

# **Divided by Common Interests**

## **Transatlanticism and the Future of International Law After Iraq**

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International Relations Theory commonly contrasts the traditional, pre-1945 “Westphalian Model” of a fragmented world public order with the contemporary “UN Charter Model.” In the former, order is preserved and exercised through absolute state sovereignty, and all forces infringing that sovereignty are opposed. In the latter, states are highly interdependent in an institutional matrix, with overlapping or shared jurisdiction in many spheres of international and domestic regulation. As with all stark dichotomies, this one’s purpose is didactic; it oversimplifies two modes of international relations for the purpose of illustrating some of the forces that shape state behavior. In reality, of course, the contemporary world public order combines both a strong component of Westphalian state sovereignty and unprecedented institutionalization through regional and international organizations partly founded upon the U.N. Charter.

Tension between Westphalian and UN Charter modes leads ultimately to friction between interacting states. While clashes between highly estranged states tend to be dramatic, they are also relatively infrequent. One of the most revealing paradoxes of international relations is that the more alliances and interests two states share, the greater the tension between them. As the state competencies and populations become increasingly interdependent, the traditional concept of sovereignty weakens and interaction increases, often prompting an adverse reaction from state actors who see the incentive structure that sustains their connection to a local power bases slipping from under their control. The result is that close allies, even though they may share relatively similar political ideologies and cultures, often suffer chronic friction in their relations that is absent between less intertwined, and even much less sympathetic, states.

Focusing on a common external enemy tends to suppress such disputes between allies. Before the fall of the Soviet Union, the alliance between the U.S. and Europe had reached an apparent apogee, but, notwithstanding their close ties, the relationship on the whole was unusually placid. Open disputes might signal weakness to the common opponent and were minimized whenever possible. Consequently, the transatlantic allies had relatively warm and lucrative trading relations under the auspices of the World Trade Organization; shared leadership in the world’s most powerful regional and international security arrangements; and cooperated in a staggering variety of formal and informal legal, economic, diplomatic and institutional arrangements. The dissolution of their common antagonist in December 1991 did nothing apparent to sever these close relations. While transatlantic trade clashes over bananas, aircraft subsidies, export taxes, and other economic squabbles continued, most students of international

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politics took it for granted that the U.S. and Europe would remain the world's closest allies for the foreseeable future. The prospective lines of battle were thought to be drawn between "civilizations," so that states with shared cultures, such as the U.S., Europe and the Commonwealth, would oppose other states with alien shared cultures, such as China, Latin America, or the Arab world.<sup>2</sup>

The apparent rift between the U.S. and Great Britain, on one hand, and France and Germany on the other, over Operation Iraqi Freedom (OIF) called into question the continued strength of that alliance and the viability of the "clash of the civilizations" paradigm. In July 2003, Robert Kagan went so far as to claim that it is "time to stop pretending that Europeans and the Americans share a common view of the world, or even that they occupy the same world."<sup>3</sup> In Kagan's view, the U.S. understands and uses security diplomacy in a fundamentally different manner than Europe due to differences in their political positions; the U.S. is unilateralist and anti-international law because it can be, and Europe is multilateralist and pro-international law because the UN Security Council is a substitute for the power Europe has lost since the Second World War.

If Kagan's thesis is correct, the possibilities for transatlantic cooperation in building a new world order are limited, if not doomed; we can expect clashes between the erstwhile allies on nearly every issue involving the use of peacekeeping, armed force, state-building, and international institution-building. The U.S. and EU are fated to travel diverging paths in seeking to maintain world order. The logical correlate of this view is that the transatlantic disagreement in the UN Security Council, such as the past and current disputes over how to deal with Iraq, reflects a fundamental difference in world views. The prospects for the Security Council to maintain world public order — which has been subject, in any case, to continual doubts since the Korean War — is prey to not merely the unwillingness, but the positive inability, of the U.S. and Europe to coordinate goals and strategies. What is more, international law is destined to play a primarily rhetorical role in world affairs.

