

Fights about rules: the role of efficacy and power in changing multilateralism

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Introduction

The American-led Iraq war that began in 2003 has generated intense discussion about when it is legitimate to use force and what force can accomplish. Often this debate is portrayed as a breakdown in consensus, with the US charting a new unilateralist course that undermines existing multilateral understandings of how force should be used. Often, too, the debate is portrayed as a transatlantic one in which Europeans (notably France, supported by Germany) are leading the multilateralist defence against growing US unilateralism.

Both portrayals are overblown and simplistic. While the US is resisting current multilateral rules in some spheres, it is actively promoting more and more intrusive rules in others (such as trade). Further, the US has usually opposed multilateral rules it does not like, not with unilateralism, but with alternative forms of multilateralism. This has been true even of an administration as suspicious of the existing multilateral rules as the current Bush administration. Thus, if the UN will not approve military action in Kosovo, the US goes through NATO (under Clinton). If the US thinks the Nonproliferation Treaty (NPT) is not working, it works through the Nuclear Suppliers Group or sets up a Proliferation Security Initiative (under Bush). Similarly, the perception of a large transatlantic gap in allies' attitudes toward use of force is overstated. There has been transatlantic agreement on many uses of force in recent years. Europeans were active participants in the 1991 Gulf War, with the French among those patrolling the no-fly zone in Iraq in the years after the war, and the Kosovo action was supported by all members of NATO. The gap in the Kosovo case was not a transatlantic one, but a gap between the transatlantic alliance and Russia.

Current debates over use of force look less like a fight between unilateralism and multilateralism than a fight over what exactly multilateralism means and what the shared rules that govern use of force are (or should be). Similarly, the gap in views on use of force is not only, or perhaps even primarily, a transatlantic one. There are many gaps in views on this question – gaps within Europe, gaps within the US, gaps across the international system. This is hardly an unusual state of affairs in world politics. Disagreements about when force should be used and can be used effectively are the norm, not the exception, historically. The more interesting questions for us as analysts are: what, exactly, do states think the rules governing force are; what do they think they should be; and how will these disagreements shape future action?

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To begin to answer these questions this article explores the contours of contemporary disagreements to identify some of the most prominent disagreements on use of force issues. Geographically, this brief survey identifies four important gaps and discusses some of the issues driving them. I then offer some conceptual tools for thinking about why these gaps exist and what is fuelling these arguments. Much of the disagreement about use of force can be understood as relating to two broad problems. One is the nature of multilateral rules and the ways they accommodate power. While action according to multilateral rules is broadly viewed as most legitimate, particularly among publics, actors disagree strongly about what the rules mean and what behaviour they require, particularly in the face of huge power asymmetries. Second, and related, actors often frame arguments about the legitimacy of force as if it were divorced from effectiveness and vice versa. Legitimacy and effectiveness are deeply intertwined. Understanding how this is so potentially offers some ways to reframe conversations in a more productive way.

Gaps, gaps, everywhere: disagreements about use of force

Harmony, much less unison, in world opinion about exactly when and how force should be used has been hard to come by over the centuries. Contemporary politics is not unusual in its discord on this topic. Episodes of widespread support for force, such as we saw in the 2001 invasion of Afghanistan, are as unusual as the 9/11 terrorist provocation for that action. Most uses of military force by most states are controversial among at least some parties. In contemporary politics I see at least four ‘gaps’ or ongoing disagreements about use of force issues that have the potential to shape global norms in significant ways. In addition to a transatlantic gap, there is an intra-Europe gap, and intra-US gap, and at least one large global gap between the world’s biggest states (US, China, India, maybe Russia) and others.

Gap 1: the transatlantic gap

Disagreements between the US and its European allies over when force should be used are hardly new. They existed even during the Cold War. The Suez crisis, for example, rivals the recent Iraq crisis in the depth of anger and distrust it created within the alliance, particularly between the Americans and the French, but with some roles curiously reversed. In that case, ironically, it was the Europeans who used force against a sovereign state, bypassing the Security Council, and the US that took the matter to the UN. After the Cold War, serious disagreements began to surface in the mid-1990s, first over the Balkans and then over the issue of how to deal with threats from what Americans called ‘rogue’ states.¹ Failure of Europeans to manage crises in the Balkans effectively persuaded many in Washington, first, that diplomacy without force (or credible threats of it) could not solve these crises and, second, that the Europeans were unable or unwilling to use force. This view coloured other

¹ Anthony Lake, Clinton’s National Security Council Advisor, initially termed these ‘backlash states’. See his piece in *Foreign Affairs*, ‘Confronting Backlash States’ (March/April 1994), pp. 45–55.

transatlantic debates over Iran, Iraq, Libya, Cuba, and North Korea where Americans and Europeans consistently split in approach, with the US pushing for a tougher line than Europeans. Iraq, in particular, was a focal point because of the ongoing need to manage that sanctions regime. By the mid-1990s, both sides agreed that sanctions were unlikely to bring down the Saddam Hussein's regime or radically change his policies but could not agree on an alternative approach. Europeans were inclined toward policies of engagement; Americans, in this case supported by the British, were much more willing to use coercion and did so, for example in Operation Desert Fox, sparking protests from the French and others.² The initial result of the September 11th attacks was to paper over this split. NATO invoked Article V within hours and the biggest problem faced initially by the allies was that the Europeans wanted to send more troops to Afghanistan than Washington was prepared to accept.³

Differences arising from the US war against Iraq are obviously much more complex than I can deal with here, but in basic contour they boil down to some common types of disagreement. Americans perceived a much more serious threat from Iraq than did France or Germany; Americans are more able to use force to address problems and more willing to do so; Americans, and the Bush Administration in particular, were much less confident in the ability of non-forceful tools, such as UN weapons inspectors, to protect them from threats. These three issues – threat perception, power capabilities, and effectiveness of multilateral institutions – have shaped the transatlantic debate.

Differences among governments on these issues are well known and have been amply documented elsewhere.⁴ However, government policies were often not supported by large swathes of the public, adding to the tension surrounding the conflict, and it is revealing to see where disagreements do (and do not) exist in public opinion on use of force.

- While Europeans and Americans generally agree in their assessments of major threats (terrorism, especially with weapons of mass destruction; military conflict between Israel and its neighbours; global disease such as AIDS), Americans are more likely to believe they will be the target of a terror attack.⁵
- American publics are more willing than Europeans to use military force for a variety of purposes: to prevent a terrorist attack, stop nuclear proliferation, defend a NATO ally.⁶

² For more on the UK role, why they sided with the US in this controversy, and what it might mean for evolving norms, see Christine Gray, 'From Unity to Polarization: International Law and the Use of Force Against Iraq', *European Journal of International Law*, 13:1 (2002), pp. 1–19. See also discussion in next section.

