that could be implemented only upon the cessation of the sanctions. To underscore his assertion, Sestanovich points out that "between 1997 and 2000 Russian-Iraqi trade quintupled." Id. at 154-55.

\textsuperscript{31} Russia vows to step up trade with Iraq after revised UN sanctions, Agence France-Press, May 20, 2002; available at LEXIS, News Library; Michael Wines, Tempted by Oil, Russia Draws Ever Closer to Iraq, N.Y. Times, Feb. 3, 2002, at 3. Contracts related to Iraq's oil industry are especially coveted because Iraq has the second largest oil reserves in the world. See Can sanctions be smarter?, supra note 25, at 25.

ton, it was clear that these three states—Russia, China, and France—had powerful incentives to favor termination of the sanctions against Iraq.

In addition to the economic rewards that countries could obtain by sidestepping the sanctions regime, international resistance to sanctions was fueled by evidence that, while Saddam Hussein was as secure in power as ever, widespread privation resulting from the loss of trade and investment had caused substantial death and misery among the Iraqi people. Although measurements regarding the depth of suffering vary, it is incontrovertible that the health, education, and economic well-being of the Iraqi people have declined significantly, and their mortality, especially that of children, has increased. In 1995, international concern about the welfare of the Iraqi people prompted the U.N. Security Council to create the “oil-for-food” program as a revision of the sanctions regime. “Oil-for-food” allows Iraq to export oil and use the profits, funneled through a U.N. escrow account, to purchase food and medicine. The degree to which the program improved living conditions in Iraq has been a matter of dispute, so that even today international opposition to the sanctions on humanitarian grounds persists.

Thus, in January 2001, George W. Bush inherited a withering containment strategy: The U.S. government possessed an incomplete picture of Iraq’s weapons holdings and development (since Saddam Hussein banned the inspectors nearly two years prior), and the sanctions regime, arguably the cornerstone of containing Mr. Hussein, was faltering badly. While the administration held off on pressuring for the return of the weapons inspectors, Secretary of State Powell announced the objective of restructuring the sanctions to make them more effective. Paradoxically, this required relaxing the restraints on imports of civilian products, and so-called “dual-use” products, in order to strengthen international resolve to sustain sanctions against items that carried a strong likelihood of military application.

36. For more about the argument that the U.N.-imposed sanctions have exacted intolerable humanitarian suffering in Iraq, see Donna Abu-Nasr, U.N. Sanctions Magnify Baghdad’s Economic Gap; Some Luxuries Still Available, but Few Can Afford Them, WASH. POST, Apr. 8, 2001, at A20; Cynthia McKinney, Attack on Clinton Administration Policy, in THE SADDAM HUSSEIN READER, supra note 24, at 459-63; Gordon, supra note 33, at 43; GEOFF SIMONS, IMPOSING ECONOMIC SANCTIONS, 169-80 (1999) (declaring that the U.S.-led sanctions regime against Iraq violates international law and constitutes “one of the most comprehensive campaigns of biological warfare [emphasis in the original] in modern times”). For the view that Saddam Hussein is the real culprit responsible for the impoverishment of his people, see Pollack, supra note 23, at 131-36; Melby, supra note 23, at 121; Michael Rubin, Food Fight; Sulaymaniyah Dispatch, THE NEW REPUBLIC, June 18, 2001, at 18; David Hirst, Kurds reap sanctions’ rewards; ‘Oil for food’ feeds them, but Iraq reins development, WASH. TIMES, Aug. 15, 2001, at A10.
To accomplish its goal, the Bush administration had no choice but to adopt a multilateral diplomatic approach since an effective sanctions program by definition requires multilateral backing. The administration’s original proposal to the U.N. sought the following: (1) the lifting of most economic sanctions, but a tough embargo on certain imports with military potential; (2) bringing the oil smuggling of Iraq’s Middle Eastern neighbors under the control of the U.N. oil-for-food program so that the U.N. could supervise how the revenues were spent; and (3) the posting of monitors at border sites and airports to deter smuggling. In Iraq’s Arab neighbors and Russia objected most assiduously to the U.S. proposal; the former insisted that their oil smuggling was economically necessary, and the latter wanted the sanctions to terminate altogether.

In May 2002, after more than a year of negotiations to placate Russia and various Middle East states, the U.N. Security Council approved the “smart sanctions” overhaul in an unexpected unanimous vote. At the center of the new sanctions regime is the “goods review list,” a compilation in excess of 300 pages that itemizes “dual-use” products that may be imported into Iraq only if weapons inspectors conclude that Iraq will not employ them for military purposes; goods not on the list may be freely imported into Iraq without incurring U.N. scrutiny. Importantly, however, the United States failed to gain support for its desire to bring the ongoing oil smuggling under the auspices of the “oil-for-food” program.

The Bush administration acted multilaterally to win support for its “smart sanctions” proposal. As noted above, it makes no sense to impose (or, in this case, preserve) economic sanctions against a target state unless broad-based compliance can be assured. By 2001 the diminished willingness of other states to refrain from prohibited trade with Iraq had resulted in a porous sanctions regime that was increasingly less likely to prevent Saddam Hussein from procuring weapons material. The Bush administration prudently recognized that if it did not find a way to bolster the sagging sanctions, it would be left with only a nominal containment policy. Thus, the president and his advisors had to invest in diplomacy to convince states weary of the sanctions to uphold them. In exchange, the administration agreed to make compliance easier.


40. Given the deeply cynical and suspicious beliefs about Saddam Hussein that many of the president’s closest advisors harbored (e.g., Donald Rumsfeld and Paul Wolfowitz), it is noteworthy that in its initial foray into Iraq policy the administration chose a path that could be interpreted as strengthening Mr. Hussein’s hand. After all, “smart sanctions” increased Iraq’s flow of trade, including trade in “dual-use goods,” and there still could be no absolute assurances that illegal smuggling would not continue. In the final analysis, the administration’s calculus must have been that it was better to have a less encompassing sanctions regime than only the appearance of one. The sanctions reformation proposal also gave the new administration an opportunity to promote relations with key countries: By supporting “smart sanctions,” the administration demonstrated that it was not
As described above, in its initial proposal, the United States sought to tame the illegal oil smuggling by putting it under the U.N. "oil-for-food" program. Ultimately, the Bush administration failed to secure such a provision. The willingness to compromise in the Security Council negotiations by dropping this goal is the best evidence that the administration understood that the multilateral path was the only one available to it. Since neither retreating from its sanctions restructuring proposal, nor "going it alone" was a viable option, the Bush administration could act only insofar as U.S. allies were willing to go along for the ride. As we will see, the administration’s multilateral diplomacy on sanctions contrasted markedly with its multilateral diplomacy to force Iraqi disarmament once and for all. In the latter case, the United States can (and does) threaten to act without U.N. approval, but for the reasons described above, it did not possess a unilateral option on sanctions.

Finally, the timing of the Security Council’s endorsement of “smart sanctions”—May 2002—is significant for what else it reveals about U.S. intentions towards Iraq. By this time, the Bush administration had made clear that it planned to confront Saddam Hussein on his alleged failure to destroy his weapons of mass destruction. By demonstrating its willingness to relax the much-disliked sanctions against Iraq, the Bush administration probably hoped to win points with key allies that would make pursuing its tough stance on Iraqi disarmament easier. In other words, the administration intended, in part, that its willingness to compromise on sanctions would inspire in its allies a willingness to compromise on the use of force against Saddam Hussein. 41

B. September 11, 2001

Nine days after September 11, President Bush addressed a joint session of Congress to lay before the nation and the world his administration’s response to the terrorist attacks. Although it was not evident at the time, this speech contained the first real glimmerings of the administration’s intentions with respect to Iraq. After pledging to eradicate the al Qaeda terrorist network responsible for the September 11 tragedies, the president announced that, “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.” 42 President Bush further declared that “any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.” 43

41. This conclusion is bolstered by recognizing that since the Bush administration intended to remove Saddam Hussein from power, thus making the debate about sanctions moot, it might have chosen not to expend its time and resources loosening the embargo on Iraq.

42. Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11, 37 WEEKLY COMP. PRES. DOC. 1347, 1348 (Sept. 20, 2001) [hereinafter Address on the U.S. Response to September 11].

43. Id. at 1349.
At no point in his address did the president mention or allude to Iraq as a possible target of American reprisal, and while he articulated a broad and enveloping approach to combating terrorism—vanquishing “every terrorist group of global reach”—if and how Iraq would be implicated was not clear. Since no solid evidence of Iraqi involvement in the planning or execution of the terrorist attacks ever surfaced, the use of force against Iraq on the terrorism grounds that the president emphasized in his address would seem unjustified.

Nonetheless, as the administration charted its response to the September 11 attacks, some of the president’s key advisors called for including Iraq in any military assault on global terrorism. Secretary of Defense Donald Rumsfeld and his Deputy Defense Secretary Paul Wolfowitz are the administration’s most prominent Iraq stalwarts. Wolfowitz in particular has long advocated military intervention to topple Saddam Hussein. To him, September 11 did not just present the United States with the option of undertaking that effort, but required it. He argued that even if Iraq could not be linked definitively to the September 11 attacks, its public support for Palestinian terrorist organizations made it precisely the kind of state sponsor of terrorism that the Bush administration had vowed to confront. Secretary of State Colin Powell and outgoing chairman of the Joint Chiefs of Staff Hugh Shelton countered Wolfowitz by opposing any immediate action on Iraq. Powell argued that international and domestic momentum had ignited behind an attack on the al Qaeda terrorist network, not an attack on Iraq.

