ALLIES AT ODDS?

THE UNITED STATES AND THE EUROPEAN UNION

THOMAS S. MOWLE
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Thomas S. Mowle
To Jan, Elyse, and Adrien
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LIST OF ACRONYMS

ABM       Anti-Ballistic Missile
AFSOUTH   Allied Forces South
AHG       Ad Hoc Group
AOSIS     Alliance of Small Island States
ASPA      American Service-Members’ Protection Act
AWACS     Airborne Warning and Control System
BTU       British Thermal Unit
BTWC      Biological (Bacteriological) and Toxin Weapons Convention
          [EU acronym]
BWC       Biological (Bacteriological) and Toxin Weapons Convention
          [U.S. acronym]
CAT       Convention Against Torture
CCW       Convention on Conventional Weapons
CD        Conference/Committee on Disarmament
CEDAW     Convention for the Elimination of All Forms of Discrimination Against Women
CFCs      Chlorofluorocarbons
CFSP      Common Foreign and Security Policy
CJTF      Combined Joint Task Force
CMA       Chemical Manufacturers Association
CoE       Council of Europe
COP       Conference of the Parties
CRC       Convention on the Rights of the Child
CSCE      Conference for Security and Cooperation in Europe
CTBT      Comprehensive Nuclear Test Ban Treaty
CWC       Chemical Weapons Convention
DoD       [U.S.] Department of Defense
EC        European Community
ECHR      European Court of Human Rights/European Convention on Human Rights
EDC       European Defense Community
EEC       European Economic Community
EIF       Entry Into Force
EP        European Parliament
ESDP      European Security and Defence Policy (EU)
ESDI      European Security and Defence Initiative (NATO)
EU        European Union
EURATOM  European Atomic Energy Community
FCCC  Framework Convention on Climate Change
GHG  Greenhouse Gas
HBA  Helms-Burton Act
HRC  [UN] Human Rights Commission
IAEA  International Atomic Energy Agency
ICBL  International Campaign to Ban Landmines
ICC  International Criminal Court
ICCPR  International Covenant on Civil and Political Rights
ICJ  International Court of Justice
ICTY  International Criminal Tribunal for the former Yugoslavia
IFOR  Implementation Force
ILC  International Law Commission
ILSA  Iran-Libya Sanctions Act
IPCC  Intergovernmental Panel on Climate Change
ISAF  International Security Assistance Force
JNA  Yugoslav National Army
KFOR  Kosovo Force
LCPD  Large Combustion Plant Directive
LRTAP  Convention on Long-Range Transboundary Air Pollution
MBT  Mine Ban Treaty
NAC  North Atlantic Council
NATO  North Atlantic Treaty Organization
NGO  Non-Governmental Organization
NIEO  New International Economic Order
NNWS  Non-Nuclear Weapons States
NPT  Nuclear Non-Proliferation Treaty
NRF  NATO Response Force
NWS  Nuclear Weapons States
OECD  Organization for Economic Cooperation and Development
OPCW  Organization for the Prohibition of Chemical Weapons
OPEC  Organization of Petroleum Exporting Countries
OSCE  Conference for Security and Cooperation in Europe
PhRMA  Pharmaceutical Research and Manufacturers Association
PNET  Peaceful Nuclear Explosions Treaty
PrepCom  Preparatory Committee
POW  Prisoner of War
QMV  Qualified Majority Voting
RRF  Rapid Reaction Force
SACEUR  Supreme Allied Commander in Europe
SAM  Surface-to-Air Missile
SEA  Single European Act
SFOR  Stabilization Force
SOFA  Status of Forces Agreement
SST  Supersonic Transport
TEU  Treaty on European Union
TTBT  Threshold Test Ban Treaty
UCMJ  Uniform Code of Military Justice
UDHR  Universal Declaration on Human Rights
UN  United Nations
UNDP  United Nations Development Programme
UNEP  United Nations Environment Programme
UNGA  United Nations General Assembly
UNHRC  United Nations Human Rights Commission
UNMIK  United Nations Interim Mission in Kosovo
UNMOVIC  United Nations Monitoring, Verification, and Inspection Commission
UNPROFOR  United Nations Protection Force
UNSC  United Nations Security Council
UNSCR  United Nations Security Council Resolution
UNSCOM  United Nations Special Commission
U.S.  United States
USA  United States of America
VerEx  Verification Experts
WEU  Western European Union
WMD  Weapons of Mass Destruction
WTO  World Trade Organization
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The United States and the European Union: On the Brink of the Transatlantic Rift?