³ Philip H. Gordon and Jeremy Shapiro, *Allies at War: American, Europe, and the Crisis over Iraq* (New York: McGraw-Hill, 2004), p. 2.

⁴ See, for example, Gordon and Shapiro, *Allies at War*; Joanna Spear, 'The Emergence of a European "Strategic Personality"', *Arms Control Today* (November 2003); James Thomson, 'US Interests and the Fate of the Alliance' *Survival*, 45:4 (2003), pp. 207–30 at 216–17.

⁵ German Marshall Fund of the United States and Compagnia di San Paolo, *Transatlantic Trends 2004*, (<http://www.transatlantictrends.org/>); www.gmfus.org at pp. 11–12 and topline data at ([http://www.transatlantictrends.org/apps/gmf/ttweb2004.nsf/0/461EA7D25CC77DA185256F020059C76D/\\$file/Topline+with+logo+final.pdf](http://www.transatlantictrends.org/apps/gmf/ttweb2004.nsf/0/461EA7D25CC77DA185256F020059C76D/$file/Topline+with+logo+final.pdf)). The *Transatlantic Trends* data were collected in June 2004.

⁶ *Transatlantic Trends 2004*, p. 11.

- Fifty-four per cent of Americans agree with the proposition that the best way to ensure peace is through military strength; only 28 per cent of Europeans do.
- Seventy-two per cent of Europeans believe the war in Iraq has increased the threat of terrorism; only 49 per cent of Americans share this view.⁷
- Eight-two per cent of Americans believe that under some conditions, force is necessary to obtain justice; only half that proportion (41 per cent) of Europeans agree.⁸
- When asked about power capabilities, 71 per cent of Europeans believe the EU should become a superpower like the United States. However, 47 per cent withdraw that support if superpower status requires greater expenditure.⁹
- Fifty-nine per cent of Americans believe it is justified to bypass the United Nations when vital interests of their country are involved, although 44 per cent of Europeans also agreed with this statement about their countries.¹⁰ However majorities in both the US and Europe believe international approval of some kind would be essential before using military force in a future Iraq-like situation.¹¹

Overall, Americans seem more willing to use force than Europeans in part because they perceive greater threat but also because they believe force is effective. It is effective for dealing with threats but also for doing good in the world ('ensuring peace', 'securing justice').

Gap 2: the intra-European gap

While there are clear transatlantic differences on the use of force, there are also important differences within the European Union which have become clear, not only in the dispute over Iraq but in the efforts to negotiate a common security and defence policy. Governments differ, with Britain and many of the Eastern countries having different approaches than France, Germany, and the Nordics. They have differed both in their willingness (also ability) to project force, but also in their view of the appropriate relationship among multilateral institutions projecting force. Blair has had a much more globalist view of force projection than has France, for example, and Britain's policies toward CSDP and NATO, toward defence procurement, and general willingness to deploy, have reflected this view.¹²

Publics also differ, both across countries and from their own governments, in their views on appropriate use of force.

- When asked whether war is sometimes necessary to secure justice, support ranged from 69 per cent in the UK and 53 per cent in The Netherlands to 25 per cent in Spain.
- Only 24 per cent of Poles approve of their government's deployment of troops in Iraq; 28 per cent of Portuguese and 21 per cent of Slovenians similarly disapprove

⁷ *Ibid.*, p. 12.

⁸ *Ibid.*, p. 11.

⁹ *Ibid.*, p. 6.

¹⁰ *Ibid.*, p. 13.

¹¹ *Ibid.*, p. 15.

¹² Jolyon Howorth, 'France, Britain, and the Euro-Atlantic Crisis', *Survival*, 45:4 (2003), pp. 173–92.

of their own deployments. By contrast, Dutch approval was 58 per cent in June 2004.¹³

- Europeans are divided over whether it is justified to bypass the UN when vital interests are at stake. While 44 per cent believe bypassing would be justified, 49 per cent disagree. Differences between European countries are significant, ranging from 58 per cent of Dutch supporting such a bypass to only 37 per cent of Italians.¹⁴

Thus, while European public opposition to the 2003 Iraq war was widespread and strong, attitudes toward use of force issues more generally are much more varied.

Gap 3: the intra-American gap

The 2004 US election revealed deep splits in the American public on many issues between what have colloquially become known as the 'red' and 'blue' factions of the country. 'Polarized', is the word often used in the press to describe US opinion, and use of force issues are among the most polarising. Public attitudes on national security issues have become more strongly associated with party affiliation than they were in the late 1990s when these issues barely registered as correlates of partisanship. Now, national security issues are twice as likely as economic or social issues to shape party identification.¹⁵

- Increasing numbers of Republicans believe that military strength, rather than good diplomacy, is the best way to ensure peace. The percentage endorsing diplomacy as the better strategy has dropped from 46 per cent in 1999 to 32 per cent in 2004. Views among Democrats are shifting in the opposite direction. In the 1990s roughly 60 per cent of Democrats endorsed diplomacy as the best way to ensure peace; that figure rose to 76 per cent in 2004.¹⁶
- Americans overall are cautiously supportive of at least the occasional use of force against countries that may seriously threaten but have not attacked the US (60 per cent) but views vary strongly with party affiliation. Conservatives support such pre-emptive force by margins ranging from 69–89 per cent. Democrats oppose it by margins of 54–67 per cent.¹⁷
- Americans continue to be split, largely on party lines, about whether the war in Iraq was the right decision. Republicans and conservatives support it by margins of 72–94 per cent; Democrats and liberals oppose it by 61–87 per cent. Overall, 49 per cent say it was the right decision; 44 per cent say it was the wrong choice.¹⁸

¹³ *Transatlantic Trends 2004*, p. 14.

¹⁴ *Ibid.*

¹⁵ Pew Research Center for People and the Press, *Politics and Values in a 48%–51% Nation*, 24 January 2005, (<http://people-press.org/reports/display.php3?ReportID'236>).

¹⁶ Pew Research Center, *Politics and Values*.

¹⁷ Pew Research Center, *Beyond Red and Blue*, 10 May 2005, (<http://people-press.org/reports/display.php3?ReportID'242>). Note that Democrats show some splits on this with a group Pew terms 'Conservative Democrats' endorsing pre-emptive force by 58–32 per cent.

¹⁸ Pew Research Center, *Beyond Red and Blue*.

