
Introduction

Coalitions of the willing are strongly associated with the Iraq War of 2003. Indeed, it was this event that so fundamentally questioned the efficacy and future of international law and brought the phenomenon into public awareness. Symbolic as it may be, the United States-led military alliance is only one of the various phenomena designated by the term. ‘Coalition of the willing’ is a political catchphrase that receives different meanings depending on who is using it. The Iraq War of 2003 and the military operation to combat terror, crime, and piracy, Operation Enduring Freedom; diplomatic partnerships among liberal democracies like the proposed League of Democracies; trans-governmental, non-governmental, and hybrid networks in all conceivable fields, such as the fight against transnational organized crime; the stabilization of the global financial architecture; the fight against global warming; and the pursuit of human security all seem to be part of the steadily growing collection of coalitions of the willing acting in the global realm. In the domestic realm, the expression is also occasionally employed, but the present book is concerned with the usages of the term within international discourses and the implications of the phenomenon for international law or, more precisely, for the role of law in global affairs.

Due to the negative connotations that the catchphrase acquired after the illegal intervention in Iraq, the broader ‘global war on terror’, and the aggressive international rhetoric of the government of George W. Bush, especially during his first term in office, it has been largely replaced by euphemisms like ‘partnership’, ‘platform’, or ‘initiative’; at times, reference is made just to ‘coalitions’. However, the idea behind these labels has not changed significantly, and ‘coalition of the willing’ is the expression that best captures the motivations, strategies, and goals involved in the concept. This is the reason why I have deliberately chosen to keep this term throughout the present study, although the book is not about the Iraq War of 2003.

Without engaging in the analysis of the concept at this point, it can be said that coalitions of the willing are informal groups of like-minded actors – though the like-mindedness of all participants is questionable in several ways, as I will argue. This notion is not restricted to states and has been applied to transnational NGOs, as well as to diplomatic joint ventures in which governments have worked together with civil society in the pursuit of humanitarian aims, such as the Humanitarian Initiative that played a crucial role in the recent adoption of the Treaty on the Prohibition of Nuclear Weapons. Still, we are dealing mainly with groupings of states that often, but not always, integrate the private sector into their functions. In the end, coalitions of the willing are states' creatures, and states – rather, a few in particular – are the principal actors assembling and leading them. Hence, this book is about informal coordination mechanisms among states,¹ which are often but not exclusively led by the United States of America (USA).

International co-operation outside institutions and treaty structures is certainly not a new phenomenon, and informally co-ordinated state conduct can be traced back to at least the Congress of Vienna and the concert system put in place by it. A net of informal mechanisms in the field of exports control of weapons of mass destruction (WMDs) and dual-use materials began to operate in the 1950s with the Coordination Committee on Multilateral Export Controls (CoCom), which was replaced by the Wassenaar Arrangement after the Cold War. These groups, as well as other trans-governmental networks² in the financial sector, like the Basel Committee on Banking Supervision, are the direct precedents of the type of coalitions of the willing I will discuss in this book. An important point of clarification is due in regard to the relationship of coalitions of the willing with trans-governmental networks as those studied in Anne-Marie Slaughter's *New World Order*.³ I will discuss in some detail, for example, the Financial Action Task Force (FATF), a trans-governmental network *par excellence*, and also other schemes of agency-to-agency co-operation at the transnational level. I will analyze closely related phenomena and their current evolutions while tracing,

¹ See Eyal Benvenisti, 'Coalitions of the Willing and the Evolution of Informal International Law', in Christian Calliess, Georg Nolte, and Peter-Tobias Stoll (eds.), *Coalitions of the Willing: Avantgarde or Threat?* (Cologne/Munich: Carl Heymanns Verlag, 2007), p. 1.

² See Robert O. Keohane and Joseph S. Nye, 'Transgovernmental Relations and International Organizations' (1974) 27 *World Politics* 39, at 42-50.

³ Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004).

explaining, and always maintaining awareness of the linkages they have with a whole conceptual framework where the coalition of the willing approach has actually been developed and refined over the years as an integral part of a global governance strategy. This strategy has been mainly designed by US foreign policy circles in the government, think tanks, and academia, and Professor Slaughter has played a prominent role in this regard in Princeton as well as in Washington, D.C. This is a strategy concerned with the maintenance of US hegemony in a rapidly changing world. It emerged in the early post-Cold War years, particularly in the writings of the influential international relations (IR) scholar Richard N. Haass, and has been adjusted since then to other tectonic shifts in world order, such as the 9/11 situation, and more recently to the increasing non-polarity in world affairs. As part of this strategy, the coalition of the willing approach offers greater flexibility and expediency in comparison to slowly incremental and politically contested traditional multilateral diplomacy, as well as the rigidity of international law-making processes. It is not clear how this strategy will unfold under President Donald Trump. What can be said is that Trump's foreign policy so far seems to lack a coherent route,⁴ which makes the pursuit of this approach as part of an integral strategy questionable. But even under such a scenario, the US-led coalitions with which I will deal here continue to perform until this very day, and quite intensely so. Moreover, the coalition of the willing approach is no longer exclusive to the USA or the West but has become part and parcel of global governance in a non-polar age.⁵