44. The president did refer to Iraq to make clear that the war against terrorism would not resemble the Persian Gulf War. Id.
45. The administration did work to ascertain whether Iraq had any ties to al Qaeda. Reports circulated of a connection between Mohammad Atta, one of the suspected ringleaders of the September 11 attacks, and Iraqi intelligence agents, but allegations of a meeting in Prague between the two ultimately proved to be without foundation. See Interview by Thierry Thuillier of France 2 with Colin L. Powell, U.S. Secretary of State (Dec. 5, 2002) at http://www.state.gov/secretary/rm/2002/15822pf.htm (last visited Jan. 31, 2003) [hereinafter Interview by Thierry Thuillier] (Secretary of State Powell acknowledging that “we have no evidence, conclusive evidence, that Iraq and al-Qaida worked together with respect to 9/11”). In addition, initial speculation that Iraq may have been responsible for the anthrax attacks in the United States that occurred shortly after September 11 also proved illusory when it was revealed that Iraq probably did not possess the kind of anthrax used. Bill Sammon, No proof of Iraqi contamination; Additive linked to Saddam not found in Senate’s letter, WASH. TIMES, Oct. 29, 2001, at A1.
46. For an account regarding Iraqi fears that American retribution for September 11 would befall them, see Joshua Hammer, Republic of Fear; Baghdad Dispatch, THE NEW REPUBLIC, Oct. 8, 2001, at 16.
47. For more on Wolfowitz’s hawkish predilections on Iraq, see Bill Keller, The Sunshine Warrior, N.Y. TIMES MAG., Sept. 22, 2002, at 48.
48. See Bob Woodward, BUSH AT WAR, 49, 60, 83 (2002). Apprehension about the possibility of success in Afghanistan, owing to that country’s rough terrain and the Soviet defeat there in the 1980’s, further prompted the president’s top advisors to consider attacking Iraq. According to Bob Woodward, in what appears to be largely a concern about the political repercussions of failed operations in Afghanistan, the president’s national security advisors contemplated an attack elsewhere in the world as an “insurance policy” for a mishap in Afghanistan. Id. at 83.
49. Id. at 49, 61.
50. Id. at 49. For more on the post-September 11 split in the administration about whether to wage war on Iraq, and in particular, the split in opinion between the State and Defense Departments, see Lawrence F. Kaplan, Phase Two; Why the Bush administration will go after Iraq, THE NEW REPUBLIC, Dec. 10, 2001, at 21.
President Bush ultimately honed in on al Qaeda in Afghanistan and decided to stay any decisions about Iraq until after concluding the Afghan campaign.\(^1\)

Although the president elected not to include Iraq in the initial U.S. military response, his closest advisors clearly regarded Iraq as a possible, if not likely, future target. Thus, Iraq was not so much taken off the table in the immediate aftermath of September 11, as pushed to a corner, where it could later be retrieved and acted upon.

In retrospect, the president’s address to a joint session of Congress in the wake of September 11 sounded the first alarm that a major policy shift would be forthcoming. The expansive commitment he made to eliminate terrorism extended well beyond al Qaeda. Moreover, he portrayed the terrorism threat to the United States as so pernicious (indeed, as equal to fascism, Nazism, and totalitarianism) as to demand an extraordinary response.\(^2\) In other words, from the Bush administration’s perspective, September 11 opened up more opportunities to identify foreign threats to American national security, no matter how seemingly remote, and implement aggressive measures to eliminate them.

But the terrorist attacks did not just empower the administration to act more assertively in pursuing its goals on the international stage. They also ruptured received wisdom about national security and foreign policymaking. So monumental were the terrorist attacks in their impact that September 11 has given rise to a paradigmatic shift in thinking that has not occurred since the end of World War II.\(^3\) The new doctrine coming out of the Bush administration goes to the heart of how the United States conceives of its role in the world and how it should exercise its unparalleled power.

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\(^1\) See Woodward, supra note 48, at 99. Interestingly, a poll taken in October 2001, after Afghan operations began, showed that an overwhelming majority of Americans supported extension of the war effort to Iraq. In an ironic twist given President Bush’s prudential decision to reserve the question of Iraq, this may have been his best opportunity to invade without incurring domestic political opposition. See Joyce Howard Price, Poll shows public wants Saddam targeted; government opinion split, WASH. TIMES, Oct. 26, 2001, at A6.

\(^2\) Address on the U.S. Response to September 11, supra note 42, at 1349.

\(^3\) Numerous scholars and commentators have spilled considerable ink in describing how the Bush administration has broken with the prevailing ethos of international relations. Gary Schmitt, for instance, points out that the “Bush Doctrine” augers in a new era in which the doctrine of preemption replaces that of containment, now regarded by the president and his advisors as a Cold War anachronism. Another dimension to the Bush Doctrine is its elevating the spread of democracy abroad to the level of “strategic imperative.” Schmitt writes that “the United States is back in the business of shaping a world order—with a vengeance.” See Gary Schmitt, A Case of Continuity, in One Year On: Power, Purpose and Strategy in American Foreign Policy, THE NAT'L INT., Fall 2002, at 12. Yale professor John Lewis Gaddis says that the Bush administration’s National Security Strategy, discussed infra at pages __, is the first “grand strategy” of the post-Cold War era and reflects the kind of deep structural thinking about the world and American objectives within it that last occurred under President Truman. Gaddis asserts that “the Bush grand strategy is the most fundamental reshaping of American grand strategy that we’ve seen since containment, which was articulated back in 1947.” See Frontline Interview with John Lewis Gaddis, Professor, Yale University (Jan. 16, 2003), at http://www.pbs.org/wgbh/pages/frontline/shows/iraq/interviews/gaddis.html (last visited Feb. 21, 2003) [hereinafter Frontline Interview with Professor Gaddis]. But see, Charles A. Kupchan, Misreading September 11th, in One Year On: Power, Purpose and Strategy in American Foreign Policy, THE NAT'L INT., Fall 2002, at 26. Kupchan argues that it is “premature to announce the opening of a new era and the consequent emergence of new geopolitical fault lines.”
As a candidate for the presidency, George Bush called for limiting American interventions abroad, and during his first eight months in office, he did not articulate a coherent foreign policy agenda. After September 11, however, the president adopted a sweeping vision of U.S. foreign policy that called for using American power to shape the world according to U.S. values and interests. The doctrine of containment, the centerpiece of U.S. foreign policymaking throughout the Cold War, became a casualty of the administration's emerging philosophy. Nowhere was this more evident than in the administration's eagerness to confront Iraq. In just one year—between September 2001 and September 2002—the president and his advisors came to regard containing Saddam Hussein through sanctions and weapons inspections as ineffective and perilous. As the campaign in Afghanistan wound down, the administration began talking about a policy of preemption as a way to deal with foreseeable, but not yet imminent, threats. As discussed infra, Iraq's intransigence on disarmament made it the administration's first candidate for preemptive treatment.

II.
THE SECOND YEAR OF THE BUSH PRESIDENCY

A. The U.S. Against the Rest?: The Post-September 11 Consensus Comes to an End

Following the September 11 tragedies, American allies abroad expressed not just their condolences, but vigorous affirmations of support for the U.S. war on terrorism. For the first time in its history, the North Atlantic Treaty Organization (NATO) invoked Article V of its charter, which declares that an attack on one member state is an attack on all. For a brief period, the French intonation that "we're all Americans now" sublimated the differences between the United

54. Indeed, prior to September 11, the Bush administration found it easier to withdraw from the world than participate positively in it as evidenced by the numerous global cooperation agreements the administration moved away from, including the Anti-Ballistic Missile Treaty, the Kyoto Protocol, the International Criminal Court, and the Biological Weapons Convention.

55. Such an unabashed attitude has struck some commentators as emblematic of a new kind of empire, with the United States acting as the imperialist superintendent of the world. Josef Joffe hypothesizes a hubs and spokes model of the world in which the United States is centrally situated—the hub of a wheel—and its spokes include the subsidiary powers of Europe, Russia, the Middle East, the Far East, etc. See Josef Joffe, Of Hubs, Spokes and Public Goods, in One Year On: Power, Purpose and Strategy in American Foreign Policy, THE NAT'L INT., Fall 2002, at 17. James Chace writes:

It goes against the American grain to admit that the United States is now an imperial power, but the magnitude of the American economy (twice as large as its sometime rival Japan), its military budget (greater than the next twenty biggest spenders combined), and its new willingness to intervene unilaterally and massively across the globe all mark a decisive turning point in American history.


States and its allies that had grown sharper and more unremitting in the months prior to the attacks. The harmony soon began to fade, however, due in large part to the realization that the Bush administration's desire to countermand threats to American national security did not end with Afghanistan.

President Bush's State of the Union Address, in which he singled out Iraq, Iran, and North Korea as an "axis-of-evil," fueled early speculation that the administration was preparing for a move against Iraq. According to the president, guaranteeing national security called for more than confronting states that harbor terrorists; in addition, the United States would take the steps necessary to thwart "the world's most dangerous regimes" developing "the world's most destructive weapons." Bush went on to suggest that he would consider preemptive action by refusing to "wait on events while dangers gather."

The "axis-of-evil" moniker generated immediate response. U.S. allies reacted with alarm and repudiation, fearing that the president's rhetoric signaled a unilateral escalation of global tension. They also objected to the overall mood of the address, and in particular, the pugnacious way in which President Bush promised to deal with those who threatened American security. One-by-one foreign leaders scolded the United States for its defiant, go-it-alone attitude. For instance, Joschka Fischer, the German Foreign Minister, stated that the United States could not use its war on terror as a vehicle for intervening willy-nilly in other countries. Moreover, Fischer insisted, the United States must cooperate with and respect the views of its international partners; allies would "not be
reduced to following” or to “satellites.” Hubert Vedrine, the French Foreign Minister, characterized the Bush administration’s foreign policy as a “simplism that reduces all the problems of the world to the struggle against terrorism, and is not properly thought through.” He added that the president and his advisors disdained “any multilateral negotiations that could limit their decision-making, sovereignty and freedom of action.” Javier Solana, the Secretary-General of the European Union Council, described the United States as a “global unilateralist,” while other European officials sought to distinguish Europe’s foreign policy approach as one that emphasizes engagement and diplomacy. Sensing the Bush administration’s heightened interest in Iraq, the EU, China, Russia, and Germany warned the United States not to attack Iraq without first working through international diplomatic channels.