- Republicans are much less likely than Democrats to believe that UN approval is required before using force (26 per cent versus 81 per cent.) However, 46 per cent of Republicans believe it is essential to secure approval from European allies before using force; 77 per cent of Democrats share this belief.¹⁹
- A strong majority of Americans supports a wider role for the UN and believes the United States should be more willing to take decisions to the UN even if that means the US will have to go along with a policy that is not its first choice.²⁰ However, partisanship colours these views. Democrats view strengthening the UN as a higher foreign policy priority than do Republicans (89–53 per cent). Party leaders are more split. Ninety per cent of Democratic leaders agreed that strengthening the UN should be an important policy goal: only 43 per cent of Republican leaders do and 55 per cent oppose it.²¹

Institutions of the US government are not split the way the public is. While the presidential election was decided on a 51–48 per cent vote, Republicans control both the executive and legislative branches. The recent election returned the Bush administration for another term and increased Republican majorities in both houses of Congress. Further, Republican leaders have stronger partisan views than the public generally.²² Thus, unlike the EU, internal splits in the US have not influenced policy in marked ways in recent years, however they suggest caution when projecting current policies into the future.

Gap 4: global splits

The transatlantic community is hardly the sole arbiter of global norms on use of force. Other states have strong views on these questions and have been able to make those views felt on a variety of issues. Both China and Russia have been critical of transatlantic enthusiasm for use of force to accomplish various humanitarian missions. Both fear, with some reason, that making human rights violations a legitimate excuse for external military intervention will cause problems for them in places like Tibet, Taiwan, and Chechnya. The Chinese have been particularly vocal in their opposition to what they view as attempts to limit state sovereignty on humanitarian grounds.²³ This opposition has been widely shared by among developing countries and the G-7 Declaration at Havana declared: ‘We reject the so-called ‘right’ of humanitarian intervention, which has no legal basis in the United Nations

¹⁹ *Transatlantic Trends 2004*, p. 27.

²⁰ Chicago Council on Foreign Relations, *Global Views 2004*, (http://www.ccr.org/globalviews2004/sub/usa_summary.htm).

²¹ PIPA/Knowledge Networks Poll, *Opportunities for Bipartisan Consensus: What Both Republicans and Democrats want in US Foreign Policy*, 18 January 2005. (http://www.pipa.org/OnlineReports/mandatepoll/Report01_18_05.pdf).

²² PIPA/Knowledge Networks Poll.

²³ See, for example, (<http://ee.china-embassy.org/eng/zggk/xzgwjjs/t110315.htm>); (<http://www.fmprc.gov.cn/eng/wjbj/zjzg/gjs/gjzzyhy/2594/2602/t15218.htm>), for Chinese arguments about the Kosovo intervention.

Charter or in the general principles of international law'.²⁴ Developing countries like India and Pakistan argue strongly that the current nuclear regime, as embodied in the NPT, is an unfair attempt by the nuclear 'haves' to keep the 'have-nots' down. Failure of the 'haves' to reduce their nuclear arsenals as stipulated in the treaty have compounded resentment as became glaringly obvious during the recent negotiations over NPT renewal. Debates over the International Criminal Court also reveal global 'gaps'. While the US has been painted as the chief obstructionist in transatlantic debates over the ICC, it has important company in China, India, and Russia, none of which has ratified the treaty.²⁵ The fact that the ICC treaty negotiations bypassed the UN Security Council – the body held up by many ICC supporters in other fora as the necessary arbiter of legitimacy on force issues – raises some interesting questions about what, exactly, is implied when multilateral institutions legitimate action in use-of-force matters, questions that are discussed below.²⁶

Global opinion surveys show very strong support for the United Nations generally but also strong support for UN reforms, particularly for adding new members to the Security Council. Germany, Japan, India, and Brazil receive the most support. Publics in most countries also support modifications to the UN veto. Among 23 countries surveyed in a recent BBC World poll, publics in all but two supported the idea of allowing the Security Council to override the veto of a permanent member. Publics in permanent member states were reminded that their own country would lose the absolute veto. They were asked if they would support a rules change such that 'if a decision were supported by all other members, no one member, not even (your country), could veto the decision'. Interestingly, 57 per cent of Americans polled favoured giving up the absolute veto; 56 per cent of Britons, and a plurality (48 per cent) of Chinese agreed (36 per cent opposed). Overall, citizens in 21 countries favoured such a rules change (16 by majorities, 5 by pluralities). Citizens in only two countries were not supportive: France and Russia. The French were evenly divided (44 per cent in favour, 43 per cent opposed); Russians were weakly opposed (25 per cent in favour, 29 per cent opposed with 46 per cent not answering).²⁷

Disagreements about use of force issues are thus real and deep, but they are also far more complex than a simple transatlantic divide. Divisions are broad, indeed global, on many issues, with some of the world's largest states (and possessors of its largest militaries) having markedly different views from others. Disagreements also exist within states, including some of the most influential states on use of force matters. Further, people are arguing about some of the most basic issues concerning use of force. Divisions exist concerning the appropriate goals of force (for example, whether it can be used to secure justice or for humanitarian protection), whether multilateral authorisation is required and if so, by what body (the UN or NATO),

²⁴ Declaration of the Group of 77 South Summit, Havana, Cuba, 10–14 April 2000, (http://www.g77.org/Declaration_G77Summit.htm). However, note again that public attitudes diverge from government views. In a recent poll of 10,809 Africans in eight countries, 65 per cent believe the UN should have the right to authorise the use of military force to prevent severe human rights violations such as genocide. Program on International Policy Attitudes, 'The Darfur Crisis: African and American Public Opinion', 29 June 2005, (http://www.pipa.org/OnlineReports/Africa/sudan/062905/Darfur_Report062905.pdf).

²⁵ (<http://hrw.org/campaigns/icc/ratifications.htm>), as listed 31 May 2005.

²⁶ John van Oudenaren, 'What is "Multilateral"?', *Policy Review* (February/March 2003), pp. 33–47; David Davenport, 'The New Diplomacy', *Policy Review*, 116 (December 2002).

²⁷ BBC WorldPoll, 22 March 2005, (http://www.pipa.org/OnlineReports/BBCworldpoll/032005/Report03_20_05.pdf).

and whether it is effective (for example whether it will deter proliferators or reduce terrorism.)

One striking commonality, however, is the widespread public support for multilateralism in uses of force. A number of scholars have documented the rise and spread of multilateralism as a social form in world politics, and we should not be surprised that its effects have permeated use of force debates as well. Public support for multilateral action seems not to have translated into happy agreement on all issues, however, and the remainder of this article offers two arguments that might help us think about these differences conceptually. First, I examine debates over multilateralism and argue that controversy is best understood, not as a debate over unilateralism versus multilateralism, but as a debate over what the multilateral rules should be and how they should accommodate power disparities. Second and related, I explore debates over legitimacy in using force and how legitimacy might be related to effectiveness. Debates about the UN, for example, often turn on whether its procedures will actually work – whether they will bring about the results members say they want. Effectiveness is not irrelevant to legitimacy, and I explore how this interplay might operate.

