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# Charter Values and the Response to Terrorism

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I am glad that the Charter of the United Nations does not deal only with Governments and States or with politics and war but with the simple elemental needs of human beings whatever be their race, their colour or their creed. In the Charter, we reaffirm our faith in fundamental human rights. We see the freedom of the individual in the State as an essential complement to the freedom of the State in the world community of nations. We stress too that social justice and the best possible standards of life for all are essential factors in promoting the peace of the world.

—Zuleta Angel, 1946<sup>1</sup>

**This chapter is a preliminary attempt** to evaluate the implications of the terrorist attacks on the United States in September 2001 for the promotion of the values articulated in the UN Charter, which are held to be universal in international society.<sup>2</sup> The premise of the chapter is the proposition that one of the most important roles of the world organization is to promote certain values and set “the terms” of international debates.<sup>3</sup> I begin with an effort to lay out just what these values are and how they evolved in the Cold War and post–Cold War eras. I then assess the impact of unilateral and multilateral actions in the “war on terror” on the promotion of these values.

I argue that the struggle against terror may have important effects on the fundamental values of peace, nonaggression, sovereignty, and nonintervention that are embedded in the Charter. Moreover, if we agree with Zuleta Angel that the Charter involves a dual pursuit of, or balance between, individual and state rights, then we may be encountering a rebalancing of that relationship through the reassertion (often unilateral) of the prerogatives of state power after a period of rapid normative development that has focused on multilateral processes and on human beings. Finally, and more positively, to the extent that September 11 is seen as a reflection of social injustice, then the response

to it may over time conduce to a strengthening of this component of the UN's normative agenda by highlighting the connection between justice and great-power interest that was such a frequently encountered theme at the time the Charter was negotiated.<sup>4</sup>

Given the nature of the topic, it is useful to lay out my own assumptions on several issues. First, the topic implies a belief that ideas matter and that institutions matter as purveyors of ideas. I agree with neoliberal institutionalists that international institutions have a significant, although not dominant, role to play in the structuring of international cooperation. The experience of cooperation does affect state calculations, not so much by altering their preferences but by shaping the way in which they seek to attain them.<sup>5</sup> With regard to the role of ideas, I accept the soft constructivist view that state behavior is affected by how states and their leaders perceive their environment and that their cognitive processes are shaped by shared understandings of what international politics is about.<sup>6</sup> These understandings are themselves to some extent rooted in values. For these reasons, consideration of the role of the UN (and other institutions) in promoting particular normative agendas has significance in the analysis of world politics. The UN's role in this respect is particularly important, since near universality of membership conveys a degree of legitimacy that is not enjoyed by regional institutions or coalitions of like-minded states.

This is not to deny the relevance of what are claimed to be structural constants (the primacy of the state as an actor and anarchy as a condition)<sup>7</sup> and variables (the distribution of power) in the explanation of international politics.<sup>8</sup> Indeed, one way to interpret the transition in international politics after September 2001 is as a reassertion of traditional realist concerns over power and security after a bucolic (at least for the established great powers) interlude in which a permissive threat environment allowed states and non-state actors to focus on the promotion of an array of norms loosely associated with the UN system, to the extent that they were not preoccupied with internal concerns. Arguably, although the threat occasioning the reversion is hardly traditional, it has produced a reemphasis on power, unilateralism, and geostrategy that is quite familiar to students of traditional security studies. It remains to be seen to what extent the evolution of the normative framework since the end of the Cold War poses meaningful constraints on the exercise of raw power.