In the end, the “axis-of-evil” statement was certainly a gratuitous flourish. In using such an absolutist label, President Bush seemed to appropriate unto himself the right to proclaim who the world’s enemies are, as well as what should be done about them. U.S. allies were right to think that a Cold War-like carving up of the globe into countries certified by the United States as either friend or foe is not the way to foster international cooperation in addressing the difficult challenges presented by the admittedly problematic Iran, Iraq, and North Korea. Moreover, the unmistakable allusion to the “axis powers” of World War II in the “axis of evil” was unnecessarily provocative, especially since Bush’s address made paltry reference to the contemporary allies and their substantial contributions to the war on terror. In World War II, the United States did not defeat Nazism and fascism on its own, but through combining forces with the allied Great Britain, France, Russia, and China. Now, in the twenty-first century war on terror, Bush’s failure to credit adequately the assistance of other countries, and his insistence on what American power would yet achieve, suggested that the United States no longer thought its self-interest best served by

65. Id.
67. Id.
68. Ian Black, John Hooper, and Oliver Burkeman, Bush warned over ‘axis of evil’: European leaders insist diplomacy is the way to deal with three nations singled out by America, THE GUARDIAN (LONDON), Feb. 5, 2002, at 13.
70. The allies could at least take comfort in knowing that the president did not even consult his own Department of State on the potential consequences of using the phrase “axis-of-evil.” Apparently, David Frum, the president’s speechwriter, originated the phrase after being instructed “to provide a justification for a war” in Iraq. Frum proposed “axis-of-hatred” and applied it only to Iraq, but the president’s political hands changed it to the now famous “axis-of-evil” and added as its targets Iran and North Korea. See Hendrik Hertzberg, Axis Praxis, THE NEW YORKER, Jan. 13, 2003, at 27.
working in concert with others. Indeed, this disdain for partnerships was evident even in the Bush administration’s effort to raise a coalition in the wake of September 11, when its *modus operandi* was that the mission would define the coalition and not the coalition the mission. 71 This attitude meant that the Bush administration would not allow its agenda to be deterred or diluted by the preferences of its coalition partners. If allies agreed with the U.S. position, they could join in the mission; if not, they could wait for another opportunity.

The general tenor of President Bush’s State of the Union Address, and particularly the emphasis on “axis-of-evil” states, disclosed the administration’s maverick streak. However, few among the Europeans and others who reproached the United States for its perceived unilateralism appeared to understand the new international framework in which the United States believed itself to be operating. If the Bush administration was more combative, more willing to instruct the world in the behavior that it would and would not tolerate, and less amenable to accommodating the views of allies, then it was in large part because September 11 had awakened the United States to horrors with which it had never before imagined living. 72 Chris Patten, the European Union’s Commissioner for External Relations, although critical of the United States, was one of the few international leaders to discern this new current in American foreign policymaking. He acknowledged that even those who “know America well” do not “fully comprehend the impact of a grand innocence and a sense of magnificent self-confidence and invulnerability being shattered in that appalling way.” 73 A French foreign policy expert made a similar admission when he stated that Europeans viewed September 11 as “an aberration” and something behind them, whereas for Americans it remained a palpable and perspective-altering experience. 74

September 11 did indeed transform American foreign policy thinking as attested to frequently by figures in the Bush administration. National Security Advisor Condoleezza Rice described it as “one of those great earthquakes that clarify and sharpen.” 75 However, as described *supra*, what had come into starker relief for Rice and her colleagues was not just the shadowy dangers that lurk in the world, but the need to promulgate a new paradigm for dealing with those dangers. The president’s State of the Union Address advanced the development of that paradigm by not only identifying and characterizing the threat—”axis-of-evil” states—but pledging to redress it before another September 11-like tragedy could befall the United States. The “axis-of-evil” rhetoric garnered more public attention, but the president’s assertion that he would not stand idly by “while dangers gather” was the more portentous statement. 76 After all, it

75. Lemann, *supra* note 72, at 44.
76. State of the Union Address, *supra* note 59, at 135.
matters little what countries are called or how they are defined; what matters is the will of states to act in accordance with such characterizations. President Bush could denounce Iraq as a pariah state all he wanted without Iraq suffering negative repercussions. But the president’s willingness to take preemptive action against Saddam Hussein constituted a real danger to the Iraqi regime. Thus, the State of the Union Address signaled the president’s growing comfort with a policy of preemption.

B. Paving the Road to Baghdad

While Vice President Cheney and others dismissed what many were lamenting as the escalating turmoil in the “transatlantic relationship” (i.e., U.S. relations with Europe), robust reassurances to America’s allies had to wait until the president traveled to Europe in May.\(^77\) In the meantime, the administration cued the world that it intended to stay the course. Neither the criticism, nor the unease, engendered by the State of the Union Address prompted the president or his subordinates to back away from the “axis-of-evil” statement. Moreover, in an appearance before the International Relations Committee of the House of Representatives, Secretary of State Colin Powell testified that the United States would seek to work with its allies, but that it would not “shrink from doing that which is right, which is in our interest, even if some of our friends disagree with us.”\(^78\) Powell went on to confirm that the United States would not back down from confronting Iraq and that “regime change” constituted the administration’s official policy.\(^79\)

In March 2002 Vice President Cheney traveled to the Middle East ostensibly to express American gratitude for assistance in the war on terror, but more importantly to begin laying the groundwork for an attack on Iraq.\(^80\) In order to


\(^78\) Secretary of State Powell’s Testimony Before the House International Relations Committee.

\(^79\) Id. The choice of Powell as the messenger of this hard-line approach to foreign affairs generally, and Iraq in particular, was significant since Powell had long been regarded as an administration moderate, as the voice urging deliberation and diplomacy, rather than jeremiads or threats of military force. Although Powell repeatedly stated that the administration had not settled on a plan for dealing with Iraq, let alone a military one, his firm testimony before the House International Relations Committee strongly indicated that a challenge to Iraq would be mounted. Although a consensus within the administration in favor of confronting Iraq may have congealed by this time, disagreement as to the means persisted. Opinion was divided between those who believed that the situation could be resolved best through diplomacy, led by Secretary Powell, and those who felt that the only real option was to eliminate Mr. Hussein through force, led by Secretary of Defense Rumsfeld and his deputy, Paul Wolfowitz. See Michael R. Gordon and David E. Sanger, *Powell Says U.S. is Weighting Ways to Topple Hussein*, N.Y. TIMES, Feb. 13, 2002, at A1; Todd S. Purdum, *U.S. Weighs Tackling Iraq on Its Own, Powell Says*, N.Y. TIMES, Feb. 7, 2002, at A14; David E. Sanger, *U.S. Goal Seems Clear, And the Team Complete*, N.Y. TIMES, Feb. 13, 2002, at A18; Seymour Hersh, *The Debate Within*, THE NEW YORKER, Mar. 11, 2002, at 34; BOB WOODWARD, supra note 48, at 331-34.

wage an effective military campaign, the United States needed the cooperation of its Arab allies in authorizing basing and overflight rights. Both the aerial missions and land invasions that would comprise any sustained assault on Iraq had to launch from somewhere else in the Middle East. Moreover, the “Arab street” was already inflamed against the United States, as September 11 and its aftermath indicated, and the Bush administration wanted the symbolic cover that Arab support could provide: The United States could not afford for an attack on Iraq to be perceived as an attack on Islam that thereby gave license to more terrorist activity. By persuading moderate Arab allies to join it, the United States hoped to quell popular discontent and provide its Iraq policy with increased legitimacy.

Unfortunately for the Bush administration’s ambitions, the Middle Eastern leaders with whom Vice President Cheney met proved less pliable than desired. In fact, Cheney encountered deep resistance to a potential attack on Iraq. Both King Abdullah of Jordan and President Hosni Mubarak of Egypt warned that a U.S. offensive against Iraq could destabilize the entire Middle East and that progress in bringing peace to the Israeli-Palestinian conflict should take precedence to any entanglements with Iraq.\(^\text{81}\) Crown Prince Abdullah of Saudi Arabia also expressed opposition to an attack on Iraq, stating that he did not think it served anyone’s interests.\(^\text{82}\)

Later in the same month, the Bush administration’s Iraq plans suffered a further setback when Saudi Arabia negotiated an unexpected accord between Kuwait and Iraq at the Arab League Summit in Beirut. Iraq agreed to recognize Kuwait as an independent, sovereign state and it pledged not to attack Kuwait again.\(^\text{83}\) In exchange, the other Arab League member states agreed to a statement asserting that they considered threats of force against Iraq “an aggression and infringement to the region’s security and stability.”\(^\text{84}\)

The Bush administration’s first real attempt to secure international support for its position on Iraq—Cheney’s trip to the Middle East—had failed. The Arab world put the United States on notice that it would not necessarily follow the hyper-power’s lead. The early repudiation of a military assault on Iraq by Jordan, Saudi Arabia, Egypt, and Turkey was further significant because it probably frustrated any notions the Bush administration entertained of bypassing the U.N. weapons inspections process. While these countries may not be powerful by virtue of military capacity or permanent membership on the U.N. Security Council, they could nonetheless upstage an attack on Iraq by denying permission to station American troops and equipment within their borders.

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84. See *Excerpts From Arab League’s Statement*, supra note 83.
Thus, from the start, the United States did not have the luxury of taking action against Iraq completely unfettered by world opinion. This was not like the Bush administration’s attitude toward the Kyoto Protocol or the International Criminal Court (ICC) where the United States could behave unilaterally merely by withholding its consent to be bound by agreements that much of the rest of the world considered worth sacrifice. Metaphorically speaking, on Kyoto and the ICC, the Bush administration told the world that it did not care to play in the global sandbox. To pursue its policy of “regime change” in Iraq, however, the administration had to convince others to come play in its sandbox, if for no other reason than the logistical requirements of waging war. Unilateralism may be an option for the United States when the world attempts to engage its attention and support for an issue, but much less of an option when the tables are turned and the United States is trying to bring other countries around to its preferred policy outcomes. In other words, even a hyper-power finds it easier to obstruct than to act affirmatively.

