

“Coalitions of the willing” or “governance by posse” were prevalent metaphors among US geopolitical rhetoricians only for the first few years of the twenty-first century, but Alejandro Rodiles makes a convincing case that the interweaving of formal international law with designed informality of operational commitments has become ubiquitous. This excellent study, informed equally by legal theory and early experience as a Mexican diplomat, probes the challenges posed for lawyers by a phenomenon that extends from the Proliferation Security Initiative to contemporary partnerships and network governance and perhaps even China’s Belt and Road.’

Benedict Kingsbury, New York University School of Law

‘Whoever is interested in process of global lawmaking should read this book. Provocatively building on the notion of the “coalitions of the willing”, Professor Alejandro Rodiles shows how the interplay between formal and informal law shapes the development of international law across a range of fields. The book is theoretically innovative and empirically rich and last but not least, it is a very good read.’

Professor Wouter Werner, Vrije Universiteit Amsterdam

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Alejandro Rodiles
Frontmatter
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COALITIONS OF THE WILLING AND INTERNATIONAL LAW

Global action and regulation is increasingly the result of the interplay between formality and informality. From the management of state conduct in international security to the coordination of national policies in climate change, international organizations work ever closer with coalitions of the willing. This book carefully describes this dynamic game, showing that it consists of transformative orchestration strategies and quasi-formalization processes. On the institutional plane, coalitions of the willing turn into 'durable efforts', while international organizations perform as 'platforms' within broader regime complexes. On the normative level, informal standards are framed in legal language and bestowed with the force of law, while legal norms are attached to multilayered schemes of implementation, characterized by pragmatic correspondences, persuasion tactics, and conceptual framing. Understanding how this interplay alters the notion of 'international legality' is crucial for the necessary recalibrations of the political ideals that will inform the rule of law in global governance.

ALEJANDRO RODILES is an associate professor of international law at the Instituto Tecnológico Autónomo de México (ITAM), Mexico City. He undertook his doctoral studies at the Humboldt University of Berlin and is a member of the International Law Association's study groups on UN sanctions and on cities and international law. In addition to his academic pursuits, he has extensive diplomatic experience, including as legal advisor of Mexico's Mission to the UN, as *sous-sherpa* to the Nuclear Security Summit, at the Office of the Legal Advisor, and at the Policy Planning Staff of the Foreign Minister.

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COALITIONS OF THE
WILLING AND
INTERNATIONAL LAW

The Interplay between Formality and Informality

ALEJANDRO RODILES



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Para Natalia y Sofía, con todo mi amor

[W]e are the hub of alliances unrivalled in the history of nations.

Barack H. Obama

In this era of international relations, we may need to start thinking less about formal international treaties and agreements and much more about what you might describe as coordinated national policies.

Richard N. Haass

Managing States turns centrally on information . . . for example through cognitive framing[.]

Kenneth W. Abbott

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FOREWORD

This book fascinatingly portrays the encounters of an evocative political concept with international law and its manifestations in practice. Alejandro Rodiles describes ‘coalitions of the willing’ as a widespread paralegal phenomenon that leaves international law formally intact but may decisively determine its interpretation and application, and which may even go so far as to undermine international law. Such coalitions are more than a subset of the many informal arrangements that are part of what is often called global governance. Coalitions of the willing represent a quintessentially modern driving force for the development, implementation, and supplementation of international law, as exercised by influential states. Originally developed as an operative political concept in and for the United States of America, the concept of ‘coalitions of the willing’ is analyzed and presented as a category with considerable explanatory force.

The author is both a theory-minded academic and an experienced international legal practitioner. Alejandro Rodiles first works on the concept of ‘coalitions of the willing’, its purpose, and effects – including a discussion of the political subconscious through the application of language theory. It is only after having developed a proper theoretical foundation and perspective that he explores certain regimes at the edges of international security law and policy. In describing the creation and working of regimes like the Proliferation Security Initiative (PSI), the Container Security Initiative (CSI), the Global Initiative to Combat Nuclear Terrorism (GICNT), the Nuclear Security Summit (NSS), the Global Counterterrorism Forum (GCTF), and the Financial Action Task Force (FATF), he extracts their symptomatic character for the way in which international security relations are conducted behind the more visible events.