Third, the title assumes that one can speak meaningfully of the United Nations as an entity that possesses values. As Adam Roberts once wrote: "The UN is not an institution to which people should look if they want logic, consistency, clarity, and simplicity."<sup>9</sup> Anyone familiar with the relationships be-

tween the Department of Peace-keeping Operations (DPKO), the Department of Political Affairs (DPA), and the Office for the Coordination of Humanitarian Affairs (OCHA) within the Secretariat or between OCHA and the specialized agencies or among specialized agencies with overlapping mandates (e.g., in the humanitarian sphere) is aware that the United Nations encompass a wide array of often-conflicting institutional and individual perspectives. When one considers the member states, the perspectives are often more diverse still. As recent discussions of humanitarian intervention and the international responsibility to protect civilians in war suggest, there is among the membership, not least among the Permanent Five, a great disparity of views on fundamental normative issues.<sup>10</sup>

In a related vein, it is worth acknowledging that much of the discourse on values at the United Nations has a distinctly rhetorical and often disingenuous flavor. The fervent commitment to democracy and nonintervention by Soviet representatives during the Cold War sat uncomfortably with their oppression of their own populations and suppression by force of the peoples of Eastern Europe. American criticism of human rights in the Soviet bloc and of Soviet intervention in Afghanistan, likewise, was difficult to square with U.S. support of abusive dictatorships in Africa, Latin America, and Asia and with American interventions in Vietnam, the Dominican Republic, and Nicaragua, leaving aside Washington's role in deposing Chile's democratically elected government of Salvador Allende. The General Assembly, meanwhile, continued to accept the credentials of the Khmer Rouge authorities who had slaughtered large portions of their own population and refused to seat the Vietnamese-backed regime that had halted the slaughter.

Nonetheless, the United Nations has played a significant role in setting or strengthening standards based on the values of maintaining the system (international security), survival of the units of the system (sovereignty, territorial integrity, and nonintervention), peace, and justice (decolonization, human rights, and a more equitable redistribution of resources within the system). It has done so in at least three ways. In the first place, the organization serves as a forum in which values can be and are espoused and in which opinion can coalesce around particular understandings. The role the General Assembly played on the issues of decolonization and apartheid is illustrative. Second, the secretary-general and the specialized agencies can and do act as "norm entrepreneurs"<sup>11</sup> in the effort to persuade states of the need to embed certain values in world politics. The role of various agencies associated with the United Nations in the promotion of justice concerns and in clarifying the relationship between human rights, development, and security is illustrative, as is the

advocacy role of the current secretary-general in the evolution of international society's understanding of sovereignty. Third, many of the UN's agencies have responsibilities to implement the normative commitments of the organization and its members; for example, the role of the UN High Commissioner for Refugees (UNHCR) in administering the international refugee regime. Particularly in the post-Cold War era, and perhaps more controversially, the UN cluster of organizations has adopted, or has been granted, a stronger role in the implementation of changing values, particularly in the humanitarian and human rights arenas.

Next, one should acknowledge in a study of this type an important methodological difficulty. The United States has dominated international response to the attack on September 11, 2001. Many of the observations made in the penultimate section below concern the impact of American actions and perspectives on the UN and on world politics. However, September 11 is not the only causal factor in play. The attacks were preceded nine months earlier by the arrival of an administration that had perspectives on the UN and on world politics that were rather distinct from those of its predecessor.<sup>12</sup> It is, consequently, difficult to tell to what extent U.S. actions and perspectives after September 2001 reflect the specific experience or the predispositions of a new and apparently considerably more unilateralist leadership team. In this regard, one can legitimately ask whether the campaign against Iraq is part of the global struggle against terror or whether it is an element of a broader and preexisting agenda, with the attacks of September 2001 playing a permissive rather than a proactive causal role.

Likewise, it is possible to argue that September 11 appears to undermine norms regarding collective security, in that it has fostered greater American unilateralism. On the other hand, if one believes that an approximate balance of military power (in which no single power is preponderant) is necessary for the effective functioning of collective security, then the erosion of collective security may be more a consequence of the growing relative power of the United States in military affairs than it is of discrete events.