In 2002–3, the Iraqi crisis made clear that the United States and its allies in Europe are increasingly at odds. Germany and France were the most vocal opponents of American policy, with Chancellor Gerhard Schröder winning reelection in September 2002 largely due to his firm opposition to German participation in any war in Iraq, and President Jacques Chirac vowing on 10 March 2003 to veto UN approval for an attack. While Prime Minister Tony Blair sent troops in support of Saddam Hussein’s overthrow, and many European governments offered at least rhetorical support for the operation, public opinion in Europe strongly preferred maintaining inspections rather than using military force to achieve regime change in Iraq.

If this clash with respect to Iraq were an isolated event, then one could disregard it as merely a difference of opinion over a very difficult decision. If it were merely a few European countries opposing U.S. policy, then one could concur with U.S. Secretary of Defense Donald Rumsfeld’s distinction between an “Old Europe” that opposes the United States and a “New Europe” that supports the United States. Neither view would be accurate. Disputes have erupted over many different issues, and the Iraqi case is unusual in that some members of the European Union (EU) sided with the United States rather than against it.

This is the puzzle at the root of this book: Why, despite their professed similarity of goals, do the policy preferences of the European Union and United States diverge on so many multilateral issues? The EU—acting as one or simply as the collection of its member states—and the United States have disagreed on a wide range of subjects, especially since 1997. These include the Kyoto Protocol on climate change, the Mine Ban Treaty, the International Criminal Court (ICC), the future of the North Atlantic Treaty Organization (NATO), and the Comprehensive Nuclear Test Ban Treaty (CTPT). All of these standoffs became apparent while Bill Clinton was president. Since the inauguration of George W. Bush, and continuing after the terrorist attacks of 11 September 2001, the list of differences has grown to
include verification provisions for the Biological (Bacteriological) and Toxin Weapons Convention (BWC), a Small Arms Program of Action, and policy toward Iraq. Many of the differences between the United States and the European Union can be seen in their interaction with multilateral institutions, often working on global issues. In general, the EU has supported the multilateral solution, and the United States has not.3

This series of disputes seems odd because the United States and the European Union profess to share many of the same values and interests: democracy, human rights, peace and stability. The original Treaty on European Union (TEU), signed at Maastricht on 7 February 1992, stated:

The objectives of the common foreign and security policy shall be:
- to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its Member States in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.4

The Treaty of Amsterdam in 1997 left these words substantially intact, only dropping the reference to “Member States,” adding safeguarding “the integrity of the Union” and strengthening security “on external borders.” In June 2000, EU External Relations Commissioner Chris Patten described “the projection of stability as the EU’s essential mission,” with a focus in neighboring regions on “peace, prosperity and security…rooted in free trade. We seek to promote human rights, democracy and the rule of law.”5

The 1999 National Security Strategy of the United States listed three similar goals: “to enhance America’s security, to bolster America’s economic prosperity, [and] to promote democracy and human rights abroad.”6 Elaborating, it stated that the American vision was for a stable, peaceful security environment—one in which our nation, citizens and interests are not threatened; the health and well-being of our citizens are enhanced by a cleaner global environment and effective strategies to combat infectious disease; America continues to prosper through increasingly open international markets and sustainable growth in the global economy; and democratic values and respect for human rights and the rule of law are increasingly accepted.7

In November 2001, the State Department’s Director of Policy Planning, Ambassador Richard Haass, listed the Bush administration’s “important foreign policy tasks” as including “stymieing the proliferation of weapons of mass destruction…promoting world trade…[promoting] good governance, rule of law, and democracy…integrating new countries and peoples
into the global economic order...and coping with state failures.” In April 2002, he repeated these sentiments and added “limits on the power of the state, respect for women, private property, equal justice, religious tolerance” to the “consistent body of ideas and policies that [guide] the Bush Administration’s foreign policy.” Each of these concepts, along with “strengthen alliances to defeat global terrorism” and “work with others to defuse regional conflicts,” were incorporated as primary goals in the September 2002 National Security Strategy of the United States. This document is notable, on the other hand, for its rejection of multilateral measures such as the ICC and arms control treaties in favor of reserving the right to independent action. It thus brought American policy rhetoric in line with established American practice.

Policy disagreements despite agreement over basic goals are not unusual. There may be many means to the same end. It is nevertheless difficult to overcome such a divergence unless you understand its sources. This book describes the history of these differences between the United States and the European Union and assesses what factors seem to best explain them, allowing us in the end to make some projections regarding the future of transatlantic relations. Before further laying out the plan and approach of this book let us first review some vignettes that capture recent trends among these allies.