### **From Berlin to Kabul**

The Euro-pessimistic view represents a possible reading of the present and future geopolitical situation, but hardly the most convincing one. In spite of recurrent minor spats over such issues as the ABM Treaty and the International Criminal Court, the U.S. and EU share an alliance unequalled in its durability, scope and diversity, and this alliance is founded on a common respect for international law. For over 55 years, the U.S. and Europe have cooperated, albeit unevenly, in realizing a common view of the world order as dominated by states dedicated to global democracy, universal human rights, relatively unrestricted trade, peaceful settlement of

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<sup>2</sup>Samuel P. Huntington, "The Clash of Civilizations," *Foreign Affairs* 72(3): 22-28 (1993).

<sup>3</sup>Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (2003).

disputes whenever feasible, a sustainable environment, and the development of poorer countries in a manner compatible with capitalist economics. Among these diverse shared goals, three main pillars sustain the longstanding alliance — strong and mutually beneficial trade relations, a desire to spread the liberal political philosophy of human rights and democracy worldwide, and the goal of preventing destabilizing armed conflicts. A commitment to international law is critical to each of these goals.

Notwithstanding these commonalities, examples of U.S. and European divergence on international law in general, and security matters in particular, are not scarce in the UN Security Council. The U.S. under the Reagan Administration was not so quick as its European neighbors to condemn forcefully the illegal South African occupation of Namibia. The U.S. is more friendly to Israel than is most of Europe. And the U.S. under the Bush Administration has proven less concerned about preserving the global environment and cooperating in international security and criminal law matters. Europe for its part was not enthusiastic about U.S. attempts to restore democracy in Cuba and Grenada. Most of Europe opposed the war in Vietnam and several of the most powerful European states opposed OIF. But to scrutinize minutely the bumps in the road is to ignore its overall grade, which is consistently toward transatlantic cooperation and unity in matters of international law and world order. The United States managed to bring the EU along in Operation Desert Storm and in the Balkan War following the breakup of Yugoslavia. It has kept Germany and (at least nominally) France in NATO. The transatlantic allies have consistently cooperated in attempts to resolve the Korean tensions. And the United States and Europe have virtually united in their vision of how multilateral trade negotiations should ultimately materialize.

It is important, then, not to allow the Iraqi conflict and similar squabbles to overshadow the general course of U.S.-EU relations at the beginning of the twenty-first century. This was most clearly illustrated soon after the September 11, 2001 terrorist attacks on U.S. symbols of power and prosperity. At the time, the transatlantic partners seemed to have experienced a kind of epiphany. The governments of Europe and the U.S. were caught unprepared for the viciousness and depravity of which Al Qaeda extremists proved capable. The response from Europe was immediate and concrete. Governments in Europe began identifying and detaining persons connected to the Al Qaeda web of interests, and transatlantic intelligence sharing spiked upward. More than €100 million of suspected terrorist assets in Europe were identified and promptly frozen. In the December 2002 meeting of the Wassenaar Arrangement, the U.S. and Europe agreed to adopt specific antiterrorism export controls and draft guidelines identifying potential terrorists.

Most unusual, though, was the response of the Security Council. Immediately following the 9-11 attacks, the Council began adopting unanimous resolutions affirming “the inherent right of individual and collective self-defence in accordance with” Article 51 of the UN Charter.<sup>4</sup> The reference to self-defense in the resolutions was highly favorable to the United States’ intended policy, as it implied (albeit obliquely) that the concept of self-defense, which has traditionally been circumscribed under international law, could be stretched to cover anticipatory action

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<sup>4</sup>E.g., S.C. Res. 1368 (Sept. 12, 2001); S.C. Res. 1373 (Sept. 28, 2001).

against states harboring terrorists. The choice of phrasing indicated an intention to allow substantial latitude in an area in which states are normally very cautious due to the changing nature of security threats. By accepting an expansive definition of “self-defense” under Article 51 of the Charter, the September 2001 Security Council resolutions demonstrate how the 9-11 attacks rallied international support in general, and European support in particular, to the United States.

America’s European allies backed up this resolution with prompt assistance when the U.S. presented an ultimatum to, and promptly invaded, Afghanistan, which was harboring Al Qaeda and its leadership. Operation Enduring Freedom (OEF) openly aimed to kill or capture Al Qaeda and the Taliban and to establish a secular, democratic system of governance in Afghanistan. OEF prominently featured European cooperation, including special forces teams from the UK, Norway, Denmark, and Germany, as well as surveillance, interdiction and interception operations undertaken by French, German, Greek, and Italian, Dutch, Spanish and UK airplanes and ships.