C. Bush Offers Reassurance

In May 2002, President Bush made his first trip to Germany and France. The principle purpose of the tour was to sign a new agreement with Russia that enlarged its role in NATO, and to reassure nervous European allies that the United States would not disregard their views. Arriving in Germany, the president was greeted by a banner declaring that “Berlin welcomes President Clinton.” The salutation pointedly demonstrated how different many Europeans regarded the current president from his predecessor.

Since the luster of September 11 coalition-building and “we’re all Americans now” solidarity had faded, European and American newspapers burgeoned with regular articles and editorials about the widening gap in “the transatlantic relationship.” Those who felt that the United States was abandoning the very international architecture that it helped erect in the wake of World War II blamed the rift on the administration’s bellicose rhetoric. The “us against them,” “you’re with us or you’re against us” style of discourse infuriated Europeans who thought that the problems of terrorism and security in a porous

87. Nous sommes tous des Americains, supra note 58.
global world defied the simplistic categories in which the American leadership tried to lodge them. Moreover, the history of the twentieth century—two world wars; Soviet communism in Eastern Europe; and the Cold War, in which Europe was geographically situated between the two nuclear superpowers—convinced Europeans to invest in diplomacy, not sabers. Others who felt less charitably inclined toward the European perspective argued that the United States was behaving precisely as a hegemonic power does (and even should). Robert Kagan advanced this argument most forcefully. He contended that weak states, like the European countries, engage in multilateral negotiation and consensus-building because that's how weak states are best able to accomplish their objectives. Strong states, like the United States, on the other hand, can impose their will on the world because they possess the resources to achieve their goals without consulting the opinions of others. In short, weak states need friends; strong states need no one.

Amid this backdrop of controversy, President Bush arrived in Europe to assuage rampant concerns about American unilateralism, and yet still insist on his own diagnosis of the problems plaguing international peace and security. In a speech before the German Bundestag, Bush acknowledged differences in world views between Americans and Europeans, but stated that both are animated by common values and both are striving to build “the same house of freedom.” He repeatedly emphasized the importance of European-American cooperation on a broad spectrum of issues from security and anti-terrorism efforts to trade and development. Indeed, Bush seemed to understand that Europeans felt increasingly sidelined by the United States and that this had generated much despair. He sought to reassure them and reject predictions of American-European estrangement by declaring: “The magnitude of our shared responsibilities makes our disagreements look so small. And those who exag-

89. See Zakaria, supra note 6, at 72.
90. See id. Philip H. Gordon argues that the Cold War “division of labor” conditioned Americans and Europeans to think differently about the world. By assuming the military defense of western Europe through NATO, the Americans enabled the European states to develop their economies and democratic institutions. Consequently, writes Gordon, “Americans are in the habit of worrying about Iraq, North Korean missiles, or a Chinese invasion of Taiwan” while “Europeans are generally more worried about food safety and global warming.” Philip H. Gordon, Bridging the Atlantic Divide, FOREIGN AFF., Jan.-Feb. 2003, 70, 73-74.
91. Robert Kagan, Power and Weakness, POL'Y REV., June 1, 2002, at 3. Kagan’s analysis examines the U.S.-European relationship. He makes the startling assertion that, “It is time to stop pretending that Europeans and Americans share a common view of the world, or even that they occupy the same world.” Id. at 3.
92. Id. Philip H. Gordon notes that Kagan’s Power and Weakness article attracted considerable attention in Europe. He writes that “it was reprinted or excerpted in Le Monde, Die Zeit, the International Herald Tribune, and Commentaire, and was even distributed to European Union officials by EU foreign policy chief Javier Solana.” Gordon, supra note 90, at 72. While he characterizes Kagan’s work as “perceptive,” Gordon maintains that Europeans and Americans still have much more that unites them, than divides them. Id. at 74-75.
93. Remarks to a Special Session of the German Bundestag, 38 WEEKLY COMP. PRES. DOC. 881, 882 (May 23, 2002).
94. Id. at 883-84.
gerate our differences play a shallow game and hold a simplistic view of our relationship."95

While President Bush devoted much of his address to reinforcing the transatlantic alliance, he did not mince his words in describing the unflappable U.S. resolve to address global security threats. He reiterated his "axis-of-evil" rhetoric and stated that the international community must not be intimidated by repressive states seeking weapons of mass destruction, an oblique reference to Iraq.96 "America," the president stated, "will consult closely with our friends and allies at every stage. But make no mistake about it, we will and we must confront this conspiracy against our liberty and against our lives."97

Thus, President Bush explained to his European audience that multilateralism had an important role to play in his administration's diplomacy, but it had its limits, and its results were not necessarily decisive. The United States would indeed "consult"; it would present its case and listen to the views of its allies, but if at the end of the day agreement remained elusive, the United States would act, alone if need be. In Bush's view, the Europeans emphasized talk, but he emphasized action. The president was willing to concede that the former had its place, but not as a substitute for the latter.

D. "The Path of Action" (and Dithering?): Summer 2002

In June 2002, President Bush delivered the commencement address at the United States Military Academy in West Point. In this speech, he expressly verified a major doctrinal shift that had been building in the administration's thinking since September 11: Deterrence and containment, the two pillars of Cold War foreign policymaking, were no longer sufficient for managing twenty-first century challenges like state-less terrorism and "unbalanced dictators with weapons of mass destruction."98 In just a few words, the president inaugurated a new era in strategic thinking. But he did not confine his pathbreaking remarks merely to identifying what no longer works. He went on to praise "the path of action," and although he did not use the word "preemption," it was clearly what he intended by asserting that, "If we wait for threats to fully materialize, we will have waited too long."99 President Bush's West Point address marked the first time that he so unequivocally explained that America had set its sails upon a new global course.

Although the president's West Point address laid down the theoretical justifications for a confrontation with Iraq, he did not decisively articulate how his administration would deal with Saddam Hussein's regime. Indeed, during the summer of 2002, the Bush administration's Iraq policy appeared to be in disarray. Instead of propounding a coherent policy agenda, the president left it to his

95. Id. at 885.
96. Id. at 884-85.
97. Id. at 884.
98. Commencement Address at the United States Military Academy in West Point, New York, 38 WEEKLY COMP. PRES. DOC. 944, 946 (June 1, 2002).
99. Id. at 946.
Cabinet officers and other subordinates to speak out about the Iraqi threat, and even then the administration put forth little in the way of persuasive argumentation. Other than piecemeal assertions about Saddam Hussein's weapons of mass destruction and ties to terrorist groups, the administration seemed unwilling to address its intentions with respect to Iraq. Speculation and press leaks filled this presidential void.

Reports of meetings between administration figures and key members of the Iraqi opposition in exile, as well as a Pentagon leak to the New York Times about military plans for an invasion, gave the distinct impression that the Bush administration had made up its mind about Iraq without consulting the American people, let alone American allies.

By August, the conventional wisdom held that the Bush administration would seek authorization from neither Congress nor the United Nations for an attack on Iraq. In fact, the White House indicated that its own analysis confirmed that it did not need the approval of either body to validate its actions. It reasoned that such approval remained in effect by virtue of the 1990 Congressional resolution which authorized the first Persian Gulf War, and from prior U.N. resolutions declaring Iraq to be in material breach of its obligations under the 1991 ceasefire agreement. This was not just unilateralism abroad; it was unilateralism at home as well. Former foreign policymakers published a flurry of opinion pieces in the nation's leading newspapers. They all renounced American unilateralism on Iraq and argued that building an international coalition along the lines of that forged by President Bush's father in 1990-1991 was the best approach. Some commentators explicitly urged the administration to take its case to the U.N. Security Council. The weighing in of these
experts, as well as the growing public consternation, began to affect the administration’s planning.

E. Getting Serious and Taking the Case to the U.N.

Moving into the autumn of 2002, the Bush administration finally began to spell out a coherent policy agenda on Iraq. The president himself, who rarely uttered the word “Iraq” in his public statements or otherwise directly broached the subject,\(^\text{107}\) promised to consult at home and abroad before taking any action.\(^\text{108}\) He soon made good on both promises when he agreed to seek fresh Congressional authorization to use force (although the administration originally suggested that the 1990 Congressional resolution remained in effect, thus obviating a second resolution\(^\text{109}\)), and he presented his case to the U.N. General Assembly.\(^\text{110}\)

But first, on August 26, in a speech to the Veterans of Foreign Wars (VFW) National Convention, Vice President Cheney took the lead in articulating the administration’s views on Iraq.\(^\text{111}\) The vice president began by reiterating the major theme of President Bush’s West Point address: Deterrence and containment have been eclipsed by new strategic thinking. Segueing into Iraq, Cheney cited Saddam Hussein as exactly the type of “dictator” who is uncontainable and undeterrable. The vice president charged the Iraqi leader with continuing to possess and develop biological, chemical, and nuclear weapons.\(^\text{112}\) He insisted that Mr. Hussein’s pursuit of these weapons is motivated by a desire to achieve regional domination, a position from which he could threaten the entire world.\(^\text{113}\) While Cheney did not offer a decided course of action for dealing with Iraq, he did seem to rule out one very significant remedy: weapons inspections.\(^\text{114}\) According to the vice president, weapons inspections in the 1990’s had been only marginally effective, owing to Mr. Hussein’s considerable skill in concealing his stockpile and programs.\(^\text{115}\) Furthermore, reviving inspections “would provide no assurance whatsoever of his compliance with U.N. resolutions. On the contrary, there is a great danger that it would provide false comfort that Saddam was somehow ‘back in his box.’”\(^\text{116}\) The scornful tone with

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\(^{107}\) Although Bush did not expressly speak to Iraq, his oblique references to states with weapons of mass destruction were typically understood to include Iraq.

\(^{108}\) Remarks Following a Meeting With the Secretary of Defense and an Exchange With Reporters in Crawford, Texas, 38 WEEKLY COMP. PRES. DOC. 1390, 1392 (Aug. 21, 2002).

\(^{109}\) See Putting his cards on the table, supra note 102, at 21.

\(^{110}\) Remarks Following a Meeting With the Secretary of Defense, supra note 108, at 1392 (the president stated, “Not only will we consult with friends and allies, we’ll consult with members of Congress”).