The divergence between the United States and Europe came to public attention, briefly, on 3 May 2001, when United Nations Economic and Social Council voted the United States off the UN Human Rights Commission (HRC) for the first time since it was founded in 1947. The New York Times blamed the vote on “rising resentments abroad” over American nonpayment of UN dues, its position on the death penalty, and its rejection of agreements including the Mine Ban Treaty and the Kyoto Protocol. Others saw a closer link to the politics of human rights. William Safire saw it as punishment for criticizing China and not Israel. Amnesty International USA, on the other hand, said it was “due in part to an effort by nations that routinely violate human rights to escape scrutiny of their human rights’ records.” Since the policies of states like Sudan and Sierra Leone (both elected to the HRC at the same time) had not changed, the lost votes were attributed to a new suspect: the EU. As Joanna Weschler of Human Rights Watch noted, “It wasn’t just enemies. It was friends as well who voted the United States out of the commission.” Senator Jesse Helms (R-NC) observed that it was “no surprise that a few European countries maneuvered...to eliminate the United States from the United Nations Human Rights Commission seat.” The New Republic editorialized, “The European countries...resent America’s public commitment to human rights because it gets in the way of business...Many European governments view moral questions as a bothersome distraction from the realpolitik that dominates the European diplomatic tradition.”

This dispute put a spotlight not only on transatlantic differences, but also on the EU itself. The Union had evolved over 50 years from the European
Coal and Steel Community through the European Economic Community (EEC) until it took its current name at Maastricht in 1992. It had grown from six original members seeking peace through economic development and interdependence to include 15 European states, from Finland to Portugal and from Ireland to Greece. The Union also had deepened cooperation among its members to the point where it was ready, at the end of 2001, to discard the currencies of 12 of its members in favor of the common euro. This is not the place to describe either the history of the EU, which has been presented in great detail elsewhere, or the mechanics of its governance, which continue to change through the 2004 Constitutional Treaty. Instead, let us focus on the EU as an actor in the global community.

This book takes the EU seriously, which has been unusual outside the realm of economic and trade policy. At one level, the EU is simply an intergovernmental organization, a group of sovereign states who work together to achieve common goals. In some areas, however, the Union has established supranational authority over its member states. European Monetary Union is the most visible of these, but the principle was established as early as 1964. In a case comparable in significance to *McCullough v. Maryland* (1820) in the United States, the European Court of Justice ruled, “The Member States have limited their sovereign rights, albeit in limited fields…the Treaty [of Rome] carries with it a permanent limitation of their sovereign rights.” In essence, the member states of the EU have agreed to share their sovereignty with each other, while retaining the legal right to reassert their individual sovereignty by withdrawing from the Treaties. The EU might best be described as a confederation: a grouping of political actors in which clear delineations are made between areas of unit sovereignty and areas of central sovereignty.

The European Community (EC) had competence over matters of trade and economics. As the history of the U.S. Constitution’s commerce clause would predict, this power created an incentive to coordinate in other areas, including foreign policy in general. A Common Commercial Policy and Common External Tariff affected more than just trade. European Political Cooperation remained informal until the 1986 Single European Act (SEA). The Treaty on European Union formally established a Common Foreign and Security Policy (CFSP) “pillar” alongside the existing Community and a third pillar for Justice and Home Affairs. The CFSP was to be the province of the European Council, composed of the heads of government of all member states. This was in contrast to the Community pillar, where an appointed Commission took the lead in developing policies for approval by the Council (or rather, by the appropriate Council of Ministers, such as the Environment Council, composed of each member state’s Minister of the Environment). The Commission did not fully stay away from foreign policy, as it created its own commissioner for External Relations in 1993. The Council followed up with its High Representative for the CFSP, established in the Treaty of Amsterdam in 1997. Presidency of the European Council, and leadership of the Councils of Ministers, rotated every six months among the member
states. The elected European Parliament (EP) appointed the Commission President and the other Commissioners. The EP had budgetary power, as well as the ability to block or delay decisions of the Council in some areas and to set a public agenda for the Union.