Multilateralism

The rise of multilateralism as a policy preference is by no means unique to use of force issues. Indeed, many might say that use of force has been one of the last and most difficult spheres for multilateralism to penetrate. Countries can be particularly jealous in guarding their autonomy of action when it comes to matters of national security, yet we have seen a proliferation of multilateral security arrangements in the last sixty years that is unprecedented in world history. Multilateral laws of war have become more elaborate and more widely recognised. Multilateral treaties on arms control have mushroomed and now exist in many flavours: nuclear, biological, chemical, missiles, landmines. Deployments of force through and by multilateral organisations have increased in number and size.

Many of the reasons for multilateralism's spread are obvious and functional. States simply cannot get many of the things they want without engaging in multilateral action. Certainly they cannot build a robust economy without it, but they also cannot rebuild failed states, stop drug trafficking, or curb proliferating WMD without multilateral action. These clear functional reasons for multilateralism stemming from growing interdependence have long been understood and much of the neoliberal-institutionalist literature on regime creation and institutional design emphasises the way in which international institutions might be pareto-improving for members.²⁸ Functionality has not been the only spur to multilateralism, though, and, indeed, it is not clear that all multilateralism is functional. Much of it is driven by ideas, identities, norms, and values, often coupled with power. US foreign policy after 1945 prized multilateralism and institutionalised it in the architecture created after

²⁸ See *inter alia*, Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Economy* (Princeton, NJ: Princeton University Press, 1984); and more recently Barbara Koromenos, Charles Lipson, Duncan Snidal, 'The Rational Design of International Institutions', *International Organization*, 55:4 (2001), pp. 761–99.

the Second World War, in part as an alternative to empire.²⁹ Multilateral rules and institutions also draw support from their rational-legal character which, as Max Weber and others have argued, are culturally valued and uniquely powerful in modern life. The spread of bureaucracy and law at a global level, both of which serve to institutionalise multilateral action, are occurring for many of same cultural and ideational reasons that created bureaucratised institutions nationally a century ago.³⁰ These explanations for the rise of multilateralism are by no means mutually exclusive and, far from being surprised, we should probably view recent multilateralism's spread as overdetermined.

Despite its history as a proponent of multilateralism, much of the recent debate has been about whether the US is now turning its back on multilateral norms. The end of the Cold War and the unprecedented power disparities that now exist between the US and all other states have raised questions both inside the US and outside about whether and when the US needs multilateral cooperation to achieve its goals. Policy moves by American administrations in the last decade and strong rhetoric from some parts of the Bush administration have further fed fears abroad of US unilateralism: fears of a US that increasingly 'goes it alone' and does not play by the multilateral rules that have developed since 1945.

To assess these fears of declining multilateralism analytically we must ask: What, exactly, is multilateralism and how would we know it, or its opposite, unilateralism, when we see it? In the scholarly literature, multilateralism is generally understood to have two dimensions, one quantitative, the other qualitative.³¹ Multilateralism entails acting in concert with two or more other states. This much is obvious just from the semantics. If unilateralism is acting alone then logically, multilateralism must be acting with others. By implication, too, the more others one acts with, the more multilateral the action and states often boast about the number of partners in their action as proof of its legitimacy and multilateral character. The Bush administration, for example, has been quick to mention the 30-odd countries involved in the 2003 Iraq action and takes pains to discuss its actions there as acts of 'a coalition'.³²

However, multilateralism is more than a numbers game. If it were only that, 'coalitions of the willing' would be perfectly acceptable as would action by groups of countries most of whose participation is completely symbolic either because they are too small, too weak, or too unwilling to contribute significantly. Multilateralism is more than just concerted action with some number of partners. Those partners have to act in particular ways, specifically they have to act according to some set of generalised rules or principles. Contemporary multilateralism implies a relationship among partners that is based on rules rather than simple power. Those rules, norms,

²⁹ See, *inter alia*, G. John Ikenberry, *After Victory* (Princeton, NJ: Princeton University Press, 2001); Henry Nau, *At Home Abroad: Identity and Power in American Foreign Policy* (Ithaca, NY: Cornell University Press, 2002); Anne-Marie Burley [Slaughter], 'Regulating the World: Multilateralism, International Law, and the Projection of the New Deal Regulatory State', in John G. Ruggie (ed.), *Multilateralism Matters* (New York: Columbia University Press, 1993), pp. 125–56.

³⁰ See Michael N. Barnett and Martha Finnemore, *Rules for the World: International Organization in Global Politics* (Ithaca, NY: Cornell University Press, 2004).

³¹ John G. Ruggie (ed.), *Multilateralism Matters*. Also Stewart Patrick, 'Multilateralism and its Discontents', in Stewart Patrick and Shepard Forman (eds.), *Multilateralism and US Foreign Policy* (Boulder, CO: Lynne Rienner, 2002), pp. 1–44.

³² The number of contributors has varied over time and in type of contribution. See <<http://www.pwhce.org/willing.html>> and <http://www.globalsecurity.org/military/ops/iraq_orbat_coalition.htm>.

principles apply regardless of power capabilities, individual country interests, or convenience of circumstances. It is this qualitative dimension of multilateralism that makes it a distinct form of political action.³³

Multilateralism has a couple of notable features for current debates over US action. First, multilateralism entails some degree of Great Power restraint. Within a multilateral arrangement Great Powers cannot do just anything they want. They restrain themselves to conform with the generally accepted rules of the multilateral structure. Second, and related, multilateralism entails an odd form of equality. Multilateral action is governed by general, impersonal rules. These rules apply to everyone equally. Big states, little states: they all have to play by the same set of rules. These two features – Great Power restraint and equality under the rules – are an important part of what legitimates multilateral arrangements and make them broadly popular, particularly with publics and smaller states. However, it would be a mistake to think that Great Power acquiescence to multilateral rules is altruism of any kind. Strong states restrain themselves and play by multilateral rules out of self-interest. After all, Great Powers usually get to write the rules in these multilateral arrangements, and they write rules that on balance benefit themselves. The US, for example, has written many of the free trade rules and, as a strong economy, benefits disproportionately from that regime. Similarly, the US was an original author of the UN Charter and gave itself a veto in doing so. Despite this, weaker states often value the predictability in Great Power behaviour that comes with rule-governed behaviour, even if those rules favour the strong, and accept such rules as a consequence. This combination of utility and legitimacy has contributed to multilateralism's rapid spread in the past 50 years.