\(^{112}\) Vice President Speaks at VFW 103rd National Convention, supra note 111.

\(^{113}\) Id.

\(^{114}\) Id.

\(^{115}\) Id.

\(^{116}\) Id.
which Cheney discussed inspections suggested that the Bush administration regarded military force as the only viable recourse on Iraq.

The Bush administration likely intended Cheney’s tough rhetoric both as a preview of the president’s own address to the U.N. General Assembly two weeks later, and as an opportunity to test the words and themes that would make up the president’s address. By sending Cheney out first to impugn Iraq in the harshest terms possible, and to dismiss applying more of the same methods of compulsion that had repeatedly failed to disarm the Iraqi regime, the administration signaled the world that it would no longer tolerate Saddam Hussein’s obfuscation. Importantly, however, Cheney’s renunciation of weapons inspections did not re-surface in the president’s U.N. address. The strong international disapproval that Cheney’s words elicited likely convinced the administration to phrase its indictment of Saddam in ways more palatable to its international audience.117

On September 12, 2002, a year and a day after the terrorist attacks on the World Trade Center and the Pentagon, President Bush addressed the U.N. General Assembly to alert the world to the threat presented by Saddam Hussein’s regime. Bush’s decision to submit his case to the U.N. and seek Security Council approval for a new resolution was, in and of itself, remarkable. After all, the president and his closest advisors were known to harbor less than adoring views of the U.N. Indeed, in a Foreign Affairs article published during the 2000 presidential campaign, National Security Advisor Condoleezza Rice argued that the pursuit of national interests should not depend on “notions of international law and norms” or “institutions like the United Nations.”118 She further commented that “multilateral agreements and institutions should not be ends in themselves.”119 In addition to a general aversion to working through the U.N., the news coming out of Washington suggested that the Bush administration believed that existing U.N. resolutions (in addition to the 1990 Congressional resolution) were all the authority it needed to strike Iraq. Given the administration’s disposition, then, it is important to ask why President Bush decided to go to the U.N.

One explanation for the administration’s about-face is that it wanted to reduce the diplomatic and capital costs entailed in an attack on Iraq. In other words, the cost of unilateral action was too high. Other U.S. objectives that depend on international cooperation could suffer if the administration eschewed world opinion on Iraq. The war on terrorism, in particular, required the support of other states to apprehend suspected terrorists, cut off their financial flows, and otherwise disrupt and destroy their networks.120 Moreover, the process of

117. See James Blitz, Straw flies in the face of U.S. hawks over U.N. work in Iraq, FIN. TIMES, Aug. 29, 2002, at 3; Carola Hoyos, U.S. facing strong opposition to military move on Iraq; Cheney’s speech: Vice-President’s endorsement of a pre-emptive strike on Baghdad sends diplomatic alarm bells ringing around the globe, FIN. TIMES, Aug. 28, 2002, at 7.


119. Id.

120. For the view that a war against Iraq would have harmful effects on the war against terrorism, see Tony Judt, The Wrong War at the Wrong Time, N.Y. TIMES, Oct. 20, 2002, at Week in Review, 11; Scowcroft, supra note 105; Vice President Al Gore, Address to the Commonwealth
globalization had wrought such profound changes in the world that issues once thought largely intra-state in character—for example, disease, environmental degradation, government corruption, drug trafficking, etcetera—could be resolved effectively only through international cooperation. In addition to these “big picture” considerations, the act of waging war in Iraq entails costs that any state would naturally prefer to share with others. As the world’s preponderant military power, the United States would inevitably contribute most of the manpower and equipment to an assault on Iraq, but it could hardly hurt to involve military units, or financial support, from other countries. Indeed, in the first Gulf War, the United States paid for just a fraction of the costs of liberating Kuwait; other states, principally Japan, underwrote the effort. Finally, the reconstruction of a post-Saddam Hussein Iraq would substantially drain U.S. resources. If the United States acts without U.N. support, it will bear the brunt of the burden of securing Iraq’s borders, preventing its dismemberment along ethnic and religious lines, instituting a democratic government, and rebuilding its infrastructure. Iraq would thus become a protectorate of the United States, and for an administration that disdains “nation building” (even in Afghanistan according to critics), such a proposition is likely loathsome. Moreover, as one commentator has observed, a post-Hussein Iraq could resemble either a “Germany” or a “Yugoslavia.” In the case of the latter, it would certainly be better to have U.N. support.

There is a second, and perhaps even more important explanation for the Bush administration’s decision to seek U.N. support. In effect, international criticism of American unilateralism and broad-based opposition to the use of force in Iraq, even by key allies such as Germany, France, Russia, and Saudi Arabia, forced President Bush’s hand. He relented because irrespective of whether he wanted to be at the U.N., the international community expected him to be there, and that made all the difference. In founding the United Nations in 1947, the victors of World War II intended it to serve as a vehicle for the peaceful resolution of disputes that threatened global security. If Iraq imperiled that security to the degree that the Bush administration insisted it did, then the U.N. was where the United States had to go to muster support. “Regime change” of another sovereign state is simply too dramatic a proposal for the rest of the world to ignore or acquiesce to without debate. In short, the U.N. had become sufficiently entrenched as the organization through which international security

121. For more on how globalization has changed the world, see Thomas L. Friedman, The Lexus and the Olive Tree (1999).

122. For an assessment of how many billions of dollars a war in Iraq will cost, see William D. Nordhaus, Iraq: The Economic Consequences of War, The N.Y. Rev. of Books, Dec. 5, 2002.


124. Thomas L. Friedman, Roslov Lecture on International Affairs at the Johns Hopkins School of Advanced International Studies (Mar. 6, 2003).
threats should be defused that even the American hyper-power could not escape its pull.

F. The U.N. Speech

President Bush’s September 12, 2002 address to the U.N. General Assembly was the most important since his address to a joint session of Congress immediately following the terrorist attacks of the prior year. The address itself can only be characterized as expertly drafted and persuasively delivered. Over the preceding months the typically proffered reasons for going to war with Iraq included the regime’s weapons of mass destruction, its human rights abuses, and its reputed ties to terrorists. President Bush addressed all three subjects, but the centerpiece of his argument was that Iraq was making a mockery of the United Nations by systematically disregarding the Security Council’s resolutions. In all, Iraq had violated sixteen U.N. resolutions; for seven years it had failed to comply fully with the inspections regimen and for the preceding four years it had reneged on inspections altogether. According to President Bush, it was not the United States that was behaving unilaterally, but Saddam Hussein in his defiance of international will. The critical question, Bush urged, was not what Saddam Hussein would do next; rather, it was what would the United Nations do in response? Bush contended that the very legitimacy of the U.N., its raison d’être as the institution responsible for enforcing fundamental international norms and agreements, was on trial. To this end, the president pointedly asked, “Will the United Nations serve the purpose of its founding, or will it be irrelevant?”

Now the terms of the debate really had been set. Remarkably, Bush succeeded both in flashing his multilateralist credentials and in portending the death of multilateralism if the U.N. failed to follow the American lead. Bush represented the United States as the champion and defender of the U.N. against its willful subversion by a rogue regime, and as such, the champion and defender of the U.N. as the world’s chief multilateralist body. On the other hand, Bush

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126. Id. at 1530-32.
128. Address to the United Nations, supra note 125, at 1532.
129. Id.
130. See id.
131. Id.
insisted that the future of multilateralism as a viable diplomatic strategy depended on the U.N. taking the kind of unyielding stand on Iraq that his administration promised to make. This was more than saying, "the American way or the highway." A close reading of Bush's words suggests that disagreement between the United States and the U.N. on the all-important question of Iraq could precipitate a rupture not just for this time on this issue, but for all time. If the U.N.'s very relevance was at stake, and it failed to pass the test, then why would the United States continue to participate in any meaningful way in an irrelevant institution?133

President Bush undoubtedly intended his "relevancy" rhetoric to cajole the U.N. into action. He could count on this bluster to produce the desired result because the other veto-bearing members of the Security Council were not going to roll over and permit the United States to portray the U.N. as feckless. The global stature of France, Russia, and China depends heavily on their permanent membership in the U.N. Security Council. They know that the prodigious nature of American power means that the United States has the capacity to bypass the U.N. on many issues, including Iraq. If they withheld their support for a new resolution on Iraq, the United States would be increasingly less likely to subject its conduct to U.N. approval. Moreover, if the United States did successfully remove Saddam Hussein from power, it could deny these countries a role in the reconstruction of Iraq, which would undermine their diplomatic prestige and potentially cut them out of lucrative economic opportunities, particularly in Iraqi oil.

But Bush's speech did not just wed the dissenting or skeptical members of the Security Council to a U.N. resolution; it also ensured that the United States would have to make important concessions to its allies for them to supply that coveted resolution. Although the logic of Bush's speech dictated diminished U.S. participation in the U.N. if the Security Council failed to fulfill its obligations on Iraq, the administration was undoubtedly not anxious for such a result. As discussed supra, other American objectives could be harmed by an erosion of international cooperation that the U.N. fosters.

In sum, President Bush delivered a very effective indictment of Saddam Hussein in his September address to the General Assembly. He summoned the world community to action and received a positive response immediately: As U.N. Secretary-General Kofi Annan observed, "Every speaker who got up and spoke after the President [sic] said Iraq has to cooperate, Iraq must disarm."134

133. President Bush regularly invoked U.N. relevance in his arguments urging the Security Council to enact a tough new resolution. For instance, in an evening address to the American people justifying his administration's position on Iraq, the president stated that if the U.N. failed to act it "would betray the purpose of its founding, and prove irrelevant to the problems of our time." Address to the Nation on Iraq From Cincinnati, Ohio, 38 WEEKLY COMP. PRES. DOC. 1716, 1720 (Oct. 7, 2002) [hereinafter Address to the Nation from Cincinnati]. Further explaining his "relevance" tactic, the president remarked in a press conference that "you see, if you send out 16 resolutions and all 16 resolutions were ignored, at some point in time, somebody has got to tell the truth and say, you're not relevant. Why pass a resolution, unless you really mean it?" Interview with European Journalists, 38 WEEKLY COMP. PRES. DOC. 2047, 2051 (Nov. 18, 2002).