One perception of coalitions of the willing is that they perform outside international organizations, thus being 'better understood as an activity than an organization'.⁶ As such, they pose a serious challenge to organized multilateralism; they are certainly part of a broader 'move from institutions'.⁷ It is important to clarify that 'organized multilateralism' does not only refer to international organizations (IOs) but also to the idea of an international community organized through law. Here, of course, the United Nations (UN) occupies a pivotal position, but it is more the notion of the post-war order *qua* legal order that I have in

⁴ On this, see Chapter 3, p. 76, and pp. 89–90.

⁵ See Section 3.3.

⁶ Richard N. Haass, *The Reluctant Sheriff: The United States after the Cold War* (New York: Council on Foreign Relations/Brookings Institution Press, 1997), p. 95.

⁷ See the contributions to the ASIL symposium, 'The Move from Institutions?' (2006) 100 *Proceedings of the Annual Meeting (American Society of International Law)*, pp. 287–302.

mind. This is not to ignore the limitations of the ‘international community’. However, the ideal of a *Rechtsgemeinschaft* is at the core of rule of law aspirations at the international level; i.e., it fulfils a purpose for the legitimacy and credibility of international law as a universal *project*. I speak consciously of a ‘project’ as I do not pretend to portray a picture of international law as an inclusive and transparent legal system that is now being threatened in its integrity by coalitions of the willing. These and other manifestations of global governance are, nevertheless, threats in the sense that they can reverse some of the achievements constructed over time and take the faith away from important aspirations, including rule of law aspirations, which are crucial as political ideals in order for international law not to stagnate. As we will see in the course of this book, one of the achievements that is seriously jeopardized by ‘coalitions of the willing and the evolution of informal international law’⁸ is international law’s foundational principle of sovereign equality. This principle, all its shortfalls notwithstanding and even taken as a fiction, remains of the utmost importance for less powerful states.⁹ Coalitions of the willing are thus conceived in this book as instruments that contribute to the further loosening of control of powerful states,¹⁰ which take advantage of the selectivity awarded by coalitions in order to define the priorities in the implementation and evolution of international law – nothing more but nothing less.

Legal certainty and predictability are seriously affected by informality in global affairs. Now, it is also true that the strength of these values in international law tends to be overestimated. Formal international law-making – i.e., the processes of rule creation that can be traced back to a valid source of international law – already entails a great deal of instances that are opaque in the sense that their genesis is not always clear.

⁸ This is the title of the first comprehensive legal essay addressing coalitions of the willing from an international law perspective, see Benvenisti, ‘Coalitions of the Willing’.

⁹ See Benedict Kingsbury, ‘Sovereignty and Inequality’ (1998) 9 *European Journal of International Law* 599; see also B. S. Chimni, ‘Legitimizing the International Rule of Law’, in James Crawford and Martti Koskenniemi (eds.), *The Cambridge Companion to International Law* (Cambridge: Cambridge University Press, 2012), p. 290, at p. 294; in relation to coalitions of the willing, see Heike Krieger, ‘Coalitions of the Willing – A Résumé from the General Public International Law Point of View’, in Christian Calliess, Georg Nolte and Peter-Tobias Stoll (eds.), *Coalitions of the Willing: Avantgarde or Threat?* p. 43, at pp. 46–47.

¹⁰ Benvenisti, ‘Coalitions of the Willing’, pp. 22–23; and Brad R. Roth, ‘Coalitions of the Willing and the International Rule of Law’, in Calliess, Nolte, and Stoll (eds.), p. 33, at pp. 41–42.

Customary international law is a prime example; another is the normative evolutions of treaties through conferences of the states' parties and their subsidiary organs, including the cross-references they tend to make to the work of expert bodies through 'best practices' and the like. This also reveals a certain degree of informality, or semi-formality, and the opaqueness that it produces also tends to favour those who have the resources to impose their own standards. However, the informality that characterizes coalitions of the willing has evolved over time. It is worth commenting in this context that in 2000, memoranda of understanding (MoUs) were still conceived as 'the standard building block of the informal international order'.¹¹ Today, states that wish to circumvent legal constraints by opting for informal arrangements are better advised to avoid the signing of MoUs, as the US Department of State explicitly encourages its negotiators to do.¹² More importantly, the informality that is actively promoted by coalitions contributes to a further deformalization of international law and, therefore, increases the dislocation of authority in the global realm. This happens primarily through the replacement of competent authorities and legal powers with regime complexes, where fluid 'spheres of authority' are juxtaposed in multi-layered global governance schemes.¹³ And this is made by the intense interplay of coalitions with formal institutions and law, the interplay between formality and informality that this book is about.