One common misunderstanding, often apparent in contemporary debates, is a notion that multilateralism demands the end of all independent action in foreign affairs and, conversely, that any independent action constitutes a unilateralist rejection of multilateral principles. This is a misreading of both multilateralism's history and the basic logic of the social form. Multilateralism involves acting according to a mutually agreed-upon set of principles and rules. It has never meant that all decisions get made by committee nor has it demanded that states abandon all independent action. Rather, multilateral rules specify what decisions are left to individual states (commonly self-defence, for example) thus delineating the range of agreed-upon unilateral action. The rules also lay out the procedures by which the multilateral 'committee' will operate in areas where it has been authorised. Thus, we have multilateral rules governing the production, use, and transfer of some types of weapons (missiles, nuclear material) but others are left largely to national authorities (for example small arms, which probably kill more people.) The UN's multilateral rules for peacekeeping only allow the organisation to demand financial contributions from members to support peacekeeping operations; it cannot require members to contribute troops. That matter is left to state discretion.

Another common misunderstanding is that the rise of multilateralism and the existence of common rules should somehow eliminate disagreement – far from it. Actors in any rules-based system, domestic or international, argue constantly about

³³ See, *inter alia*, Stewart Patrick, 'Multilateralism and its Discontents'; John G. Ruggie, 'Multilateralism: The Anatomy of an Institution', in Ruggie (ed.), *Multilateralism Matters*; Van Oudenaren, 'What is "Multilateral"?', pp. 33–47.

what the rules are, what they should be, and what they mean for behaviour in any particular situation. This is well understood in the area of trade, where states have set up a Dispute Settlement Body as part of the World Trade Organization precisely to arbitrate fights over what the rules demand of parties. In the security realm, we see similar fights albeit without such clearly organised modes of arbitration. For example, in the Iraq crisis, much turned on issues like what constituted ‘material breach’ of UN resolutions and what was meant by ‘serious consequences’. The 9/11 terror attacks promoted the US administration to adopt a more expansive notion of what actions could and should be encompassed in legitimate ‘self-defense’ under UN rules and international law, notably arguing that ‘preventive war’ must be part of this realm in an age when technology and terrorism had made the previous standard of ‘imminent danger’ ineffective. Other heated disagreements in recent years have similarly turned on different interpretations of what the rules are, which rules apply, and what they require. The US use of alternative multilateral fora (NATO instead of the United Nations, Nuclear Suppliers Group or Proliferation Security Initiative instead of NPT or IAEA) is revealing. Yes, this is ‘forum shopping’ of a kind familiar to political scientists, but the fact that action is oriented to multilateral fora at all confirms the importance of multilateralism to legitimate action. An argument that says, ‘I won’t play by the rules’ is a political loser. It is much more palatable and effective politically to fight rules with rules and argue, ‘I am playing by the rules; they just aren’t *your* rules, and your rules are wrong (or ineffective or inapplicable in this situation)’.

Most of the disagreements, particularly the transatlantic ones, we see over use-of-force issues are best understood as disagreements within a multilateral framework, not rejection of it. As in any rules system, actors have different interpretations of the rules and, not surprisingly, different agendas for changing them. Two issues in particular lie beneath much of the debate we see on use of force. The first concerns the ways in which multilateral rules do (or do not) accommodate power disparities. The second concerns the effectiveness of current rules.

Accommodating power disparities

One frequent source of friction in debates over use of force is the huge disparities in states’ ability to project force. Everybody playing by the same rules concerning use of force sounds lovely, but if, as a practical matter, only a few states can wield force effectively, the rules need to come to some accommodation of those states, both as necessary enforcers of rules and as possible threats to others. Much of the debate in the ‘gaps’ described earlier hinges on this issue. The US has been explicit that its unique power projection abilities and worldwide military presence creates unique concerns evidenced, for example, in its elaborate system of bilateral agreements to protect its military personnel from foreign or ICC prosecution. Others, notably France, have been articulate about the need to use multilateral rules to constrain American ‘hyperpower’ and discretion in using its military capabilities. If rules and multilateralism become no more than tools for the weak to use to coerce and constrain the strong, they will be resisted and ultimately rejected. Conversely, if the rules are viewed as unfair and tyrannical by weaker states, they will be illegitimate

and resisted. The challenge for multilateralism is, and has always been, to devise rules that both accommodate power (so the strong will 'buy in') but are accepted by others.

There is a notion, most commonly articulated in legal circles, that sovereign equality is incompatible with rules that recognise power asymmetries. Political scientists will quickly recognise the fallacy here. Equality of sovereigns is a legal phenomenon, and juridical equality is only one aspect of sovereignty.³⁴ Other aspects of sovereignty play a crucial role in any rules governing sovereign states. For example, empirical sovereignty – the ability to actually exercise control over people, territory and resources – plays a central role in the way rules are made, the way they are enforced, and what they actually say.

Recognition of the need to accommodate power in multilateral rules is hardly new. It was central, for example, in one of the earliest multilateral arrangements, the Concert of Europe. That was explicitly a Great Powers' club that operated, in part, according to a double-edged rule: first, that no Great Power would act alone but second, that no Great Power would be left behind or isolated. The latter was crucial since without it there was no reason for a Great Power to join the Concert.³⁵

Most enduring multilateral arrangements show some accommodation to power asymmetries. The UN Charter does. Vetoes are one obvious mechanism by which power asymmetries are accommodated and interests of strong are protected. The international financial institutions do, and there is clear understanding within those institutions that multilateral rules that disregard power will be both ineffective and illegitimate.

There are a variety of ways to accommodate power within multilateral rules. One obvious way is by allowing the powerful a disproportionate say in writing the rules. Often this happens naturally in the security realm either because the powerful take an interest in some issue and draft rules or because rules are drafted within a body such as the Security Council where the strong have institutionalised power. If they get to write the rules (or at least have strong influence in their drafting), powerful states are more likely to embrace and respect those rules subsequently. Another means of accommodation is that mutually agreed-upon rules can specify special privileges for the powerful within the rules. Sometimes they might do this according to some general, seemingly objective criterion. For example, the international financial institutions distribute votes based on wealth and contributions to these organisations. The practical effect is obviously that strong states get much greater voting power than weak borrower states. Alternatively, rules might name the powerful as recipients of special status, for example the UN Charter specifies five members who get permanent seats and vetoes on the Security Council.

One problem with specification of unequal treatment is that distributions of power in the world often change faster than institutional rules. One might well ask, for example, whether the countries that have the UN veto are still the right powers to be accommodated. This is certainly one of the issues at stake in the 'global gap' in views on use of force, and much of UN reform debate is about whether vetoes have become out of line with the contemporary distribution of power and whether they adequately

³⁴ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999).