At the same time, Bush's decision to seek U.N. support was a victory for the international community that demanded a multilateral approach to the resolution of global security threats.

G. Negotiations at the U.N.

Following President Bush's September 12 address, U.N. Security Council members earnestly began negotiations on a new resolution that aimed to compel Iraqi compliance with its own disarmament. While the president's trip to the U.N. produced a collective sigh of relief throughout much of the world, the real test of Bush's avowed embrace of multilateralism was yet to come. What the United States would demand in the negotiations, and how much, or more predictably how little, it would yield to the views of others on the Council, would constitute the real measure of the Bush administration's commitment to multilateral dispute resolution.

1. The Elephant in the Room

To a casual American observer, the purpose of the Security Council negotiations was to divest Iraq of its weapons of mass destruction. However, a more subtle, but equally significant current in the negotiations was how to contain the exercise of American power. Many members of the Security Council regarded the prospect of a unilateral American attack on Iraq as equal to, and perhaps even greater than, the threat posed by Iraq. They felt that if the United States subverted the Security Council diplomatic process by making intolerable demands, or if it acted militarily without U.N. approval, the international organization would suffer grave damage. The Bush administration might look upon the U.N. as a hindrance, but other countries were keen on ensuring that it did not go the way of the League of Nations.

The concern about American unilateralism within the U.N. was not misplaced. As described supra, key members of the Bush administration harbored a cautious (dis)regard of the organization. Moreover, the administration's rhetoric treated the U.N. more like a peer to the United States and less like the ultimate arbiter of international security questions that its framers intended. For example, the administration's National Security Strategy, released in September 2002, professes a U.S. commitment to multilateral institutions such as the U.N., but at the same time makes room for "coalitions of the willing" to "augment these permanent institutions." The insertion of "coalitions of the willing" is a clear

135. See Polly Toynbee, The last emperor: One thing was made crystal clear yesterday: there is no other authority than America, no law but U.S. law, THE GUARDIAN (London), Sept. 13, 2002, at 17.


admonition that when the United States is barred from achieving its goals within the established institutions, it will consider following its own path anyway. Moreover, in her discussion of the National Security Strategy in a lecture to New York’s Manhattan Institute, National Security Advisor Condoleezza Rice stated that the United States would work to facilitate “great power cooperation.” This cooperation is important, said Rice, because it “creates an opportunity for multilateral institutions—such as the U.N., NATO, and the WTO—to prove their worth.” Here, Rice indicated that the merit of multilateral institutions is not obvious and should not be assumed. Rice might have said that great power cooperation facilitates the work of multilateral institutions, or that great power cooperation creates an opportunity for multilateral institutions to demonstrate their worth, but she did not. The selection of the phrase “prove their worth” is but a partial endorsement of multilateralism.

Thus, as they began their work, Security Council diplomats knew they had a limited capacity to resist American demands. Failure to pass a resolution acceptable to the hyper-power could lead it to step altogether outside of the established channels of global diplomacy. If that occurred, then influencing, let alone containing, the United States in the future would be that much harder, and perhaps even impossible. From the Security Council’s perspective, it was better to keep the United States within the international system where it could be bridled, even if that meant papering over disagreements with the United States to give it largely what it wanted.

On the other hand, the Security Council still possessed significant clout. It has been reduced by the preponderance of American power, but not to the point of merely serving as a rubber-stamping organization. The other members of the Security Council knew that the U.S. position on Iraq would be significantly enhanced (both at home and abroad) by U.N. support and that therefore the United States would be more flexible in the negotiations than its strident rhetoric implied. Indeed, the president’s speech to the U.N. guaranteed as much because even the hyper-power could not afford for the U.N. to be “irrelevant” on the world stage: As discussed supra, if a military campaign is waged, the United States will benefit from U.N. expertise in re-building a post-Saddam Hussein Iraq, and the addition of allied military might and resources would substantially reduce both the human and capital costs to the United States.

From the very beginning then, no state was in a position to extract exactly what it wanted from the opposition: The United States would not win U.N. support for “regime change” in Iraq, and the other members of the Security Council would not persuade the United States that returning weapons inspectors to Iraq,
without more, would be sufficient to contain Mr. Hussein. How they would carve out the middle ground would be the subject of the ensuing two months.

2. The American Position

In the wake of the president’s address, the United States wasted no time in announcing its expectations for what a final resolution would contain. Secretary of State Colin Powell articulated three conditions that the United States regarded as indispensable. First, the resolution had to state that Saddam Hussein stood in material breach of his obligations as set forth in prior resolutions; second, the resolution had to state what Mr. Hussein was required to do to come into compliance; and third, the resolution had to specify the U.N.’s response if Mr. Hussein once again failed to comply. Clear deadlines as to each of these requirements were also necessary. Moreover, Powell hewed to the administration’s “regime change” policy; in a direct question from interviewer Tim Russert about whether disarming Saddam Hussein would be sufficient, Powell refused “to go that far.” He further asserted that even though the United States hoped to receive U.N. approval, President Bush retained “all his options as President of the United States to do what he thinks is necessary to defend us.”

Powell’s remarks were an affront to the U.N. diplomats preparing to work with the United States to craft a mutually acceptable resolution. As Powell’s explanation of the U.S. position demonstrated, the administration had set up a dichotomy in which the United States claimed status as both a full participant in the U.N. and an outsider that could withdraw if its expectations were not satisfied. In one way, this is not terribly unusual or deleterious since no state completely subordinates its interests to the dictates of the U.N. Nonetheless, the Bush administration’s readiness to resort to an attack on Iraq without U.N. approval raised two important problems for the U.S. relationship to the international body. First, the United States threatened to part ways with its Security Council colleagues on precisely the issue that the Security Council was intended to dominate: the prevention of war. If the United States could wage war over the express objections of the Council, particularly the four other permanent members, then the Council would have no independent authority to manage global conflict. Second, the United States purports to be a world leader, but it cannot lead if it rebuffs the opinions of the rest of the world. For less powerful countries, participating in the U.N. is a way to exercise global influence; in order to lead, the United States must participate in the world body along with them.

In addition to characterizing the United States as both a U.N. participant and a U.N. outsider, depending on which way the wind blew, Powell’s refusal to back off the “regime change” rhetoric was also impolitic. There was no chance

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142. Id.
143. Id.
144. Id.
that the Security Council would authorize an attack on Iraq without first giving Saddam Hussein another opportunity to disarm through the weapons inspections process. But, since Powell most certainly knew this (indeed, the three elements he considered vital to a new resolution explicitly acknowledged as much), the "regime change" mantra probably irritated the other diplomats more than it alienated them.

The insistence that the United States retained the right to act unilaterally, however, was of a different order. Throughout the negotiations to a final resolution, Powell and other key administration figures repeatedly emphasized that the United States would not hesitate to force Iraqi disarmament if the U.N. proved unwilling to do the job. For example, in testimony before the House Committee on International Relations, Powell stated:

President Bush is hoping that the U.N. will act in a decisive way. But at the same time, as he has made clear, and my other colleagues in the administration have made clear and I make clear today, if the United Nations is not able to act and act decisively—and I think that would be a terrible indictment of the U.N.—then the United States will have to make its own decision as to whether the danger posed by Iraq is such that we have to act in order to defend our country and to defend our interests."

President Bush also vociferously promised to protect what he termed American freedom of action (but what others called American unilateralism). Upon signing the Congressional resolution that authorized the use of force in Iraq, the president stated that if the Iraqi regime refused to eliminate its weapons of mass destruction, "the United States will lead a global coalition to disarm that regime." He further warned that "if any doubt our nation's resolve, our determination, they would be unwise to test it."  

145. The Administration's Position With Regard to Iraq, Secretary Colin L. Powell's Testimony before the House Committee on International Relations (Sept. 19, 2002) at http://www.state.gov/secretary/rm/2002/13581.htm (last visited Oct. 12, 2002). See also Interview by Larry King with Colin L. Powell, U.S. Secretary of State (Oct. 9, 2002) at http://www.state.gov/secretary/rm/2002/14255.htm (last visited Oct. 12, 2002) (Powell stating that it is always best to see if you can do it with like-minded nations and with the support of the international community; but at the same time, if the United States is in danger, at risk, the President has the inherent right as President of the United States to do whatever is required to protect us. That might sometimes require unilateral action. It is not because we don't like multilateral action, but because it is necessary to act unilaterally.)


147. Id.
The U.S. threat to make good on charges of unilateralism if it did not like the results of U.N. diplomacy was just one of the ways in which the Bush administration put pressure on the international organization. Throughout the negotiations, no less an official than President Bush regularly goaded the U.N. through what may be charitably described as a “prove me wrong” kind of logic. On one occasion, the president commented that the time had come for the U.N. to demonstrate whether it was “a force for peace or an ineffective debating society.”

On another occasion the president metaphorically called the U.N. cowardly when he stated that

the United Nations must show its backbone. And we will work with members of the Security Council to put a little calcium there, put calcium in the backbone, so this organization is able to more likely keep the peace as we go down the road.

The Bush administration’s unilateralist rhetoric illustrated its hard bargaining strategy. By loudly claiming that it would not be bound by U.N. decrees at odds with its preferred course of action, the administration hoped to prod Security Council members toward the conclusion that it was better to go along with the United States than risk being left out. If the rest of the Security Council could not be genuinely persuaded that Iraq posed an intolerable threat, then perhaps the Bush administration’s insistence that it would not be deterred would at least persuade them that “order is better than justice.”