The CFSP aimed at having EU member states coordinate their positions in international organizations and to vote as a bloc as much as possible. Even when the members do not formalize their agreement by taking a Common Position, they generally vote together. By 2001, this tendency had been observed many times, which led to suspicion that much the same thing had happened with regard to the HRC. Despite the bluster over that election, there was little anyone could do, so the issue dropped from the public eye almost as quickly as it entered it. One year later, the United States returned to the HRC as one of four candidates for four open seats—Spain and Italy agreed to withdraw from the competition to ensure the United States would be elected along with Australia, Germany, and Ireland. The Western European and Others Group in the United Nations worked to rotate future membership so the United States will almost always be a member of the HRC.21

This election represented a longer trend, and foreshadowed deeper disputes that would link human rights and traditional national security issues. One such dispute surrounded the treatment of detainees from the war in Afghanistan, who were being held at the U.S. Naval Base in Guantánamo Bay, Cuba. A photo of shackled and hooded prisoners prompted an outcry in Europe, which was further excited by Secretary of Defense Donald Rumsfeld’s statement, “I do not feel even the slightest concern about their treatment. They are being treated vastly better than they treated anybody else over the last several years and vastly better than was their circumstance when they were found.”22 He later noted that the detainees’ handling was “humane and appropriate and consistent with the Geneva Convention for the most part.”23 This did not satisfy Europeans. The High Representative for the CFSP, Javier Solana, replied, “The Geneva Convention must be applied to everyone who is detained in similar circumstances.”24 Dutch Foreign Affairs Minister Jozias van Aartsen warned, “In the fight [against terrorism] we need to uphold our norms and values. That applies to prisoners, too.”25 British Foreign Secretary Jack Straw added, “The British government’s position is that prisoners—regardless of their technical status—should be treated humanely and according to customary international law.”26 German Foreign Minister Joschka Fischer said, “Regarding those under arrest in Guantánamo, we are of the view that, regardless of any later definition of their status, they are to be treated as prisoners of war. That means in accordance with international law and in a humanitarian way, as written in the Geneva Convention.”27

Reacting to this criticism, the United States modified its interpretation slightly—agreeing that the Geneva Conventions applied to the Taliban forces, but not to al-Qaeda members. Nevertheless, since Taliban forces violated provisions of the Conventions, they were unlawful combatants since
“they had not carried arms openly or been part of a recognisable military hierarchy” and thus were ineligible for status as Prisoners of War (POWs). Later in 2002, the Department of Defense (DoD) further modified its stance, to become, “DoD is treating all of the detainees under its control humanely and in a manner consistent with the Third Geneva Convention of 1949.” The United Kingdom disagreed with this interpretation and decided that it would not turn captives over to the United States, but would grant POW status to Taliban forces. Nevertheless, this bow to international law, combined with no evidence of mistreatment beyond the initial photos—which DoD officials concede may have violated Geneva restrictions against using captives for publicity—calmed this dispute. Even if the Conventions were applied to al-Qaeda, they would remain unlawful combatants and not POWs, so nothing about their treatment would change. The deeper lesson of this episode lies in the quick assumption of European leaders that the United States was casting aside international law.

A dispute over the ICC in the UN Security Council (UNSC) in summer 2002 replaced Afghan detainees at the nexus of human rights, American military policy, multilateralism, and transatlantic relations. On 30 June, the United States vetoed renewal of the UN police-training mission in Bosnia because it did not have blanket immunity from the ICC (which is fully discussed in chapter 5). U.S. Ambassador to the United Nations John Negroponte said, “With our global responsibilities, we are and will remain a special target, and cannot have our decisions second-guessed by a court whose jurisdiction we do not recognize.” Europeans saw this step as extreme. The French Ambassador to the United Nations, Jean-David Levitte, said “what is at stake is the very capacity of the United Nations to continue peacekeeping operations. For the United States the simplest thing is to withdraw the 46 U.S. police. There is simply no need to kill off [the mission].” Per Stig Møller, the Danish foreign minister speaking for the EU Presidency, “deeply regret[ted] this dramatic step,” while Commission President Romano Prodi said “This complicates the situation and is another example of the divisions between the United States and Europe.” As the deadlock went on, the EU investigated whether it could accelerate its planned assumption of the police-training mission.

To resolve the dispute, the United States suggested giving each UNSC permanent member veto power prosecutions of its own citizens—a provision the United States had advocated unsuccessfully in the ICC’s Rome Statute. UK Prime Minister Tony Blair said the U.S. worry was “perfectly legitimate [since] they do massive amounts of peacekeeping in the world and don’t want their peacekeepers to be subject to some political prosecution.” At the time, the United States had 702 participants in UN peacekeeping, out of total UN forces of 47,000. Despite Blair’s sympathy, France and Britain proposed a compromise in which the UNSC would vote one year of blanket immunity for U.S. peacekeepers, as arguably provided for in Article 16 of the ICC Statute, with a promised intent to renew each year. To further legitimize this agreement, the UNSC would extend immunity to all non-ratifiers
The United States and the European Union

in peacekeeping missions, a privilege already granted to states that had ratified. For nearly two weeks, the United States held out for the indefinite renewal, but conceded on 12 July. Negroponte said this “first step” would be acceptable for now, and that the United States would next try to work out bilateral agreements under Article 98 of the Statute, to win immunity.37