### **The Iraqi Difference**

Although the Security Council clearly did not intend to issue the U.S. a *carte blanche* to invade any country harboring terrorists, approval of armed action against the Taliban was widespread. The general mood among European leaders was reflected in the statement of President Romano Prodi on October 24, 2001, affirming the EU’s commitment “to do all it can to help bring to justice the perpetrators, organisers and sponsors of” the 9-11 attacks, and “to hold accountable those hiding, supporting or harbouring them. We thus pledged our complete solidarity with the government and people of the United States.”<sup>5</sup> Aside from some minor flares of opposition, European popular sentiment reflected Prodi’s support for OEF.

Following the defeat of the Taliban by coalition forces, the Bush Administration turned to the next persistent thorn in its side — Saddam Hussein. Hussein had long flouted the UN embargo of Iraq and supported terrorists, although no convincing evidence had linked Iraq to Al Qaeda. The 9-11 attacks reminded the Security Council that, if extremists could commit such stupefying atrocities without weapons of mass destruction (WMD), the possession of WMD — their avowed aim — would greatly multiply their power of devastation. In light of Hussein’s noncooperation with twelve years of Security Council resolutions demanding disarmament and an accounting of Iraqi WMD, the meteorological conditions, and the timing of U.S. elections, the policy of neutralizing Iraq acquired a new sense of urgency.

The U.S. accordingly began pushing hard for prompt Iraqi cooperation. In response, the Security Council, after painstaking negotiations among the members, offered Iraq on November 8, 2002, a “last chance” to comply with its obligations to declare and destroy all WMD.<sup>6</sup> Resolution 1441 demanded that weapons inspections, moribund for the past four years, be

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<sup>5</sup>EU Press Release, SPEECH/01/484, Oct. 24, 2001.

<sup>6</sup>S.C. Res. 1441 (Nov. 8, 2003).

resumed and that Iraq cooperate “immediately, unconditionally, and actively.” It pregnantly warned Iraq of “serious consequences” if it continued to violate the obligations it had been flouting for so long. NATO responded by pledging its support for the implementation of the resolution.<sup>7</sup>

Inspections resumed, but Iraq’s cooperation was predictably imperfect. As tensions mounted, the EU’s “complete solidarity” with the U.S. began to dissipate. Flushed with its victory in Afghanistan, the Bush Administration was rapidly bringing an armed confrontation in Iraq to a head, but this time without Security Council consensus. In January 2003, Secretary of State Colin Powell began threatening that Iraq faced military force if it failed to comply with Resolution 1441. The fly in the ointment appeared when France and Germany adopted more conciliatory tones and consolidated their joint position. As U.S. and British war preparations proceeded, Jacques Chirac and Gerhard Schroeder announced opposition to the U.S. request for advance NATO planning for an Iraqi conflict, claiming that “everything must be done to avoid war.”<sup>8</sup>

At the January 27, 2003, meeting of the Security Council, Hans Blix, Executive Chairman of UNMOVIC, announced that, since UNMOVIC had resumed operations in Iraq in November 2002, Iraq had still not come to “genuine acceptance” of the Security Council’s demand that it disarm.<sup>9</sup> What followed was seven weeks of wrangling and head-butting between the U.S., UK and Spain on one hand, and France, Germany and Russia on the other. On February 5, 2003, Colin Powell arranged a ministerial session of the Security Council to make the case for action against Iraq. At the time, delegates from Germany and Spain sat as temporary members of the Security Council, with Germany presiding. Four out of the fifteen members of the Council, then, were European states. Powell’s presentation emphasized the deficiencies in Iraq’s compliance with Resolution 1441 that Blix had reported and shared U.S. intelligence on Iraq’s alleged “active and systematic efforts” to hide inculpatory evidence and to stymie the UNMOVIC inspection teams.<sup>10</sup> Powell concluded his discussion of Iraq’s alleged WMD on a note of urgency, arguing that Iraq posed a grave threat to the world and warning that the Security Council would become irrelevant if it did not respond “effectively and immediately.”

The Franco-German reaction to Powell’s presentation betrayed as deep a split in Europe as in the Security Council. The day before the Security Council meeting, the EU President had announced that time was “running out” on Iraq and that cooperation and disarmament must be immediate, complete and active. Yet, following Powell’s speech, the European reaction was

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<sup>7</sup>NATO, Prague Summit Statement on Iraq, Press Release (2002) 133 (Nov. 21).