One final clarification is necessary. Many of the UN values discussed below are embodied in texts recognized to have the status of international law (e.g., Charter principles on the use of force, sovereignty, and nonintervention).<sup>13</sup> Others, however, do not have this formal status (e.g., the stipulation of state duties regarding self-determination in General Assembly resolution 2734 (1970), "Declaration on the Strengthening of International Security"). This paper thus focuses on principles and norms that appear in the UN Charter and have been widely shared by UN organizations rather than on international law *per se*.<sup>14</sup>

## The Values

When one considers the values promoted by the United Nations, one is tempted to jump immediately to substantive issues such as national self-determination, economic redistribution and development, and human rights and humanitarian protection. However, it is worthwhile to begin with an overarching procedural norm, multilateralism, before discussing five more substantive values (the use of force, sovereignty and nonintervention, self-determination, redistributive justice, and human rights).

The UN and its Charter are based on the idea that it is preferable that contentious issues in world politics be considered, and resolved if possible, cooperatively rather than on the basis of the unilateral exercise of power. Article 1 provides an eloquent demonstration, calling for “effective collective measures for the prevention and removal of threats to the peace.” Paragraph 3 identifies the achievement of “co-operation in solving international problems of an economic, social, cultural and humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms” as a purpose of the organization. Paragraph 4 states the UN’s intention of becoming a “centre for harmonizing the actions of nations.” In this respect, multilateralism can be seen as a goal<sup>15</sup> that is both embodied in and promoted by the UN.

This procedural preference is clear in sections of the Charter addressing the first cluster of substantive values to be considered here, those relating to peace and security. A stable order (the maintenance of international peace and security) has been privileged as a value; multilateralism is privileged as an approach.<sup>16</sup> The use of force is ruled out except in two cases: member action (individually or collectively) in self-defense until the Security Council acts<sup>17</sup> and collective response by the Security Council when it determines that a threat to, or breach of, international peace and security exists (Chapter VII, Articles 39 and 42).

Later General Assembly resolutions strengthened the prohibition on the aggressive use of force. The “Definition of Aggression,” which the assembly adopted in resolution 3314 (1974) after a debate that spanned decades, stated that “no consideration of whatever nature, whether political, economic, military or otherwise, may serve as the justification for aggression.” On the other hand, the assembly was responsible for a certain dilution in the proscription of the use of force in instances related to national self-determination, apartheid, foreign occupation, or foreign domination.

The second major cluster of substantive values promoted by the United Nations is that surrounding sovereignty/territorial integrity and nonintervention. Article 2.1 states that the UN is founded on the basis of the sovereign

equality of states. Article 2.4 can be interpreted to cover intervention as well as the direct aggressive use of force in its proscription of the threat or use of force against the territorial integrity or political independence of any state or in any other manner against the purposes of the United Nations. Article 2.7 extends the principle of nonintervention in domestic jurisdiction to the actions of the UN itself. The International Court of Justice (ICJ) clarified the illegality of forceful intervention in the Corfu Channel case in 1949:

[The Court] can only regard the alleged right of intervention as the manifestation of a policy of force which cannot find a place in international law . . . [B]etween independent states, the respect for sovereignty is an essential foundation for international relations.<sup>18</sup>

Again, subsequent actions of the assembly stiffened the UN's commitment to these propositions. The "Declaration on Intervention" averred that no state had the "right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State."<sup>19</sup> Both this declaration and its successor on aggression specified that intervention was a form of aggression.<sup>20</sup>

The discussion of sovereignty leads naturally to that of national self-determination. However, the relevance of September 11 to this subject is limited. It is plausible that in a limited number of instances (e.g., Chechnya, Xinjiang, Mindanao, and Aceh), terrorist attacks have affected prospects for self-determination by minority communities in multinational states. With regard to Chechnya and Xinjiang, for example, Russian and Chinese officials have attempted to dismiss minority struggles for self-determination as Islamic terrorism. Before September 2001, this line was not widely accepted in the West. The apparent links between some members of the Chechen and Uighur resistance movements and Al Qaeda enhanced Western receptivity to the characterization of these conflicts as counterterrorist operations. Moreover, the desire for Russian and Chinese cooperation in the struggle against terrorism has led to a diminution of international criticism of Russian and Chinese conduct in these cases.