³⁵ For more on multilateral norms operating in the Concert, see Martha Finnemore, *The Purpose of Intervention* (Ithaca, NY: Cornell University Press, 2003), ch. 4.

represent the world of the twenty-first century. The NPT similarly contains substantive recognition of power asymmetries, explicitly recognising nuclear haves and have-nots. It, too, has come under pressure as have-nots become more technologically sophisticated and capable of acquiring weapons technology. The international financial institutions have a system of quota review to help substantive power recognition (vote distribution) stay somewhat aligned with economic reality. Few security institutions have similar built-in review systems and this stickiness has been a source of conflict (or 'gaps').

Of course, there are times when states interested in devising new rules move their negotiations outside such formal institutions precisely because they know their aims are opposed by one or more powerful states who will use the rules to block their efforts. Agreements hammered out outside the UN on landmines, nuclear testing, global warming and the International Criminal Court all aimed to use the normative weight of numbers – numbers of signatories – against previously negotiated rules protecting the interests of great powers.³⁶ While the landmines treaty has the quantitative legitimacy that comes with numbers (it has 144 signatories), non-signatories (which include the world's largest states and militaries – the US, China, Russia, India) have objected to its failure to conform to shared principles of legitimate procedure at the UN, procedures which recognise the disproportionate power of these states. Similarly, the ICC has 139 signatories and 100 ratifications, but numbers alone have not guaranteed smooth multilateral sailing. It matters *which* states sign or do not, and the fact that the non-signatories include the world's largest states with its largest militaries detracts from the legitimacy and effectiveness of the treaty. Efforts to legitimise rule changes by force of numbers effort can work, at least partially, though. The US may not have signed the landmines treaty, but it has certainly changed its procurement planning with regard to these weapons.³⁷ Similarly, while the US has resisted joining the ICC, it has agreed to use it for trials of war criminals in Darfur for lack of a better alternative. As in any political system, people are creative in their efforts to change the rules, and even the strong can be brought around to grudging acceptance through a combination of shifting public opinion, peer pressure, and realisation of the utility of a policy tool.

One obvious reason to accommodate the powerful in a multilateral system is simply that the rules will not be effective without the support or at least acquiescence of powerful states. However multilateral rules can be ineffective, with or without the support of the strong. I turn next to this issue.

Effectiveness and legitimacy of force

One persistent source of tension on use-of-force issues involves the effectiveness of multilateral rules. When multilateral rules do not produce desired outcomes, people start asking hard questions which eventually take a toll on the legitimacy of those

³⁶ Van Oudenaren, 'What is "Multilateral"?', pp. 33–47; David Davenport, 'The New Diplomacy', *Policy Review*, 116 (December 2002).

³⁷ See, for example, Lincoln P. Bloomfield, Jr., Assistant Secretary for Political-Military Affairs, 'New Developments in the US Approach to Landmines', on-the-record briefing, 27 February 2004, at (<http://www.state.gov/t/pm/rls/rm/29976.htm>).

rules. This was a persistent problem with various UN Iraq policies. The sanctions programme produced humanitarian outcomes unacceptable to many, and the US, in particular, was not persuaded that the weapons inspection programmes were actually disarming the regime. It has also been a problem in many humanitarian crises. Failure of multilateral rules concerning genocide and human rights to produce effective responses to disasters in Rwanda and in Darfur (most would say the African Union response has been woefully inadequate) have made a sham of the proclaimed 'responsibility to protect' in the eyes of many, including UN staff.

Asking about the effectiveness of force only begs the question: 'Effective for what?' Effectiveness always must have a referent. One cannot assess the effectiveness of force without understanding its purpose or goals. States and other actors differ in their opinions about the purposes for which force can be effective and when they think it should be used. This is hardly surprising, nor is it new. Disagreements about whether and when to use force have always attended to its consequences as well as its appropriateness. Conceptually and logically, though, these disagreements can focus on different aspects of use of force, and unpacking these differences we can see a variety of dimensions of potential disagreement.

Different goals

Whether force is useful depends on what one wants to accomplish. Two actors might have very different perceptions about the utility of force that are easily explained by the fact that they have very different goals. If state A wants to maintain lucrative commercial ties to state B but state C is more concerned about B's stability in the face of civil unrest, A and C are likely to disagree about the role force should play in their respective policies. Force, or threats of force, might be useless or even counter-productive for accomplishing actor A's goals of preserving trade but essential for securing actor B's of stability.

States also often have private goals that differ from publicly-stated ones, and the fact that public goals are not achieved does not mean private goals were not met. For example, one common interpretation of the failure to intervene in Rwanda is that, far from failing, multilateral rules served states' goals perfectly. No state wanted to intervene in Rwanda and the rules allowed them to dither and obfuscate so they did not have to do so.³⁸ Any assessment of effectiveness would have to take these unstated goals into account.

Predicted consequences

Even if states agree on objectives, there is often uncertainty and disagreement about the consequences of force. Unintended consequences of force are common, and actors know this. Military actions often go awry. Even if one kills exactly the people one planned and destroys or captures exactly the machinery or infrastructure one

³⁸ 'Triumph of Evil', BBC/Frontline video.

planned, calculating the political effects of force is difficult. Death and destruction may create martyrs and resistance rather than submission. States had different views, for example, about the likely consequences of toppling Saddam Hussein's regime. The Bush Administration believed those using force would be greeted as liberators. Others, both inside and outside the US, were less sure. Believing the liberator prediction would logically incline one much more toward a belief in the utility of force in that case. Scepticism logically leads to a different conclusion. Worries about fickle public support for uses of force are another source of uncertainty that may be particularly consequential to decision-makers in democracies. Leaders may err in being overconfident of public support but also underconfident, as US leaders were in the wake of the Ranger killings in Mogadishu.³⁹

Legitimacy

The effectiveness of force for any actor is not an objectively-dictated given; it depends heavily on the subjective perceptions and evaluations of others. These evaluations are much broader in scope than simple assessments of information and likely consequences, discussed above. These evaluations are also normative. Whether others view force as desirable, appropriate, or necessary determines whether they will support, oppose or acquiesce to its use and those reactions will shape the effects of force on the ground and the kinds of social outcomes force creates. These judgments might have several components. Actors often support (or oppose) force and regard it as 'good' if they gain in some self-regarding way – they gain territory, eliminate undesirable people, increase political control. However, the 'goodness' of force may also be judged in another sense. Most uses of force are accompanied by a great deal of debate, not just about what people want but about what is right. Goodness in the sense of rightness or oughtness is a crucial component of actors' judgments about force and reactions to its use by others. This oughtness or rightness is at the heart of force's legitimacy.