<sup>8</sup>*EU Allies Unite Against Iraq War*, BBC News, Jan. 22, 2003, at <http://news.bbc.co.uk>.

<sup>9</sup>S.C. Doc. S/PV.4692 (Jan. 27, 2003).

<sup>10</sup>S.C. Doc. S/PV.4701, at 7-8 (Feb. 5, 2003).

bifurcated. The UK and Spanish delegates concluded that Saddam Hussein was defying the Security Council and, as a matter of international law, was in “further material breach” of Resolution 1441. In contrast, the French and German delegates claimed to see considerable risks in a resort to force and adopted instead a wait-and-see attitude. The Franco-German concept of “time running out” reflected Old World-type diplomatic temporizing, while the U.S. concept of “time running out” reflected New World-type quadrennial elections.

Much like Krazy Glue, these positions solidified instantaneously. As if to prove the maxim that politics makes strange bedfellows, on February 10, France, Germany and Russia, responding to increasingly hawkish American rhetoric, issued a joint report calling for more weapons inspectors in Iraq and more resources for them. The three countries announced their determination to do everything possible to achieve the peaceful disarmament of Iraq. That France and Germany chose to issue the declaration with Russia and not through the EU indicated the disaccord in Europe as to how the tensions in the Security Council should be handled. In the following weeks, France and Germany argued vehemently that the inspections were making progress and that armed attack was unwarranted. While admitting that Iraq had not fully complied with UN demands, they claimed to feel satisfied with Iraq’s progress and jointly with Russia presented the Security Council with a proposal to bolster the inspection regime.<sup>11</sup>

This proposal met with opposition from the U.S., Spain and the UK. Powell retorted that more inspections would merely shift to the Security Council a burden of verifying compliance that fell properly on Iraq. He further reiterated the consequences of a failure to disarm Iraq for the credibility of the Security Council. Spain and the UK noted that no delegate had asserted that Iraq had yet complied with Resolution 1441, and that inspections necessarily rely upon a voluntary compliance that was not forthcoming. The U.S., Spain and the UK jointly circulated a draft amendment to Resolution 1441 specifying a deadline before which compliance must be satisfactory.<sup>12</sup> Perhaps foreseeing the difficulty of proving full compliance, and the resulting possibility of an authorized resort to armed conflict upon expiration of the deadline, France, Germany and Russia blocked its adoption.

Only one week after the last Security Council meeting, the U.S. abruptly terminated the debate by invading Iraq. On the day that OIF was scheduled to commence, March 19, the rhetoric in the Security Council had reached an extreme. While agreeing that Iraq’s cooperation was unsatisfactory, Germany “emphatically reject[ed]” the war and stated that the Bush Administration’s policy of military intervention had “no credibility.” The French delegate’s speech was milder, at once implying that OIF lacked legal and moral authority and disrespected Iraq’s sovereignty, yet calling for the Security Council to intensify its fight against terrorism

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<sup>11</sup>S.C. Doc. S/2003/214, annex (Feb. 24, 2003).

<sup>12</sup>S.C. Doc. S/PV.4707 (Feb. 14, 2003); S.C. Doc. S/PV.4714 (Mar. 7, 2003).

“with all the economic, legal and political weapons available.”<sup>13</sup> Notwithstanding this opposition, the U.S. had gathered a coalition of forty-eight countries to support OIF, including fourteen present or forthcoming EU members.<sup>14</sup> It was clear that, with or without Franco-German opposition in the Security Council or NATO support, the U.S. and its “coalition of the willing” intended to wage war.

The successful invasion and occupation of Iraq, and soon the trials of Saddam Hussein and his top officials, has reaffirmed the potential seriousness of continued violations of Security Council resolutions. The Security Council has reaffirmed that preemptive wars must be very limited in scope and purpose by insisting on prompt independence for Iraq and an end to the occupation.<sup>15</sup> The United States military violated the humanitarian rights of many of its prisoners of war but, upon discovery, promptly offered reparations according to its understanding of the rights of prisoners of war under *ius in bello*. And, of course, little evidence of WMD has been found even today, which confirms that international law must include limitations on unilateral decisions to take hostile action in pursuit of preemptive self-defense.