In the midst of these efforts to ensure its exemption from the ICC, the U.S. Congress passed the American Service-Members’ Protection Act (ASPA), signed into law on 3 August 2002. While subject to Presidential waivers, the bill states U.S. government agencies may not, among other things, “cooperate with the International Criminal Court, . . . extradite any person from the United States to the International Criminal Court, . . . [or] provide support to the International Criminal Court.” It tells the President to continue keeping American forces out of peacekeeping operations unless exempted from the ICC or justified by an overriding national interest, and prohibits military aid to non-allied ICC states parties unless they agree to Article 98 exemptions. Finally, the ASPA states, “The President is authorized to use all means necessary and appropriate to bring about the release of any [American or allied person] who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court” for activities related to their “official actions.”38

The EP responded to the impending ASPA on 4 July 2002 with its own resolution in opposition. The EP argued that via ASPA “the United States [denies] itself two of the principal weapons—military and intelligence cooperation—of the global coalition against terrorism and deals a damaging blow to a third element of that coalition—international goodwill” and called on Congress “to reject the unilateralism which the ASPA represents.” Citing the NATO principle that members should “[abstain] from violence in resolving conflicts between the partners,” the EP resolution repeated the Dutch Parliament’s 13 June concern over provisions “which would give the U.S. President the right to authorise the use of force against the Netherlands to free members of the U.S. armed forces, civilians and allies held captive by the ICC.”39 This led to the ASPA’s colloquial label, the “Hague Invasion Act.” The U.S. Embassy in The Hague had, on 12 June, reassured its hosts that “The ASPA . . . does not require or suggest that any particular means be used to address this issue. Obviously, we cannot envisage circumstances under which the United States would need to resort to military action against the Netherlands or another ally.”40

Meanwhile, the United States used ASPA provisions on withholding military aid to seek bilateral immunity agreements. Under Article 98 of the Rome Statute,

The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.
To the extent the United States could obtain such bilateral agreements, it would achieve parts of what it had not achieved via the UNSC. John Bolton, undersecretary of state for arms control and international security, said “this issue is one that directly affects individual Americans and quite possibly the highest decision-makers of our country who could be hauled before this court.” Furthermore, he said, it was the EU members who suggested using Article 98, “a process expressly contemplated by the Rome Statute.”

The European Commission, however, issued a finding in August 2002 that compliance with U.S. requests for a new agreement “acts against the object and purpose of the statute.” Swedish Foreign Minister Anna Lindh said, “It is not reasonable to exempt a country, and it is fundamentally strange and wrong for the USA to try to stay on the sidelines and exempt its own citizens.” After Romania became one of the first countries (along with Israel) to sign a bilateral agreement, Prodi advised other aspirants for EU membership to delay signing until the EU had reached a final position. Bolton responded, “We’re not applying any pressure on countries to sign these agreements, and we don’t think it is appropriate for the European Union to prevent other countries from signing them.” American Secretary of State Colin Powell urged such states to disregard the EU and sign on “as soon as possible,” while Pierre-Richard Prosper, U.S. ambassador for war crimes, said that if the EU member states would not agree, this “would obviously pose a fundamental problem in aspects of our relationship, in as far as military engagement in Europe and elsewhere.” By the end of August, the European Council had asserted that it, not the Commission, would reach the final decision on the Article 98 agreements, and implied that it might agree to the U.S. position rather than risk creating a rift within the EU. The Council was not unified: Britain and Italy appeared ready to support the U.S. request, while Germany, France, and Austria were among those supporting the Commission’s interpretation. On 30 September, the EU foreign ministers proposed a compromise: members could sign agreements with the United States as long as they fell within what Møller referred to as “red lines”: the immunity would only apply to Americans “sent” to EU countries in their official duties, would require the United States to agree to prosecute those accused itself, and must be nonreciprocal (the EU member’s citizens would not be immune from the ICC).

Despite these and many other disagreements, and the increasing bitterness of their tone, some European and American officials have discounted the notion that there is some sort of a transatlantic “crisis.” Solana has criticized “obituaries” about transatlantic relations because “Europe and the United States are natural partners, linked by common values and interests.” Haass assures us “our relationship with Europe is not at risk.” Many officials interviewed in the course of this research, as well as NATO Secretary General Lord George Robertson, have suggested that these disagreements are a sign of a strong and healthy partnership. They may be correct. Certainly the relationship has survived deep rifts in the past: American nonsupport of the British–French–Israeli attack on Suez in 1956,