The book connects several debates in international law and political science. Although most of the examples for coalitions of the willing are taken from United States-dominated security regimes, the analytical

force of it is limited to neither elucidating a particular manifestation of US policy nor to the area of security law.

The main challenge for any author who wishes to fruitfully address ‘coalitions of the willing’ is to remain between the Scylla of a – legally or politically – constructive approach that, consciously or subconsciously, uses the concept to achieve particular goals, and the Charybdis of a critical approach for which the concept merely serves to unmask hegemonic designs. Alejandro Rodiles has, in my view, succeeded in maintaining such a fruitful balance. He sees the hegemonic dimension, but he also identifies the law-creating and implementing functions of coalitions of the willing. He combines the virtues of realist and critical political scientists and of positivist and deconstructionist lawyers. He is thereby able to capture one of the most important aspects of the ‘modern condition’ of international law.

Georg Nolte
*Humboldt University of Berlin, Member of the
International Law Commission*

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When I defended my ‘little dissertation’ in order to get my law degree, at the National Autonomous University of Mexico (UNAM), the Iraq War of 2003 had just started. The impact was profound, informing my whole approach to the discipline I came to embrace, first as a practitioner at Mexico’s Foreign Ministry, and then as an academic. The ‘coalition of the willing’ forged by the George W. Bush administration, and the whole framing of it as *the* means to deal with threats to international peace and security in face of the alleged inefficacy of the United Nations and international law, shook my whole belief in law as a meaningful and contestable articulation of power. As a junior advisor at the Policy Planning Staff of Mexico’s Foreign Minister, my agnosticism was only exacerbated. I began to work in international law as a ‘translator’, so to speak, from the legal into the political dialects, noticing that both share etymology and grammar. In this sense, well before reading David Kennedy and Martti Koskenniemi, I could grasp that law is politics by other means. But dialects are expressions of life, and translation is therefore useful in order to overcome (contingent but real) boundaries. That was the beginning of the imaginary of this book, even if I was not aware of it. I thank Arturo Sarukhán, my former boss at the Policy Planning Staff, with whom I learned to communicate in different dialects and who has profoundly shaped my sensibilities in foreign policy and international relations. He also introduced me to the work of Richard N. Haass, the intellectual father of ‘coalitions of the willing’ and a US foreign policy strategist whose ideas have exercised an important and not sufficiently acknowledged impact on world politics and law in the post- and post-post Cold War environments – I hope to remedy this attention deficit a bit in the pages to come.

I then moved to the Office of the Legal Advisor, where I had the fortune to work with Juan Manuel Gómez Robledo and Joel Hernández, fine international lawyers who taught me what I know about the craft of the discipline, as well as the value of organized multilateralism. Faith

reinstalled but plagued with doubts, nonetheless, after writing legal memoranda, I read with fervour *Der Nomos der Erde*. I could not get the thought out of my head that I was working on premises that were vanishing as I began to learn how to articulate and work with them. At that time, I luckily acquired *US Hegemony and the Foundations of International Law*, edited by Michael Byers and Georg Nolte. At the same time, I also read Andreas Paulus' 'The War against Iraq and the Future of International Law', a wonderful article that shaped many thoughts contained in this book. I wrote Andreas about my intentions to write a doctoral dissertation on coalitions of the willing and international law. He read carefully my very long emails, understood my motivations, and brought me into contact with Georg Nolte, making this journey possible in the first place. That journey would have been materially impossible without the scholarship that was generously provided to me by Mexico's Council on Science and Technology (CONACYT), and administrated by the German Academic Exchange Service (DAAD).