### **The Significance of the Rift Over Iraq**

It is important to recognize that, *pace* Kagan, the rift in the Security Council was not a U.S.-European conflict about the importance of international law. Several major European states supported OIF. The most significant schism was intra-European, with attendant consequences for the prospects of a European common foreign policy. The implications of the rift for transatlantic relations should not, therefore, be exaggerated. Nonetheless, the conflict might be viewed as the amplification of a split between the U.S. and the most influential members of the EU over the proper role of the Security Council in maintaining world order. France’s veto power in the Security Council means that such a split could seriously impair the Security Council’s ability to shape or maintain world public order. The strained Franco-U.S. negotiations during the June NATO summit on the organization’s future role in maintaining security in Afghanistan and Iraq seems to confirm that threat.<sup>16</sup>

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<sup>13</sup>S.C. Doc. S/PV.4721 (Mar. 19, 2003).

<sup>14</sup>The former were Denmark, Italy, Netherlands, Portugal, Spain, and the UK. The latter were the Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, and Slovakia. Turkey also joined the coalition.

<sup>15</sup>In August 2003, the Security Council established an assistance mission for Iraq, UNAMI, whose purpose is to assist in reconstruction prior to independence and to supervise democratic elections. S.C. Res. 1500 (2003); S.C. Res. 1546 (2004).

<sup>16</sup>Gareth Jones, *French-U.S. Tussles Reopen NATO Wounds*, Reuters Newswire, June 29, 2004.

Indeed, the effect of contradictory French and U.S. views on security policy has been keenly felt in NATO. Ironically, on December 13, 2002, NATO and the EU had developed a permanent framework for joint action to be implemented by March 1, 2003.<sup>17</sup> The impasse in the Security Council and the recent Franco-U.S. squabbling casts doubt on the viability of a partnership between NATO, which the U.S. has traditionally dominated, and the EU, in which France and Germany are strong leaders. France had opposed the framework, preferring to develop a common and exclusively European military identity, but the UK had insisted on a closer alliance between the two organizations. While France ultimately ceded the point, it had convinced the other EU members to develop a rapid reaction force separate from (and significantly larger than) NATO's rapid reaction force. On the eve of the breakdown of the last vestige of Security Council unity over Iraqi disarmament, the future of NATO itself looked almost grim. If the U.S. and EU could not coordinate security policy in NATO, they seemed to have little chance of making effective use of the Security Council, where non-Western states with diverse visions of world order can forestall action even on a unified transatlantic position.

The fact that France and Germany allied themselves with Russia and other opponents of decisive action also indicates an unfortunate strain of — charitably speaking — self-serving pragmatism in European politics. It would be understandable if these countries had opposed the war merely as being premature. The plain facts appear to be that the Bush Administration did not possess adequate evidence of any substantial short-term threat to world order posed by the Iraqi government, it never did, and it either lied or exaggerated to justify a prior decision to invade Iraq. Opposing the U.S. pressure to attack Iraq hastily would have been an entirely defensible policy befitting states sitting on the Security Council. Sadly, it is all too clear that a sense of responsibility to world public order did not motivate either France or Germany. Hypocrisy was evident in France's laughable indictment of OIF as failing to respect Iraqi sovereignty, as if the continuation of Hussein's Ba'athist government somehow embodied the sovereign will of the Iraqi people. It is equally evident in the Franco-German pandering to dictatorial Middle Eastern states and failure to safeguard chemical, biological and other profitable but destabilizing military or dual-use technologies.

Fortunately, the prospects for transatlantic cooperation in the Security Council are more sanguine than they at first appear. The Iraq conflict revealed no disagreement about the role of the Security Council *per se*, because the Security Council was necessarily irrelevant. Both the Franco-German coalition and the U.S.-led coalition knew that the Security Council would not approve an attempt to depose Saddam Hussein and the Ba'ath Party government. To obtain explicit approval would have required the support, or at least the abstention, of Russia and China, neither of which was forthcoming under the circumstances. Russia strongly and consistently opposed action against Iraq from the outset. From the perspective of the United States, the Security Council became a mere platform to justify the U.S. decision to assemble an *ad hoc* coalition. There could never have been any serious expectation that the Council would act short of a clear and imminent threat by Iraq to another state, as occurred in the 1990 Gulf War. In