Closely related to the implications for sovereign equality, the principle of state consent is also experiencing important changes through coalitions of the willing and their jurisgenerative potential.¹⁴ Furthermore, the norms that are produced within coalitions are paradigmatic examples for the rise of informal international law-making.¹⁵ From thoroughly negotiated 'working plans' specifying concrete normative expectations on the behaviour of participant states (Nuclear Security Summit, – NSS) and

¹¹ Anne-Marie Slaughter, 'Governing the Global Economy through Government Networks', in Michael Byers (ed.), *The Role of Law in International Politics* (New York: Oxford University Press, 2001), p. 177, at p. 189.

¹² See US Department of State (DoS), Office of the Legal Advisor, Treaty Affairs, Guidance on Non-Binding Documents, at www.state.gov/s/l/treaty/guidance/.

¹³ See James N. Rosenau, 'Governing the Ungovernable: The Challenge of a Global Disaggregation of Authority' (2007) 1 *Regulation & Governance* 88.

¹⁴ See Nico Krisch, 'The Decay of Consent: International Law in an Age of Global Public Goods' (2014) 108 *The American Journal of International Law* 1.

¹⁵ See Joost Pauwelyn, Ramses A. Wessel, and Jan Wouters (eds.), *Informal International Lawmaking* (Oxford: Oxford University Press, 2012).

recommendations for legal reform and harmonization of regulations (FATF), to ‘principles of conduct’ that systematize existing legal powers under both national and international law in order to carry out in a co-ordinated manner specific activities like the interdiction of vessels on the high seas (Proliferation Security Initiative – PSI), these examples demonstrate the extent to which coalitions are shaping the ways international and transnational law are made today, and they invite us to revisit the notion of soft law.

We will see throughout the case studies that will be conducted in Chapters 4 and 5 that coalitions of the willing are powerful instruments for implementing international legal rules, something that, in a system that lacks central enforcement authorities, can contribute to the strengthening of international law. Indeed, for some authors, the proliferation of informal trans-governmental mechanisms is a positive evolution towards a more ‘effective World Order’.¹⁶ Apart from the fact that this implementation will prove to be highly selective,¹⁷ this feature of coalitions may suggest that what is needed is the development of mechanisms for improving transparency and accountability;¹⁸ namely, what global

¹⁶ See Slaughter, *A New World Order*, pp. 166 et seq.; see also Kal Raustiala, ‘The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law’ (2002) 43 *Virginia Journal of International Law* 1, at 90 (mentioning in 2002 that ‘[o]n balance, the most plausible prediction about the future is that networks will strengthen the traditional tools of international law and organization’).

¹⁷ Already skeptical on the purported advantages of transnational networks, see José E. Alvarez, ‘Do Liberal States Behave Better? A Critique of Slaughter’s Liberal Theory’ (2001) 12 *European Journal of International Law* 183, at 211 et seq.; and Stephen J. Toope, ‘Emergent Patterns of Governance and International Law’, in Byers, *The Role of Law in International Politics*, p. 91, at pp. 96–97 (mentioning that ‘[n]etworks, like regimes, and regardless of their membership, are sites of power, and potentially of exclusion and inequality’).

¹⁸ This is probably the oldest and still most common critique of coalitions and informal networks. In her early writings on trans-governmental networks, Anne-Marie Slaughter, although already very enthusiastic, focused on the accountability problems, which however, she also saw as the result of misperceptions by critics, see Anne-Marie Slaughter, ‘Agencies on the Loose? Holding Government Networks Accountable’, in George A. Bermann, Matthias Herdegen, and Peter L. Lindseth (eds.), *Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects* (Oxford: Oxford University Press, 2001), p. 521; for an early warning on accountability, transparency and participation problems raised by then new forms of governance, see Philip Alston, ‘The Myopia of the Handmaidens: International Lawyers and Globalization’ (1997) 8 *European Journal of International Law* 435.

administrative law (GAL) has been searching for.¹⁹ Efforts to constrain coalitions and to provide some sort of accountability and transparency are related to the following, more fundamental question: to what extent is the interplay between formality and informality spurred by coalitions capable of developing international law towards a global law, which can better respond to dynamic global risks and needs without renouncing its quality as law?