As my doctoral supervisor, Georg Nolte motivated me and believed in my project even when I was more than sceptical. His door was literally always open for advice and thoughtful debates. We may have different views on certain issues of law and politics, but our communication flows as if there were no political or cultural barriers. I have come to think of him as an enlightened positivist who knows the law and defends it with passion, but a passion that is grounded in a genuine understanding of the world where this law acquires its meaning. And he has a dialectical mind, always willing and able to overcome the theses and anti-theses of the politics of law. This book benefited enormously from his example and guidance. Most important, he and Elena Nolte-Borovkova always cared for me and my family in Germany, alleviating homesickness as only they can.

In Munich, I had the fortune of becoming part of a wonderful environment – academic but, most of all, human – in which many of the thoughts in this book started to take shape as the project of my doctoral dissertation. I thank Georg Nolte, Bruno Simma, Bardo Fassbender, Thilo Rensmann, and Andreas Paulus for providing institutional support and invaluable advice. I am especially thankful to Christine Schuhbeck-Schmidt, who was always helpful and gentle. During my time in Munich was also when I met colleagues who became good friends, particularly Helmut Aust and Christian Djeffal. Helmut discussed with me almost every aspect of this book, read several chapters, and gave most valuable

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Eyal Benvenisti spent some time in Munich when I was starting to write the dissertation. We discussed my project in some length. Those conversations are an essential part of this story, and he continued throughout the years to listen to my ideas and give great and gentle advice. His thoughts have had a profound impact on this book, as the reader will immediately notice. Also in Munich, I took part in a research project on informality in international relations, conducted by Christopher Daase, which was extremely useful for many ideas developed in this book as well.

Still in Munich, I was invited to join the Mexican Mission to the UN, in New York, for the third participation of my country in the United Nations Security Council. I thank Juan Manuel Gómez Robledo and Claude Heller for giving me the opportunity to be part of a great team in the Mexican Mission. While there, I could not write a single page for the dissertation, but the experience proved to be crucial for the whole book, and for what it should turn into. The insights I gained as a Sixth Committee delegate, as well as an 'expert' to the Counter-Terrorism and Al-Qaida and Taliban Sanctions Committees, as well as my role as the Mexican *sous-sherpa* to the Nuclear Security Summit, informed many of the present findings and assessments. I experienced the United Nations as a platform, with the Security Council being at many edges of a growing network of governance. In New York, I was very lucky to have had the opportunity of exchanging views on these incipient observations with Benedict Kingsbury, who helped me understand the proper dimensions of these practical experiences for my academic work; he became a powerful source of inspiration far beyond this book.

After finishing my assignment in New York, Georg Nolte invited me to work with him in Berlin. He is not only an excellent doctoral supervisor, but also a wonderful person to work with. There is no other way to put it: I have learned so much from him that I cannot thank him enough.

I finished the dissertation at Humboldt University, a great institution I came to embrace as my second *alma mater*. The Chair for Public Law, Public International Law, and European Law was full of inspiring and friendly people, many of whom contributed in several ways to bringing my dissertation to a good end. For very fruitful discussions, I thank Helmut Aust, Christian Djefall, Chris Gutmann, and Peter Staubach. We also had a great time together. My profound gratitude goes to Kerstin Schuster who made life easier and brought much life into work. My

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I have discussed certain parts and aspects of this book with many friends and colleagues in several settings or bilaterally, and all have been relevant for the final outcome. Beyond those already mentioned, let me express my gratitude to Markus Jachtenfuchs, the second reader of my dissertation, who made helpful criticisms I hope I could address properly; Carlos Montemayor, who read the second chapter and provided great feedback; Alfonso Ascencio, who commented on several aspects of the Proliferation Security Initiative and the law of the sea treated in Chapter 4; Larissa van den Herik and the International Law Association (ILA) Working Group on UN Sanctions that gave me the opportunity to discuss some aspects of Chapter 5; Mattias Kumm and the Rule of Law group at the WZB, in Berlin, where I presented parts of Chapter 3; the Grakov Center at Humboldt University, where I received valuable comments on first drafts of Chapter 6 and found the time to write ‘the whole thing’ down (for PhD purposes); as well as Guadalupe Barrena, Arnulf Becker Lorca, Konrad Bühler, Jorge Cerdio, Rodrigo Chacón, Anne Peters, Ulises Schmill, and Gavin Sullivan.