This strategy posed significant risks insofar as it could irritate allies to the point of alienating them. Indeed, the administration’s disparaging remarks about the U.N. made it sound as if the United States was not even a member of the Security Council, and as such, at least partially responsible for that body’s eleven-year failure to enforce Iraqi compliance with its resolutions. Instead, the United States treated the U.N. as a peer or subordinate; the tone in which President Bush and Secretary Powell spoke of the U.N. suggested that the United States was somehow disembodied from what went on within the organization. The American leadership was quick to point out the U.N.’s faults and deficiencies, but incapable of acknowledging that the United States, as the most influential member of the Security Council, plays a pivotal role in determining whether the U.N. is successful. Considering

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150. Apparently, Gelson Fonseca, Brazil’s Ambassador to the United Nations, subscribed to the “order is better than justice” kind of thinking during the negotiations that produced Resolution 1441. James Traub writes that “like many of his colleagues, [Fonseca] has a tremendous fear of a United States freed from those constraints [i.e., the international system]; he would almost rather surrender to American wishes than see the U.S. dismiss the Security Council.” Traub, supra note 136, at 50.
how the Bush administration's rhetoric might have handicapped the negotiations, it is remarkable that the Security Council issued a resolution at all.

3. The Anglo-American Draft

When the United States argued that it was not, in fact, behaving unilaterally on Iraq, it was at least technically correct insofar as the United Kingdom had pledged its total agreement and support for the American position. Prime Minister Tony Blair aligned the U.K.'s Iraq foreign policy with that of the United States, although he endured substantial criticism at home for doing so.151 The United States and the United Kingdom worked together to forge a resolution that would garner a total of nine affirmative votes among the fifteen members of the Security Council (five permanent members and ten rotating members) and avoid a veto by any of the three other permanent members.

The Security Council members agreed that Iraq remained in blatant violation of numerous prior U.N. resolutions that required it to disarm fully. In fact, as the negotiations got underway, all of the permanent members of the Council, except China, called upon Iraq to re-admit the weapons inspectors and adhere to its obligation to eliminate its weapons of mass destruction. The Council members disagreed, however, on the proper recourse for addressing Iraqi non-compliance. Majority opinion on the Security Council decidedly favored a diplomatic resolution that would give Iraq another opportunity to comply and that would not threaten military reprisal.152 The United States, at least initially, argued that any new resolution should explicitly permit it to use force if Iraq once again breached its obligations.

In late September, the first Anglo-American draft was circulated among the Security Council members.153 The centerpiece of this draft resolution was a call for a tough inspections process that would compel Saddam Hussein to disclose fully his arsenal of weapons of mass destruction.154 The Iraqi regime would have seven days in which to state whether it would abide by the resolution and then a further period in which to compile a report of all its weapons possessions.155 The draft declared Iraq to be in “material breach” of prior U.N. resolutions and stated that if Iraq failed to comply with this latest resolution, then “all necessary means” would be employed to disarm the regime.156 The “all necessary means” language was widely imputed to signify military force. Three other provisions authorized the inspectors to engage in unparalleled intrusiveness in

156. See Latest U.S.-Britain Draft of Resolution, supra note 153.
their search for illicit weapons; these included allowing inspectors to investigate Mr. Hussein’s presidential palaces (U.N. resolution 1154 had restricted inspectors’ access to presidential palaces); the right of the five permanent members of the Security Council to send representatives to accompany the inspection teams; and the right of inspectors to take scientists and other persons with information about Iraq’s weapons programs out of the country for questioning. 157

The other permanent members of the Security Council did not greet the Anglo-American draft enthusiastically. 158 China, Russia, and France felt that the draft minimized the importance of inspections and elevated the possibility of a military attack against Iraq. One European diplomat suggested that the United States and the United Kingdom intentionally crafted the draft resolution to fail.

4. The Final Resolution

Throughout the negotiations, France served as the leader of the opposition to the American approach. Early on, France declared that it preferred a two-resolution process for dealing with Iraq. 159 The first resolution would emphasize the return of the inspectors. 160 If Iraq rejected this resolution, or impeded the inspections, then under the French proposal, the Security Council would reconvene to consider a second resolution that would prescribe the consequences for Iraq’s failure to comply, presumably including the use of military force. 161 In reaction to the U.S.-U.K. draft, France hardened its position and began lobbying more vigorously in favor of its preferred two-resolution process. 162 France contended that in order for the United States to win Security Council backing, it had to disclaim any language that could be interpreted as authorizing military action. Russia also advocated this view and President Vladimir Putin firmly rejected the Anglo-American draft by stating that it could not “be accepted as a basis for a future U.N. Security Council resolution on Iraq.” 163 France and its cohort sought to avoid language such as “all necessary means” that could give the United States authorization to revert to force whenever it deemed Iraq to have breached the new resolution, no matter how trivial an alleged violation. 164 France and Russia sought to ensure that a final resolution would not indulge “automaticity” or contain “hidden triggers” that allowed the United States to

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157. See id.; Gordon, et. al., supra note 153.
160. Id.
161. Id.
162. Jon Henley, Nick Paton Walsh, Oliver Burkeman, and Nicholas Watt, Saddam ‘to get 7 days to open sites’, THE GUARDIAN (LONDON), Sept. 28, 2002, at 1.
attack Iraq without first bringing its argument about Iraqi violations to the Security Council.\textsuperscript{165}

France’s success in rallying other members of the Security Council around its objections compelled the United States to offer some significant concessions. These concessions paved the way toward agreement on the final resolution, which came on November 8, 2002, in an unexpectedly unanimous vote.\textsuperscript{166} Resolution 1441 states “that Iraq has been and remains in material breach of its obligations” and that the Iraqi regime is being afforded a “final opportunity” to disarm.\textsuperscript{167} The resolution establishes an inspections process unprecedented in magnitude that requires Iraq to “provide UNMOVIC [the United Nations Monitoring, Verification, and Inspection Commission] and the IAEA [the International Atomic Energy Agency] immediate, unimpeded, unconditional, and unrestricted access to any and all” sites and relevant officials and persons.\textsuperscript{168} The UNMOVIC and IAEA inspectors are further authorized to take persons they wish to interview and their families outside Iraq to avoid possible retaliation by Saddam Hussein.\textsuperscript{169} The intrusive inspections system is bolstered by mandating that the Iraqi regime provide to the Security Council, UNMOVIC, and the IAEA “a currently accurate, full, and complete declaration” of its weapons programs within thirty days of passage of the U.N. resolution.\textsuperscript{170} Finally, Resolution 1441 incorporates the threat of “serious consequences” insisted upon by the United States if Iraq fails to comply with its terms.\textsuperscript{171}

Importantly, however, Resolution 1441 makes no mention of military force and, pursuant to the French proposal, it specifies that in the event of Iraqi non-compliance, the Security Council will reconvene to consider what action to take in response. While this provision does not precisely mirror the preferred French approach of two resolutions, neither does it conform to the favored American approach of an automatic military attack at the first instance of Iraqi non-compliance. In his statement upon the passage of the resolution, U.S. Ambassador to the U.N. John Negroponte confirmed that the resolution contained no “hidden triggers” or “automaticity” to use force; the United States had indeed agreed to return to the Security Council for a second debate in the event of Iraqi non-compliance.\textsuperscript{172} This was the vital American assurance that the French, Rus-
sians, and others were looking for, and that therefore made Resolution 1441 a reality.

In Bush's nearly two years in office, his administration's rejection of several international agreements had resulted in feverish charges, especially from allies abroad, that the United States behaved unilaterally. The administration's critics argued that American unilateralism endangered the global cooperation that is the only means through which common problems can be solved and common interests advanced. The uncompromising rhetoric used by the president and other government leaders in describing how the United States would confront Iraq—with or without allied support—provided more ammunition for those who denounced the Bush administration's perceived unilateralism. But listening only to the administration's rhetoric on Iraq is misleading. Indeed, U.N. Security Council Resolution 1441—the culmination of the administration's efforts to challenge Saddam Hussein's regime—was achieved through multilateralism. While President Bush's public oratory was laden with threats to act unilaterally, he vigorously pursued the multilateral path in actually implementing his goal of bringing about complete Iraqi disarmament. Resolution 1441 reflected a multilateral compromise with no Security Council participant able to claim absolute victory. Adolpho Aguilar-Zinser, Mexico's Ambassador to the U.N., characterized Resolution 1441 as representing "true consensus." To underscore his assertion, he stated that the "original draft [was] completely different from what we approved." The ambassador's remarks point to the significant concessions the United States made that belied its unilateralist rhetoric. First, the Bush administration agreed to a resolution that sought to compel Iraqi disarmament through intrusive weapons inspections, not "regime change." Second, the administration agreed to drop all references, both overt and subtle, to military retaliation as a consequence of Iraqi non-compliance.

The Bush administration's decision to ask for Security Council support, and the compromises it made during the ensuing negotiations, strongly indicate that on some issues, the American hyper-power does not really have a unilateral option. When it came to a possible attack on another sovereign state, even one controlled by the perpetually troublesome Saddam Hussein, the international community warned the United States not to act unilaterally, and in so doing, lassoed the hyper-power back into the collective security system. The subject of war and peace is different from climate change, trade, or human rights. War and peace are the global questions that captivate our attention, and our conscience, like no others, and we have come to expect international cooperation in addressing them. Thus, in the words of U.N. Secretary-General Kofi Annan, Resolution

174. Id.
175. The U.S. agreement to return weapons inspectors to Baghdad is especially surprising since no less than Vice President Cheney and Secretary of Defense Rumsfeld made statements discrediting weapons inspections as an effective mechanism for eliminating Iraq's WMD stockpile.
1441, and by extension the U.S. role in drafting it, "represents an example of multilateral diplomacy serving the cause of peace and security." 176

Some may argue that the Bush administration's insistence that it retained the right to act militarily in Iraq even without U.N. authorization had the effect of making Resolution 1441 a product of coercion and not multilateral engagement. Such a theory holds that the other Security Council members were acting under duress, and not their own free will, in endorsing the resolution. This argument, however, ignores the significant concessions made by the United States, as described above. More importantly, it misapprehends the way in which power is applied by countries that possess it. The Bush administration's threat to go it alone was not just a single-minded statement of American interests, but also indicative of a hard-bargaining position in the Security Council. Even at the founding of the U.N. it was assumed that the five permanent members of the Security Council—the victors of World War II—would play the dominant role in shaping the global security environment. 177 Since today the United States is the world's leading power, its unyielding position on Iraq within the Security Council can be characterized as an appropriate reflection of this original understanding.