However, the UN's promotion of self-determination focused almost exclusively on the territorial self-determination of colonies rather than on the self-determination of defined peoples. General Assembly resolution 1514 (1961) explicitly rejects the possibility that self-determination might legitimately be applied to minorities within sovereign states. In this respect, whatever one might think of the merits of these minorities' claims, there is no obvious relationship between the UN understanding of self-determination and the consequences of September 2001 for certain minority peoples within recognized sovereign states.

The third major cluster of issues to be considered here concerns economic and social development. The discussions leading up to the Charter reflected a strong interest in economic and social development.<sup>21</sup> As Edward Stettinius noted in his June 1945 report on the San Francisco conference:

The battle of peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace. . . . No provisions that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs.<sup>22</sup>

This view distinguished the UN to some degree from its predecessor, the League of Nations. The interest in economic and social issues reflected the experience of the Depression and the widely held opinion that the economic difficulties of the 1930s had contributed to the descent into World War II. It was also consistent with the growing influence of Keynesian theory during the New Deal in the United States. As indicated in the above quote, the economic and social provisions of the Charter had an instrumental logic related to peace and security. Article 55 of Chapter IX, in justifying UN efforts to promote “higher standards of living, full employment, and conditions of economic and social progress and development,” noted that “conditions of stability and well being [were] necessary for peaceful and friendly relations among nations.” Distributive justice was a necessary condition of peace and security.<sup>23</sup>

A similar consequentialist logic informed the UN Charter’s treatment of human rights.<sup>24</sup> As was the case with development, peace and security were seen to rest to an extent on respect for fundamental human rights. As Leland Goodrich and his collaborators observed, the authors of Article 1.3 considered international economic and social problems and the promotion of respect for human rights “with a view to creation of conditions of stability and wellbeing.”<sup>25</sup> Although the Charter commitment to human rights was rather general, it was elaborated considerably in subsequent General Assembly activities, such as the 1948 Universal Declaration of Human Rights and the 1966 international covenants on economic, social, and cultural rights and on civil and political rights.<sup>26</sup> In this context, the instrumental, security-related logic was quickly supplemented by an essentialist rationale. With little by way of reference to international security, the preamble to the Universal Declaration begins by referring to “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family.” The Covenant on Economic, Social, and Cultural Rights and the Covenant on Political and Civil

Rights likewise asserted that the rights discussed therein “derive from the inherent dignity of the human person.” The emphasis here was on the value of humanity.<sup>27</sup> In time, the logic of instrumentalist security for the defense of human rights weakened. For example, the notion that refugee movements and forced migration more generally are threats to security was largely absent from the foundational documents of the international refugee regime.<sup>28</sup>

Two Security Council actions under Chapter VII during the Cold War intruded into matters of domestic jurisdiction where human rights were at issue: sanctions against Rhodesia and South Africa. In the first instance, however, the Security Council deemed itself to be acting in support of a sovereign government responding to an act of rebellion, the “continuance” of which constituted a threat to international peace and security. Human rights were not cited as a major reason for acting in resolution 217 (1965).<sup>29</sup> In the second, regarding apartheid, the council condemned South Africa in 1976 for its policies of repression against the black majority in resolution 392. But in resolution 417 (1977), which invoked Chapter VII and mandated an arms embargo, the council emphasized the threat to international security that emanated from South Africa’s policies, in particular its arms buildup and pressure on neighboring states. These evocations of threats to international peace and security point to an important constitutional limitation on the council’s promotion of values beyond those of order and peace. It has no mandate to pursue, say, human rights or redistributive justice *per se*. These issues were generally left to other organs—namely the General Assembly, the Economic and Social Council (ECOSOC), and a range of specialized agencies.

