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## **Winning Back the World's Trust**

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The first administration of George W Bush was no friend to international law, at least by common reckoning. The litany of rejected treaties and flouted rules are often cited, most frequently as the causes of a growing transatlantic rift. Indeed, the European Union (EU) has largely succeeded in positioning itself as the champion of a rule-based multilateral world order, while the US hunts terrorists in a world it perceives as far more akin to the Wild West.

Will Bush's second administration be like his first? If it is, we are in for a rocky time. The battle lines this time will be drawn not over whether United Nations (UN) authorization should be sought for a particular use of force, but whether the UN will get US support at all.

Early attacks on UN secretary-general Kofi Annan from conservative Republican senators and a congress-mandated review of US-UN relations do not bode well. Neither does the resignation of US ambassador to the UN John Danforth, nor Colin Powell's as secretary of state. It may be time to recall that former Pentagon adviser Richard Perle said openly that the first victory of the Iraq war would be the removal of Saddam Hussein and the second the end of the UN.

Continuing US rejection of rules and procedures governing the use of force will also mean growing tension with other major powers over how to address the proliferation of nuclear weapons, most notably in Iran and North Korea, but soon also elsewhere as the old non-proliferation regime disintegrates further.

Beyond the use of force, the absence of a US commitment to restarting the World Trade Organization's Doha trade round will mean the further proliferation of bilateral agreements between various countries and the US, but also with the EU. More alarming, at least from a US perspective, will be the greater emphasis on regional free trade areas. The US might figure that it will benefit from this through an extension of the North American Free Trade Agreement, but not nearly as much as the Chinese are likely to benefit through a stronger, bigger link-up between the Association of South East Asian Nations and China.

In the environmental arena, the US must now figure out what to do after the Kyoto Agreement, since this pact has now become the standard not only for its signatories, but also for various of the constituent United States, notably California. The result is a nightmare of different, even inconsistent standards for American businesses at home and abroad.

The other question is whether the UN will continue to exist at all in its current form, even with the current level of support from the US. And the International Criminal Court will remain an entirely unnecessary sore point between the US and many countries, and an unexploited opportunity for the US to participate in using criminal indictments as levers to advance human rights and democracy.

Should the Bush administration continue to reject institutions of global governance, the highest price to be paid will be the opportunity cost: endless and growing friction over process at the expense of a collective and effective focus on substance.

Taking on international rules and institutions as a matter of principle deflects attention from more pressing issues. America has given European and Asian politicians the opportunity to score domestic political points by opposing the US in its assault on international institutions. America's refusal to play by the rules it would apply to other states makes it nigh impossible for them then to turn around and work with it on issues of common concern: terrorism, proliferation of nuclear and biological weapons, global epidemics, promoting democracy and human rights, ensuring a safe and durable global financial system, using trade to lift millions out of poverty – the list goes on.

### **A change of course**

But suppose the second Bush administration decides to change course, to accommodate rather than to attack. The prospects for collaborative approaches are actually quite promising.

With adroit diplomacy, respect for the views of others, and a willingness to understand how rules and institutions can work for America rather than against it, the administration could:

»forge a new global consensus on the preventive use of force and on the definition of terrorism;  
»marry Washington's new-found emphasis on democracy with the UN's new-found emphasis on human security to insist that the measure of international rules and institutions is not how well they serve governments but how well they serve citizens and;

»create a new set of global institutions, operating at the level of the nation-state, that would train, empower and harness national government officials to meet and counter new global threats at their domestic source.

The roadmap for reaching this consensus is already largely laid out in the recently released Report of the UN High Level Panel on Threats, Challenges and Change. Annan created the panel in September 2003 and charged it with identifying the principal threats to global security and proposing concrete measures to enable the UN to respond collectively and effectively.

Although virtually all press attention has focused on the panel's recommendation for some kind of Security Council reform, even greater significance lies in its proposals regarding a fundamental redefinition of international security itself, its proposed definition of terrorism, and its willingness to accept the need for the preventive use of force when authorized by the Security Council. Thus if the second Bush administration were so inclined, it would find a big opportunity to work with key allies and the UN secretary-general.

The starting point could be the panel's analysis of preventive force and its adoption of a single definition of terrorism. It tackles head on the issue of how a state can respond "where the threat in question is not imminent but still claimed to be real", such as the acquisition, "with allegedly hostile intent", of nuclear weapons-making capability. The panel concluded that "if there are

good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to". It goes on to enunciate five principles to guide the legitimate use of force.

This is a huge step, responding to Annan's exhortation to all UN members to consider the "early authorization of coercive measures". The panel trades off a big potential expansion of the circumstances in which the international community could decide to use force to maintain or preserve international peace and security, as long as the decision is genuinely multilateral.