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<sup>17</sup>NATO, Statement by the Secretary General, Press Release (2002) 140 (Dec. 13).

short, France, Germany and the U.S. never had a real occasion to disagree about the role of the Security Council with respect to Iraq. True, France and Germany have proven reluctant to assume the role of guarantors of international security at any significant risk to themselves. But, contrary to Kagan's insistence that the United States and Europe disagree about "first principles" in world public order,<sup>18</sup> the countries' elites were almost certainly on the same page about the proper basic function of the Security Council. And, unless the European attitude toward OEF was a fluke, there is clearly agreement that preemptive self-defense is permissible under international law in some cases. It is likely that, had inspectors discovered significant undeclared stockpiles of WMD in Iraq, or had Iraq ejected the inspectors again, France and Germany would have supported armed action against Iraq in the Security Council. Indeed, there is every reason to believe that they might have joined the OIF coalition and participated actively, as they did in the Gulf War.

Notwithstanding the absence of noble motives all around, France, Germany and Russia did have legitimate arguments to support their opposition to immediate armed action. As mentioned previously, the evidence indicated at least reluctant cooperation by the Iraqi government with Resolution 1441 and the absence of an incipient threat. The issue was not the role of the Security Council, then, but rather what the evidence showed. And this evidence was simply not strong enough on which to base a propaganda campaign to convince stridently anti-war popular opinion in Europe. Given domestic public opinion in Europe and that the U.S. never expected the Security Council act under such circumstances, the disagreement was not so much about whether the Security Council must be the exclusive agency for coping with Iraq under international law, but, rather, whether the U.S. was justified in acting without Security Council approval based on a threat to U.S. national security, i.e., because the conditions for invoking the right of self-defense under Article 51 of the UN Charter had been fulfilled.

Traditionally, self-defense required a clear and imminent threat of attack by the opposing state before action could be taken. The 9-11 attacks evidenced, however, how superannuated that conception of self-defense had become. In an era when irresponsible states and private actors can commit mass murder or deploy WMD without warning, as George W. Bush noted, the threat of unacceptable civilian casualties means that states cannot always afford to wait until an attack has commenced before acting. At some level at least, France and Germany are aware of these circumstances, as they supported OEF even though Afghanistan never attacked the U.S. directly. The difference between Afghanistan and Iraq is that, in the former case, Al Qaeda was responsible for the 9-11 attacks, openly sought to obtain WMD, and threatened to commit more atrocities under the Taliban's protection. In the latter case, although Powell tried to make a case that Iraq was also supporting megaterrorism and threatened the world with WMD, France and Germany were not convinced and, for at least some of the reasons Kagan identified, did not want to be.

The Franco-German reluctance to countenance unilateral action by the U.S. may have had other sources as well. European states in general may be slower to realize the necessity of anticipatory defensive military action because they have, on the whole, less capability for

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<sup>18</sup>Robert Kagan, *America's Crisis of Legitimacy*, FOREIGN AFF., Mar./Apr. 2004.

undertaking such action. In light of the very limited ability of France and Germany to profit from an anticipatory defense doctrine, neither country can be expected to show much enthusiasm about its liberal use by the United States. Nonetheless, as always when analyzing diplomatic language, it is unwise to credit every statement with complete frankness. In particular, it is unlikely that France or Germany views nontraditional military action, such as humanitarian intervention or anticipatory self-defense, as uniformly contrary to international law. France, for its part, has intervened militarily in humanitarian catastrophes without Security Council approval (e.g., Rwanda and most recently the Côte d'Ivoire) and neither France nor Germany insisted on explicit Security Council approval in the cases of the NATO intervention in Kosovo. Indeed, the Kosovo action is generally considered "illegal but legitimate,"<sup>19</sup> but this evaluation did not dissuade France or Germany.

Skepticism is equally justified with respect to the other Franco-German rationales for opposing war in Iraq. For example, it is difficult to credit France with sincerely believing that "war cannot bring about democracy" — a claim that Germany declined to make for obvious reasons. Similarly, the argument that restructuring the Middle East might "exacerbate tensions" in an unstable region<sup>20</sup> has a superficial ring — the U.S. had even less reason than France to wish to create conflict in the Middle East unless it believed that the tensions eliminated by the war outweighed any new ones created by it. In short, France and Germany opposed the war for various reasons, but it is unlikely that they were greatly disappointed by the defeat of Saddam Hussein and installation of democracy in Iraq, as long as they did not have to soil their own hands. There is no "great philosophical schism." There is, however, quite a lot (as always) of basing foreign policy on domestic political expediency.