It's true that in a multipolar world—i.e., a world in which power is more evenly distributed among states—the United States might not have been able to secure a U.N. resolution at all, let alone one as tough as Resolution 1441. But when "unipolarity" characterizes the global power structure, as it does today, the United States has a heightened capacity to procure assent to its preferred course of conduct; other states can object and can tame, as France and Russia did in the U.N. Security Council, but they probably cannot altogether deter. While the power deficit of other states relative to the United States might very well be an argument for counterbalancing the United States, it does not make for a persuasive case of duress. After all, France and Russia may not possess the same degree of power in the world that the United States does, but there is one type of power which all three states possess in equal measure: the Security Council veto. If they felt that Resolution 1441 was contrary to their interests, they could have exercised their right as permanent members of the Security Council to veto it; or, they could have abstained. Thus, the United States's hyper-power status did not "force" Security Council agreement, even if it made disagreement harder.

H. Waiting and Seeing: Putting Resolution 1441 Into Effect

The Bush administration greeted the U.N. resolution cautiously. The president clearly believed that it constituted merely the first step in confronting the Iraqi regime. In his remarks on the passage of the resolution, Bush put the onus squarely on Saddam Hussein, and not the returning weapons inspectors, to ver-

177. Zakaria, supra note 6, at 72.
ify the destruction of his illicit weapons and weapons development programs. According to the president, "inspectors do not have the power to disarm an unwilling regime. They can only confirm that a government has decided to disarm itself." The president also implied that he did not think Saddam Hussein would fully comply because he foreshadowed a second Security Council debate (as mandated by Resolution 1441 in the event of Iraqi non-compliance) in his warning that "the world must not lapse into unproductive debates over whether specific instances of Iraqi noncompliance are serious. Any Iraqi noncompliance is serious."

Although the administration maintained that the U.N. resolution did not extinguish the right of the United States to act militarily in Iraq without Security Council approval (for example, if the Security Council declined to authorize force in the second debate), its conviction that the application of military force was the likeliest outcome to the long-running row with Iraq seemed chastened by the resolution. Suddenly, through rhetorical gymnastics, both the president and his secretary of state stated that if Iraq does indeed fully comply with Resolution 1441, then the "regime will have changed," thus obviating American military intervention to effectuate the administration's policy of "regime change." The backpedaling on the meaning of "regime change" suggested that the administration was looking for a way to save face in the event that Saddam Hussein defied their low expectations of him. Nonetheless, this definitional muddling had more to do with seeking political cover than it did with any significant altering of the administration's perspective on Iraq. The steady acceleration in the deployment of American troops and material to the Middle East confirmed that the administration was acting on its most cynical assessments of the Iraqi regime, and perhaps its most optimistic assessments of the international support it could garner for an attack on Iraq.

On November 13, 2002, within the timeframe established by Resolution 1441, Iraq notified the U.N. that it would comply with the Security Council's demands. Shortly thereafter, on November 27, the first inspectors resumed their work in Iraq after a four-year hiatus. During the first days of December,

179. Id. at 2010.
180. Id.
181. Interview by Al Jazeera of Colin L. Powell, U.S. Secretary of State (Nov. 8, 2002), at http://www.state.gov/secretary/rn/2002/15034pf.htm (last visited Nov. 16, 2002); Interview by Thierry Thuillier, supra note 45; Address to the Nation from Cincinnati, supra note 133.
Secretary of State Colin Powell offered a relatively upbeat assessment insofar as he commented that the inspectors were “off to a pretty good start,” but he still maintained that it was too early in the process to say that the inspections were “working as intended.”  

Throughout the Security Council negotiations and implementation of Resolution 1441, President Bush insisted that he favored a peaceful resolution to the standoff with Iraq and that he hoped military intervention could be averted. But, in mid-December the administration once again ratcheted up the stakes by declaring that Iraq was in “material breach” of the Security Council resolution. The resolution required Iraq to submit a declaration disclosing all its prohibited weapons and weapons programs. In a voluminous 12,200 page document turned over to the Security Council on December 7, Iraq claimed that it was free of all such weapons and harbored no intent to manufacture them.  

After analysts examined the declaration, Secretary of State Powell held a press conference to announce that the document was “anything but currently accurate, full or complete” as mandated by Resolution 1441. The administration stated that the declaration contained discrepancies between what the Iraqi regime reported and the information acquired through prior inspections and intelligence sources. The declaration, stated Secretary Powell, failed to account for thousands of liters of anthrax and botulimum toxin and tons of mustard gas, sarin gas, and VX nerve gas, all lethal biological and chemical agents. Secretary Powell concluded with the ominous warning that “this declaration fails totally to move us in the direction of a peaceful solution.”

III.

CONCLUSION

As of this writing in February 2003, it is not yet clear how the Bush administration’s policy on Iraq will play out. While the administration has long proclaimed that war is not foreordained, it is difficult to view the American military build-up in the Middle East as an expression of confidence in a peaceful resolution. Although military action appears to be the probable outcome, it is important to remember that to date the Bush administration’s rhetoric on Iraq has been more belligerent than its conduct. At different points in the development of its policy, the administration rejected weapons inspections as a means of eliminating the Iraqi threat, and was inclined to sidestep the U.N. Security Council. Ultimately, though, the administration acquiesced to both.

187. See id.
188. See id.
189. See id.
190. See id.
Unilateral rhetoric but multilateral conduct has been the Bush administration’s paradigmatic approach to Iraq in its first two years in office. From the "axis-of-evil" moniker, to the scathing indictments of the United Nations and the repeated promises to act alone against Iraq if necessary, the Bush administration has treated multilateral engagement derisively. Certainly, one would expect the current American president to disagree with John F. Kennedy’s characterization of the United Nations as “our last best hope in an age where the instruments of war have far outpaced the instruments of peace.”191

Nonetheless, the Bush administration has not been able to escape entirely the demands of the international community. As the world grew anxious about the prospect of a unilateral American attack in the volatile Middle East, it successfully roped the American hyper-power back into the collective security system, at least insofar as it required the United States to first make its case to the U.N. Security Council.

Sometime in February 2003, the Bush administration can be expected to return to the Security Council to seek authorization to attack Iraq on the grounds that Saddam Hussein has not complied with Resolution 1441. That “second debate” will afford the best insight yet into how multilateral the administration really is in challenging the Iraqi regime. Unless Saddam Hussein has committed a gross violation of the resolution, condemnable by all, the second Security Council debate is likely to be even more contentious, and its outcome less certain, than the first. Moreover, the second debate may be hampered by severe time limitations. With more than a hundred-thousand troops positioned on Iraq’s borders, and the desert summer descending, the United States will not indulge the Security Council with two months of deliberations, as it did in the first-round of talks leading up to Resolution 1441.

Of the five permanent members on the Security Council, France and Russia are likely to be the states most resistant to authorizing the use of force. Germany, another close U.S. ally and a new rotating member of the Security Council as of January 2003, also may give the United States a diplomatic headache.192 Nonetheless, it is hard to believe that the United States won’t win Security Council support for an attack on Iraq. It is not clear that France and Russia have anything to gain by threatening a veto,193 and arguably, they have plenty to lose. Challenging the United States through the veto power would deepen the schism in the transatlantic alliance, perhaps causing irrevocable damage, and derail progress in developing a still nascent partnership between the United States and Russia. Moreover, a veto would not prevent the United States from forcibly engaging in “regime change” in Iraq, as the Bush administration has repeatedly insisted. If France and/or Russia decide that they cannot give the

193. I do not speculate about the occurrence of an actual veto because it seems inconceivable that the United States would put a second resolution to a vote if it faced a credible veto threat.
United States their affirmative votes, then it would be better for them to abstain. By doing so, they can register their disagreement with the U.S. approach, but not unduly harm allied relations, or give succor to Saddam Hussein.

In the event that the United States does fail to obtain Security Council approval, the Bush administration will probably claim that by drumming up a "coalition of the willing," it is still acting multilaterally. But "coalitions of the willing," no matter how large or how ardent, cannot serve as adequate substitutes for the U.N. The U.N. Security Council is the only organ recognized the world over as the legitimate protector of international peace and security. Its founding purpose was to foster great power cooperation in managing the global security environment. The United States cannot now just abandon the vision of collective action that it helped to create.

Finally, if the United States acts without Security Council endorsement, what will become of U.S. participation in the United Nations? After vociferously asserting that the U.N. would become "irrelevant" if it did not support the United States on Iraq, it is difficult to see how President Bush can rehabilitate the world organization's image in the eyes of the American people. Perhaps he does not even care to try. Indeed, a conservative Congress, tacitly supported by a conservative White House, may work to steadily undermine U.S. participation in the U.N. While the United States would not be expected to do anything as dramatic as withdraw from the U.N., it may do the functional equivalent by being a passive member. Such passivity could well bring on the U.N.'s collapse.

The foregoing questions and predictions bring us back to where we started—with Hubert Vedrine's characterization of the United States as a global "hyper-power." Recall that the term hyper-power was not born of a neutral assessment of the preponderant U.S. position in the world. Vedrine believed that the United States has too much power for the world's good, and that other states should work at counterbalancing the American hegemon.

It's a good bet that no matter how powerful the United States is today, it won't be "Rome" forever. Anticipating this decline in its stature, the United States should use its hyper-power influence and resources to shape a world of greater cooperation and peace. By doing so, the United States will help make destructive competition among states a thing of the past, or at least help ensure that the next hegemon shares America's fundamental values. Acting in Iraq without Security Council support will impair the ability of the United States to create this new world order. A unilateral attack will signal the rest of the world that the United States can deviate from the global rules of the game even as it vigorously polices another sovereign state's (i.e., Iraq's) conduct to ensure that it does not deviate from those same rules. In so doing, the United States may foment a global backlash that brings on the kind of challenge to its power that even Hubert Vedrine would not care to have occur.