The Plan of the Book

In order to address these questions, I will proceed as follows. In the next chapter, I will analyze the concept of ‘coalition of the willing’. The aim is not to provide a fixed definition, which contains the elements of the concept once and for all, but to understand and explain how the concept has emerged and evolved, by whom it is used and for what purposes, and in what sense it relates to international legal and political discourses. Accordingly, I will base my analysis in frame and conceptual metaphor theory. Given that coalitions of the willing function on the premise of voluntary state behaviour, renouncing legal obligation, frame analysis as developed by cognitive linguist George Lakoff will also prove to be useful for better understanding how coalitions of the willing work – i.e., how do they induce and persuade states to perform certain conduct. This will prove to be useful again in Chapter 6, where the implications of informal international law for international legality will be assessed.

In Chapter 3, the frames involved in the conceptual metaphor ‘coalition of the willing’ and the ideas transmitted by these frames will be tested. In identifying the different instances where coalitions of the willing have played an important role, I will not try to write a history of the phenomenon, but rather a genealogy of the catchphrase – i.e., to sketch an account of the distinct usages the term has experienced in international political and legal discourses over time. Special attention will thus be paid to the legal doctrines related to ‘coalitions of willing and able states’ acting in the framework or at the margins of collective security – i.e., the multinational forces authorized and unauthorized by the UN Security Council to use all necessary means to maintain or restore international peace and security. I will then show how the notion of ‘coalition of the willing and able states’ that emerged in the 1990/1991

¹⁹ See Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68 *Law and Contemporary Problems* 15, at 17 et seq.

Gulf War was further elaborated and refined as part of a US foreign policy and global governance strategy, but which has been appropriated by other states, mainly powerful ones and beyond the West.

Chapters 4 and 5 contain case studies. There, I will analyze some concrete manifestations of coalitions of the willing. The principal aim of Chapter 4 will be to show how the ideas that are entailed in the conceptual metaphor ‘coalition of the willing’ (Chapter 2) have materialized over time. Therefore, I will take a closer look at the PSI and other ‘sister initiatives’ like the Global Initiative to Combat Nuclear Terrorism (GICNT), as well as the bilaterally operating Container Security Initiative (CSI). In Chapter 5, the FATF, the NSS, and its continuation under what might be termed the ‘NSS 2.0’, as well as the Global Counterterrorism Forum (GCTF), will be analyzed in light of their interplays among themselves and with IOs, and of the jurisgenerative work arising from the latter.

In Chapter 6, an assessment of the findings of the case studies will be made. The interplay revealed in Chapters 4 and 5 intensifies the global complex as a system of rule, an assemblage of informal and formal schemes of co-operation and ruling. Therefore, in a first step, some of the salient features of regime complexity will be analyzed and problematized. Indeed, while the literature on governance and regime complexity has shed light on the mysterious ways through which conduct is steered today at the global level, it is to a large degree eulogistic in that it uncritically celebrates the intricacies of the network. Instead, my focus will be on portraying the *complexities of complexity*, with a view to unravelling the power games it enables. The formal–informal interplay spurred by coalitions of the willing has concrete consequences for international law as we know it. Building on some of the main theses developed in the informal international law-making project (IN-LAW),²⁰ I will argue that we are witnessing the emergence of an *anti-law law* as a consequence of this interplay. Coalitions of the willing are characterized by a *fluctuant informality* that consists of *orchestration* strategies, as well as *quasi-* and *reformatization* processes that take place in a dynamic game with formal law and institutions. The consequence of playing this game is the transformation of the players: coalitions turn into durable efforts and IOs into platforms; informal standards are framed in legal language; legal norms are attached to informal frames;

²⁰ See Pauwelyn, Wessel, and Wouters (eds.), *Informal International Lawmaking*.

and implementation occurs through an efficient multilayered mechanism characterized by pragmatic correspondences, persuasion, conceptual framing, and nudging.

In Chapter 7, I will make some tentative remarks on how this *anti-law law* might be transforming our understanding of international legality. While state consent-based legality is shrinking to a few chessboard domains of classical inter-state disputes,²¹ the new inter-normativity that dynamically arises from the ongoing formal–informal interplay predominates in more and more fields, including such crucial areas as global security and climate change governance, and it is spreading beyond. It is a sort of new *resilience normativity* that is extremely difficult to accommodate into a system. Whether or not this can be achieved is not something I can answer, nor do I intend to make normative assertions on how the world should be ruled instead. My aim is rather to contribute to a better understanding of these transformations of law in the global realm so that the political contestation through which the ideas of a global rule of law have to emerge can be more attuned, thus keeping alive the old dream of international law as a universal project, willing and able to constrain power.

²¹ See Anne-Marie Slaughter, *The Chessboard & the Web – Strategies of Connection in a Networked World* (New Haven: Yale University Press, 2017).