The key difference, of course, is whether such a use of force has to be authorized by the Security Council. But nothing in the National Security Strategy says that the US administration will never take an issue to the Security Council, unless it is responding directly in self-defence – a right for all countries that the UN Charter protects and the High Level Panel reaffirms.

Moreover, many conservatives are very worried about an unlimited and unmonitored right of preventive force; it is a recipe for chaos in an increasingly dangerous world. The trade-off of an expanded right to use force for a renewed commitment to seek multilateral authorization of that use through the UN could be acceptable.

### **A terrorist, not a freedom fighter**

Similarly, the panel bit the bullet on defining terrorism. It rejected once and for all the claim that political ends justify terrorist means, that "one man's terrorist is another man's freedom fighter". Instead, it enshrined a norm of civilian inviolability alongside the UN Charter's prohibition on inter-state aggression. It defines terrorism as "any action... intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This is another enormous step forward. The rules and obligations to fight the various sources and mechanisms of terrorism are already in place, but a common definition of terrorism will make them much easier to implement and enforce. Here international law can quickly become the administration's ally.

Second, the panel redefined international security to mean not only state security, but also human security. It identified threats menacing not only states, but also the people within them. This is big news in international law. For the panel, its import is all the threats that must also be faced, most of which are again in the Bush national security strategy. In addition, this redefinition leads to the panel's embrace of the formulation developed by the International Commission on Intervention and State Sovereignty of a "responsibility to protect". But if governments must protect their own citizens, they must also provide them with the basic human rights of freedom of speech and assembly, as well as minimum sustenance, healthcare and education.

This recognition of the rights of individuals and the responsibilities of governments is also reflected in the panel's criticism of the UN Human Rights Commission as suffering "from a legitimacy deficit that casts doubts on the overall reputation of the United Nations". The Bush administration could not have said it better. More generally, this shifting emphasis toward human rights and freedoms is in line with the US administration's emphasis on democratization as a

basis for long-term security.

A third area where the Bush administration might play a leading role in reshaping the international legal landscape, or at least the institutions of global governance, is the addition of more formalized networks of national government officials to existing international institutions. The panel says rightly that the key difference between the threats we face today and those we faced in 1945 is that today's threats largely originate within states rather than between them and thus require strong domestic capacity to combat them.

Fighting terrorism depends on strong domestic law enforcement and intelligence capacity; fighting global health epidemics depends on domestic public health systems; fighting illiteracy and poverty requires strong domestic educational and welfare systems.

### **Bottom up, not top down**

The world needs structures for global governance that would actually work from the bottom up, by organizing and enabling the relevant national officials to devise and implement solutions, rather than from the top down, as directed by UN agencies and institutions. The UN provides invaluable legitimacy through collective authorization and is a vital tool for consensus-building. Its expertise is also vital in many areas. But in future, the scope of global problems will far exceed the UN's capacity to execute solutions as well as authorize them. We need networks of national government officials in every area, from homeland security to health, that have their own capacity to coordinate, cross-fertilize, and cooperate in devising and implementing global policy solutions. These networks can work with existing UN agencies, but on a very different basis.

Should the Bush administration try to help build this infrastructure, it could start by working with Canada. Canadian prime minister Paul Martin has proposed the transformation of the current G20 group of finance ministers into a leaders group. The High Level Panel actually endorses this initiative at the very end of its report, on the ground that this group would encompass 80% of the world's population and 90% of its economic activity. It is an excellent forum for Bush to push some of his most important initiatives, allowing him to work face to face – Ronald Reagan-style – with key leaders. It has all the flexibility and immediacy he favours, but could be far more valuable than constantly changing coalitions of the willing. The G20 leaders could authorize their ministers in many other policy arenas, together with the other relevant government officials from their particular regions, to develop cooperative policy approaches in areas like homeland security, a civilian response corps, immigration, health, or trade and environmental policy. The resulting proposals and initiatives would then serve as pilots for more formal international institutions – to be adopted only if they prove effective.

If president Bush chooses to continue bucking the international legal system at every turn, that fight itself will define his second term in the eyes of the rest of the world. Even were he to succeed, as some of his supporters wish, in destroying or seriously damaging the post-1945 set of institutions, he would find himself unable to marshal the economic, political and even military resources that he needs to move from destruction to construction, and from problems to solutions. Representatives of the UN itself have pointed the way to a new accommodation, one

that could forge a new consensus on how to defend global security. Perhaps Bush could now decide that those who are not against us are with us, at least in a common quest to make the world a better and safer place.