Legitimate action accords with recognised rules, standards, principles, or laws. Many scholars have focused on the effects of legitimacy on those using force: the 'compliance pull' it creates and the sense it engenders that rules 'ought to be obeyed'.⁴⁰ However, legitimacy affects action by shaping audience judgments, too. Because they are widely shared, such rules and principles become 'social facts' and shape audience notions about when force ought to be used. Legitimacy is rarely absolute or uncontested; very often it is a matter of degree. The degree of legitimacy of an action, in this case a use of force, depends on the degree of consensus about its 'oughtness' or 'rightness'. Such shared judgments are not naturally-occurring

³⁹ Steven Kull and I. M. Destler, *Misreading the Public: The Myth of a New Isolationism* (Washington DC: The Brookings Institution, 1999); James Burk, 'Public support for peacekeeping in Lebanon and Somalia: assessing the casualties hypothesis', *Political Science Quarterly*, 114 (Spring 1999), pp. 53–78; Theo Farrell, 'America's Misguided Mission', *International Affairs*, 76:3 (2000), pp. 583–92.

⁴⁰ Thomas Franck, *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990), esp. pp. 15–21; Ian Hurd, 'Legitimacy and Power in International Relations: The Theory and Practice of the UN Security Council', unpublished ms.; also Hurd, 'Legitimacy and Authority in International Politics', *International Organization*, 53:2 (1999), pp. 379–408, at 381.

phenomena and legitimacy is rarely obvious or unproblematic. It has to be consciously constructed. Actors spend a great deal of time attempting to shape the judgments of others about what actions are legitimate. Consequently, most uses of force leave a long trail of justification in their wake as forcers try to connect their actions with shared notions of justice – shared notions of oughtness or rightness in using force.

We know that the effectiveness of force is a function of its legitimacy. Of course, if one simply wants to destroy or kill, the legitimacy of bombs and bullets is not going to change their physical effects on buildings or bodies. However, simple killing and destruction are rarely the chief goal of political leaders using force. Force is usually the means to some other end in social life and attempts to use force alone for social control and social influence have not fared well over the long term. Force must be coupled with legitimacy for maximum effect. Legitimacy is important because it creates some degree of support for, or at least acquiescence to, those using force. Legitimate force attracts allies, contributions, and approval from outsiders and diminishes resistance in targets of force. We rarely like being the target of force (or threats of it), but if we see that force as legitimate we are less likely to resist. Illegitimate force has the opposite effect. It galvanises opposition, often forceful opposition. It damages the forcer's reputation among peers and creates resentment, if not rebellion, in the target.

However, the relationship between effectiveness and legitimacy runs in both directions. Yes, legitimacy makes force more effective but effectiveness also enhances legitimacy. The cynic's version of this is, 'nothing succeeds like success' but the aphorism reveals something important for our purposes. Very often states agree on goals but not about how to achieve them. If force is shown to be successful or effective at achieving goals, its use is more likely to be seen as legitimate. Conversely, if experience suggests that force does not produce desired results (or does so only at unacceptable costs), it loses legitimacy.⁴¹ Economic sanctions, a form of coercion if not outright force, certainly have become more suspect in recent years for these reasons in large part on efficacy grounds: they often hurt people they are supposed to help and they often fail to produce the desired behaviour changes in their target. The 1990s sanctions against Iraq were only a particularly spectacular and well-publicised case of sanctions of dubious efficacy carried out at very high human cost.⁴²

Of course, judgments of success can be contested. They often are. In the Iraq sanctions case, sanctioners disagreed about whether containing the regime's behaviour counted as success and over whether, in fact, the regime was being contained. Not only was there inadequate intelligence to judge either issue, but sanctioners had different goals vis-à-vis the regime, disagreeing about whether containment was sufficient or whether regime collapse was the real measure of success. Judgments about unacceptable costs also change. For example, civilian casualties weigh more heavily in the calculations of most democratic militaries than they did 50 or 100 years ago. They also weigh more heavily in the judgments of those observing or suffering

⁴¹ Efficacy or 'reasonable hope of success' is also a criterion in the long-standing Just War tradition. See Ian Halliday, 'When is a cause just?', *Review of International Studies*, 28 (2002), pp. 557–75, at 569, for a discussion in the context of recent world events.

⁴² For a related examination of some of these issues in the context of the 2002–3 Iraq debates, see Simon Duke, 'The Hyperpower and the Hype: Reassessing Transatlantic Relations in the Iraqi Context'. European Institute of Public Administration, Working Paper no. 2003/W/1.

force as the outcry over the high-altitude bombing in Kosovo suggests.⁴³ But to the degree there is agreement that force can help achieve some goal, it becomes more legitimate; agreement to the contrary tends to delegitimize.

Note, too, that assessments of legitimacy often change over time in part as a result of their effectiveness. Military action to remove Saddam Hussein from Iraq in 1991 was controversial at the time it was being contemplated, much more controversial than the 2002 action, and commanded only narrow approval by the US Congress. The perceived effectiveness of the 1991 military action in rolling back Iraqi forces from Kuwait, with relatively few of the dire consequences predicted by opponents, helped turn the 1991 action into a positive exemplar of 'good' use of force during the subsequent 2002 debates. Had the effects of the 1991 action been more obviously negative – had it prompted mass demonstrations that unseated regimes in the region, for example, or had it resulted in massive civilian casualties as the armies moved through Kuwait and Iraq – the 'goodness' and legitimacy of that action would have been less and the 2002 debates may have gone differently. Legitimacy (or lack thereof) is not an inherent or objective property of forceful action. Legitimacy is subjective and, indeed, intersubjective. Force is made legitimate (or not) by those of us observing, suffering, and ultimately judging it. Not surprisingly, people often do not agree on when force is legitimate. Forceful action to topple a regime or save a threatened population, for example, might be entirely legitimate in the view of the invader but draw mixed views from the local population, other governments, other publics, and international organisations. Some of these judges will be more consequential than others in influencing the ultimate effects of force, and states calculate carefully the likely acceptance (or not) of their actions.

As we analyse the various disagreements or 'gaps' in views on force, it is worth recognising what, exactly, is in dispute. Rarely is the debate about multilateralism versus unilateralism. Multilateralism is widely accepted as the most legitimate form of political action and most states most of the time go out of their way to conform to multilateral rules. Disagreements over use of force are largely happening within this multilateral framework and they are broadly of three types. Debates are often about what current multilateral rules mean and what they demand of states; they are about whether multilateral rules are effective; and they are about how multilateral rules can be changed.

Legitimation struggles: a marketplace of multilateral rules?