As mentioned earlier, while the U.S. and Europe may disagree about some details on the content of international law, they share a commitment to the three pillars of their common foreign policy: free trade, worldwide human rights and democracy, and the maintenance of a stable world public order. There was little question that deposing Saddam Hussein was likely to advance all three goals in the Middle East. Iraqi disarmament by itself could have no significant effect on freedom, human dignity, prosperity or democracy in Iraq. Such a result could only be achieved by deposing Saddam Hussein and the Ba'ath Party leaders and installing a constitutional government based on a democratic model.

Instead, the disagreement arose from a more superficial conflict of interests. France and Germany knew that the notion of fighting terrorism was mostly a pretext for the U.S. desire to depose Saddam Hussein, and they also knew that both the U.S. and EU stood to gain by a renewal of trade with Iraq and an end to its support for terrorism. But just as the U.S. had certain

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<sup>19</sup>Independent Int'l Comm'n on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* 185-98 (2002).

<sup>20</sup>S.C. Doc. S/PV.4714, at 20 (Mar. 7, 2003) (statement of D. Galouzeau de Villepin).

self-interested ulterior motives in pressing for an early war with Iraq, France and Germany had their own domestic interests to look after. Leaders of both countries knew that their citizens strongly opposed the war and that support for the war carried certain sacrifices to their foreign policy goals.

The U.S. goal of deposing Saddam Hussein was by no means anathema to France and Germany, but both governments strove to restore stability to Iraq while maintaining their other foreign and domestic policy goals. Had the U.S. been able to propose a compromise approach in the Security Council that would have protected these interests without sacrificing the U.S. goals, France and Germany might have seized on and supported it, as it would have fostered the further mutual aim of transatlantic solidarity. In the case, U.S. policymakers appear to have determined that the immediate defeat and capture of Saddam Hussein served U.S. domestic interests better than any such compromise.

### **A Unified Vision of International Law?**

The important point to realize is that, notwithstanding an outcome to the Security Council debates contrary to the French and German positions, French and German leaders were not necessarily displeased with OIF. Given their foreign policy commitments over the past fifty years, the primary policy goals of the French and German governments with respect to Iraq appeared to be the following: (1) to prevent Iraqi sponsorship of terrorism and development or stockpiling of WMD; (2) to promote the long term goals of democracy, human rights, and political stability in the Middle East; (3) to avoid appearing to their domestic populations as warmongers or puppets of the United States; (4) to minimize alienation of other Arab states, thus exposing themselves to terrorism; and (5) the related goal of benefitting economically, to the extent possible, from friendly relations with Saddam Hussein and other Arab leaders as long as possible, recalling that France and Germany have no natural sources of oil and were the largest creditors of Saddam Hussein's government.

Had France and Germany supported the war against Iraq, they could not have accomplished the third and fourth goals. Their support could have merely symbolic value, as their abilities to project military power abroad are limited and, in any case, Russia and China were certain to veto any attempt to authorize military action in the Security Council. Yet, it must have been obvious that the first and second goals would remain equally unfulfilled as long as Saddam Hussein remained in power. The ideal solution for France and Germany, then, was to oppose the war steadfastly and vehemently without actually preventing it, as in this manner at least four of the five of the goals could be accomplished.

That no true French and German government disapproval of OIF created any serious rift with the U.S. over the content of international law is evident from their statements in the Security Council after March 19. As noted, March 19 heard the strongest language by EU members in the Council, and even then, neither France nor Germany accused the U.S. of aggression. Within a week, the EU states that had opposed war began the process of reconciliation. Unlike Russia and China, which repeatedly condemned the U.S. action and lay blame for the conflict on the U.S. and UK, Germany and France merely expressed regret at the turn of events without apportioning blame. The Greek delegate, speaking on behalf of the EU, assured the Security Council that the EU wanted "to contribute effectively to conditions allowing all Iraqis to live in freedom, dignity

and prosperity under a representative Government that will be at peace with its neighbours . . . .”<sup>21</sup> This would have been impossible in the foreseeable future without OIF.