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Most of all, I am deeply grateful to my innermost circle, my family that gives me motivation in each and every sense. I thank my wife, life

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ABBREVIATIONS

CBP	Customs and Border Protection of the US Department of Homeland Security
CMF	Combined Maritime Forces
CoCom	Coordination Committee on Multilateral Export Controls
COP	Conference of the State Parties
CSI	Container Security Initiative of the US Customs and Border Protection
CTC	Counter-Terrorism Committee of the United Nations Security Council
CTED	Counter-Terrorism Executive Directorate of the Counter-Terrorism Committee of the United Nations Security Council
CTF-150	Combined Task Force-150
CTF-151	Combined Task Force-151
CTF-152	Combined Task Force-152
CTITF	Counter-Terrorism Implementation Task Force of the United Nations General Assembly
C-TPAT	Customs Trade Partnership against Terrorism
DHS	US Department of Homeland Security
DIS	Detailed Implementation Assessment of the Counter-Terrorism Executive Directorate
DoD	US Department of Defense
DoS	US Department of State
DPRK	Democratic People's Republic of Korea
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
FAST	Free and Secure Trade program
FATF	Financial Action Task Force
FIUs	Financial Intelligence Units
FSRBs	Financial Action Task Force Style Regional Bodies
FTF	foreign terrorist fighters
GA	United Nations General Assembly
GAL	global administrative law

ABBREVIATIONS

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GCTF	Global Counterterrorism Forum
GICNT	Global Initiative to Combat Nuclear Terrorism
GMP	Global Maritime Partnership
HEP	highly enriched plutonium
HEU	highly enriched uranium
HLPM	High Level Political Meetings of the Proliferation Security Initiative
IAEA	International Atomic Energy Agency
IAG	Implementation Assessment Group of the Global Initiative to Combat Nuclear Terrorism
IATA	International Air-Transport Association
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICRG	International Co-Operation Review Group of the Financial Action Task Force
ILC	International Law Commission
IMCMEX	International Mine Countermeasures Exercise
IMO	International Maritime Organization
IN-LAW	informal international law-making project
IS	Islamic State
ITLOS	International Tribunal for the Law of the Sea
MEF	Major Economies Forum on Energy and Climate Change
MoU	memoranda of understanding
MSO	Maritime Security Operations
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NDCs	nationally determined contributions of the Paris Agreement on Climate Change
NNSA	US Department of Energy's National Nuclear Security Administration
NNWS	non-nuclear weapon states
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NSG	Nuclear Suppliers Group
NSCG	Nuclear Security Contact Group
NSS	Nuclear Security Summit
OECD	Organization for Economic Cooperation and Development
OEF	Operation Enduring Freedom
OEG	Operation Expert Group of the Proliferation Security Initiative
OEWG	Operational Experts Working Group of the Proliferation Security Initiative
OGS	Office of Global Strategies of the US Department of Homeland Security

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ABBREVIATIONS

OIA	Overview of Implementation Assessment of the Counter-Terrorism Executive Directorate
OIF	Operation Iraqi Freedom
PACOM	US Pacific Command
PCIJ	Permanent Court of International Justice
PIA	Preliminary Implementation Assessment of the United Nations Counter-Terrorism Committee
PRST	Statement by the President of the United Nations Security Council
PSI	Proliferation Security Initiative
RMSI	Regional Maritime Security Initiative
ROEG	Regional Operational Experts Groups of the Proliferation Security Initiative
SC	United Nations Security Council
SG	United Nations Secretary General
SIP	Statement of Interdiction Principles of the Proliferation Security Initiative
SOP	Statement of Principles of the Global Initiative to Combat Nuclear Terrorism
SOUTHCOM	United States Southern Command
SUA	2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TSA	US Transportation and Security Administration
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
USNSS	US National Security Strategy
VCLT	Vienna Convention on the Law of Treaties
WMD	weapons of mass destruction