Multilateral rules about use of force are constantly changing. The debates we are now seeing, within and among the Atlantic allies as well as globally, are primarily about what these rules should be. As new threats arise and old ones linger, inadequately treated by existing rules, pressure for change mounts and people craft new visions of 'good' rules for use of force. Two issues, in particular, seem central to changes currently under discussion. The first is how rules can or should change in response to changes in the distribution of power. Much of this conversation in the transatlantic

⁴³ Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

community has centred on dealing with US power and the power asymmetries it creates. However, within the US concerns are as strong, probably stronger, about how to deal with changing power in Asia particularly with the rise of China and India.⁴⁴ Both have been incompletely integrated into existing multilateral institutions governing use of force and both differ sharply from the transatlantic community on key issues. China has only recently and gingerly become involved in peacekeeping on a tiny scale. (It sent 40 peacekeepers to Timor.) It remains outside the ICC and only joined the Nuclear Suppliers Group last year. India has been an enthusiastic proponent of peacekeeping but its nuclear posture keeps it outside that regime structure. Both countries thus may have visions of desirable rules that differ from existing ones. For different reasons and in different realms, both may push for rules that are more protective of national decision-making (what some might call unilateralism.) It is not hard to imagine China pushing for limits on putative 'humanitarian' intervention and it is easy to see support for such limits among many governments outside the transatlantic alliance, especially in the developing world. Similarly, it is easy to imagine a role for India in rewriting parts of the nuclear regime and, again, this would most likely draw support from others. Devising multilateral rules to accommodate the interests of the newly-powerful will be a challenge.

Second, to remain legitimate, multilateral rules have to be at least moderately effective. Rules that do not produce at least modest progress toward desired results will be abandoned. In the security realm, the absence of rules to deal effectively with terrorism using WMD will be a persistent source of friction with the United States which perceives a real and pressing threat. Unimpressive results from humanitarian interventions or, perhaps worse, persistent failures to intervene at all, will continue to prompt calls for new rules, perhaps including broader powers for the UN and other international organisations to use force. Hypocrisy and ineffectiveness have made existing rules vulnerable to challenge and challenges backed by power (from the US, China or others) will be hard to ignore.

Underlying both issues are some very fundamental questions about how new multilateral rules are legitimated in world politics. Contemporary politics are marked by variety in the ways one can legitimate new rules, and actors strategise about how best to gain legitimacy for rules they like. Different legitimation options carry different political implications. For example, states can work through formal state organisations like the UN and NATO to legitimate new rules. These have the advantage of providing relatively well-organised and powerful mechanisms for dispensing legitimacy and promulgating new rules about when force is legitimate, but they can be hard to use since legitimation from these bodies requires unanimity among all (NATO) or a very diverse subset of members (the P5 in the UN). Consequently, those seeking to change rules (or, put differently, those seeking to legitimate new rules) that might be opposed in these forums have had to be creative.

US policymakers have intermittently attempted to set up alternative multilateral fora of 'like-minded' states. These obviously get around the opposition problem but do so at the price of producing less legitimacy. The problem with such groups is not like-mindedness per se. Action through groups of ideologically similar states is common in world politics and is still seen as multilateral, witness the European

⁴⁴ See, for example, the US National Intelligence Council's projections of the 'global landscape' in the year 2020, at (http://www.cia.gov/nic/NIC_globaltrend2020.html).

Union. Rather, the problem is convincing others that the group really is 'like-minded' in some principled way that will guide action across a variety of circumstances, even when abiding by principles may not be convenient for members. The problem is thus persuading others that the group is multilateral in a qualitative sense. Otherwise, the action looks like opportunism. To the extent that the US and its like-minded partners can articulate generalised principles of action and follow them even when it is costly, these fora may start to provide the kind of legitimation the US is seeking. Many long-lived multilateral endeavours started in exactly this way. Note, though, that such like-minded groups only provide legitimation for the actions of their own members. They have difficulty promulgating universal rules to govern those not so inclined. Thus, the Nuclear Suppliers' Group may promulgate rules that govern its own members but had difficulty claiming that non-members are bound. To the extent one's goals involve promulgating rules for all, this strategy may be of limited use.

Other legitimation mechanisms have relied on what David Davenport has called 'the new diplomacy'.⁴⁵ Efforts like those surrounding the landmines ban and the ICC have countered opposition from a few strong states by galvanising and organising support from (1) very large numbers of smaller states together with (2) prominent and credible NGOs and (3) cross-national public opinion.⁴⁶ The importance of NGOs and public opinion as arbiters of multilateral legitimacy is often underestimated, but should not surprise us analytically. Legitimation of international rules requires more than the formal obligation of treaties signed among states. Formal treaties, after all, have proved to be highly imperfect constraints on behaviour and generating compliance absent enforcement is a long-standing concern of international legal scholars. In such situations, compliance requires the generation of some felt sense of 'rightness' and of obligation in both policymakers and societies.⁴⁷ Governments can sometimes create this but they by no means have a monopoly on access to or control over public sentiments. With increasing democratisation and increasing organisational capacity of civil society actors, we should expect NGOs and public opinion to become more consequential players in generating acceptance or rejection of international legitimacy claims, including multilateral ones. Note, however, that this 'new diplomacy' is hardly divorced from the old. The public opinion and NGOs that matter the most to the success in these efforts tend to be centred in strong states. These groups are just as likely to wield influence through domestic channels, by changing the positions of their governments, as they are to challenge and confront those governments in transnational fora such as those associated with the Ottawa Process (landmines) or the ICC negotiations.

This proliferation of mechanisms suggests that we may have something like a marketplace for multilateral legitimacy operating today. Policymakers from states of all sizes and activists of all stripes understand this better than scholars. There are many roads to multilateral legitimacy and actors are strategic about framing their preferred rules and choosing fora in which to propose them. If they do not like

⁴⁵ David Davenport, 'The New Diplomacy', *Policy Review*, 116 (December 2002), (http://www.policyreview.org/dec02/davenport_print.html).

⁴⁶ Note that NGOs should not be equated with public opinion since who, exactly, NGOs represent is often a matter of some dispute.

⁴⁷ For a discussion of this point and citations to relevant legal literature, see Martha Finnemore and Stephen Toope, 'Alternatives to "Legalization": Richer Views of Law and Politics', *International Organization*, 55:3 (2001), pp. 743–58.

existing choices, they create new ones. In so doing, they become 'legitimacy entrepreneurs'.⁴⁸ Other actors then 'buy' into or reject these rules.

As scholars we need to understand this process better. We need to understand what legitimacy claims are accepted, which ones fail, and why. Treating multilateralism as some static set of behaviours and standing outside to judge what is, or is not, multilateral, risks missing these crucial political processes. The ability to redefine what is multilateral and the huge effort people spend in doing so is part of what makes the concept so powerful and interesting. Being better attuned to the dynamics of multilateralism can help us redirect our inquiries in more productive ways.

⁴⁸ For an extended discussion of normative 'entrepreneurship', see Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, 52:4 (1998), pp. 887–917.