In the following weeks, cooperation and compromise resumed on issues in which the allies had long been in agreement, such as the coordination of humanitarian aid for Iraq, the continuation of the UN Iraq-Kuwait Observer Mission,<sup>22</sup> and the establishment of a UN Assistance Mission for Iraq.<sup>23</sup> In the words of the French delegate, the UN’s role in Iraqi reconstruction “made it possible to regain the unity of the Security Council.”<sup>24</sup> Transatlantic agreement has also been unimpaired by any dispute about the shape of Iraq’s political future. All parties agree that Iraq should form a constitutional representative democracy.

### **Common Goals, Different Strategies**

As noted earlier, close allies usually have enough in common that they can find something about which to bicker pretty much constantly, as the Franco-American dispute over the role of NATO in the Middle East illustrates. This is not a sign of a serious rift; it is the normal result of tensions between fulfilling the demands of domestic constituencies and sharing control over policy issues for mutual benefit. The same process happened and is continually recurring in the negotiations of the EU member states to harmonize foreign policy. States, like all living entities, organic and inorganic alike, are fundamentally self-serving, as they must be to survive and prosper. Their nature does not, however, preclude cooperation or even altruism of a sort. Cooperation is especially likely among states sharing common ideological goals.

It is abundantly clear that the U.S. and Europe continue to share the common values and long-term goals in international relations that motivated the creation of the Security Council in 1945. It is evident from their mutual sponsorship of many regimes designed to promote international security and peace. This cooperative mission of global security is pursued through

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<sup>21</sup>S.C. Doc. S/PV.4726, at 19 (Mar. 26, 2003).

<sup>22</sup>E.g., S.C. Doc. S/PV.4732 (Mar. 28, 2003); S.C. Doc. S/PV.4743 (Apr. 24, 2003); S.C. Doc. S/PV.4783 (July 3, 2003); S.C. Res. 1490 (July 3, 2003).

<sup>23</sup>S. Res. 1500 (Aug. 14, 2003); S.C. Doc. S/PV.4808 (Aug. 14, 2003).

<sup>24</sup>S.C. Doc. S/PV.4791, at 15 (July 22, 2003). The German delegate also welcomed this role as “the beginning” of greater balance in the “common effort to rebuild Iraq economically and with respect for democratic values and the rule of law.” S.C. Doc. S/PV.4808, at 4 (Aug. 14, 2003).

the Nuclear Suppliers Group, Missile Technology Control Regime, Wassenaar Arrangement, Australia Group, the North Korean Energy Development Organization, and, less directly but no less crucially, by active participation in the OECD, World Bank, IMF, WTO and other institutions designed to foster international economic and, consequently, political, stability. That the U.S. and EU do not always agree on the means by which these shared goals should be achieved is equally evident. Frequent disagreement on such matters is no cause for concern — on the contrary, a diversity of views fosters democracy in international relations in general and in the Security Council in particular, and democracy is a shared goal of the U.S. and Europe. The litmus test for a healthy alliance is not whether the allies maintain perfect and uninterrupted harmony, but whether they maintain a general trajectory toward their shared goals.

These considerations give every reason to believe that the U.S. and EU can and do agree on the basic role of the Security Council in maintaining world order, and will continue to do so in the future. This role is necessarily circumscribed by the need for consensus among all permanent members, in all their diversity of interests and political perspectives. In the Kosovo intervention, for example, the United States was able to act through NATO with European support while it was stymied in the Security Council, because Russian and China perceived an interest in impeding UN intervention. For political reasons, the U.S. can be expected to continue seeking Security Council support for its desired international action. For equally political reasons, unanimous EU support is not always assured. Strategic behavior by the EU in the Security Council can serve the interests of the U.S. even if it means facing opposition from old allies in UN debates. The United States tied itself to Europe's security and prosperity in 1945. Where EU opposition increases that security and prosperity without compromising the outcome of the proposed U.S. action, the U.S. does well to recall the playground wisdom regarding sticks and stones. And all UN members do well to remember that an impasse in the Security Council does not and cannot preclude responsible action by states to preserve or restore world public order when necessary and, sometimes, before it becomes necessary.