At the beginning of this section, I suggested that the UN’s normative agenda has five components: peace and security (the stability of international society), sovereignty and nonintervention, self-determination, redistributive justice, and human rights. As in most other arenas, all good things do not necessarily go together. As Hedley Bull has pointed out, the effort to sustain order may require breaches of the peace. Maintaining international peace and security may be seen to require overriding the sovereign rights of states. Security, peace, and sovereignty concerns may require the contravention of widely accepted standards of justice.<sup>30</sup> In its first forty-five years, system maintenance proceeded to a large extent outside the United Nations; the Security Council itself was largely blocked by bipolar competition. And the General Assembly (the “Uniting for Peace” resolution notwithstanding) had no obvious purchase on the choices of the superpowers in this area.

While the great powers went their own way on core security issues, the General Assembly made considerable progress, for better or worse, in establishing the primacy of norms of sovereignty and nonintervention. In general,



human rights issues took a clear back seat to the norms of sovereignty and nonintervention during the Cold War. This said, the normative basis for the consideration of individual human beings as subjects of international concern expanded gradually, but substantially. In the meantime, the General Assembly made an effort to advance the redistributive agenda at the level of the state through the New International Economic Order (NIEO) but with little effect, since those states at the heights of the international economy saw no obvious advantage in accepting this agenda.

### **The Post–Cold War Era and Normative Development at the United Nations**

The end of the Cold War considerably expanded the space available for the multilateral management of peace and security, illustrated by the radical increase in the number of Security Council resolutions in the area, the equally dramatic reduction in the use of the veto, the increasing numbers (until 1994) of UN operations or operations mandated by the Security Council in the realm of security, and the expansion in the concept of peace operations to include peacebuilding. For some, the U.S.-led operation against Iraq in 1990–1991 suggested that an era of real collective security was in the making. Although the mid-1990s experienced a retreat from the ambitions of the beginning of the decade, the Implementation Force (IFOR) and the Stabilization Force (SFOR) in Bosnia and Operation Allied Force in Kosovo (which proceeded without an explicit Security Council mandate but was launched by a multilateral organization, NATO) all suggested that multilateralism of a sort had come to be taken as a basic condition of response to threats to international peace and security.<sup>31</sup>

At the beginning of Secretary-General Boutros Boutros-Ghali's term, council members asked him for a report on international peace and security in the new conditions brought by the end of the Cold War. He came back with a report that reemphasized the core values of the organization and called for a new and more activist role not only in the area of peace and security but also in the realms of rights and distributive justice. As he put it: "In these past months a conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter—a United Nations capable of maintaining justice and human rights and of promoting, in the words of the Charter, 'social progress and better standards of life in larger freedom.'"<sup>32</sup>

The sequence of interventions in northern Iraq, Somalia, the former Yugoslavia, Haiti, Liberia, Sierra Leone, Kosovo, and East Timor also had implications for the balance between the rights of the society of states and the

rights of sovereign states. The relevant resolutions took advantage of the caveat of Article 2.7 that the sovereign jurisdiction of states could be overridden where events within state borders threatened international peace and security.<sup>33</sup> In using this facility, the Security Council broadened the definition of “threat” to include forced displacement of populations, humanitarian crises, and indeed, in the case of Haiti, in Security Council resolution 940 (1994), the continued denial of democratic rights. Although the resolutions generally made clear the unique and unprecedented character of the situations and actions in question, together they suggested an attenuation of sovereignty and a corresponding expansion of the rights of the United Nations and international society more broadly with respect to the domestic jurisdiction of states.<sup>34</sup> As the secretary-general put it in 1998: “The Charter protects the sovereignty of peoples. It was never meant as a license for governments to trample on human rights and human dignity. Sovereignty means responsibility, not just power.”<sup>35</sup> The trend toward the challenge to unconditional domestic jurisdiction extended to the effort to deny impunity through the prosecution of alleged war criminals using international criminal tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), and now using the International Criminal Court (ICC).

The increasing preoccupation of UN organs, especially the Security Council, with the issue of intervention on ostensibly humanitarian grounds suggested that the rights of individual human beings had risen in the hierarchy of values embraced by the organization. This was also evident in the shifting discourse on security in the UN’s specialized agencies,<sup>36</sup> which increasingly privileged the individual protection and welfare concerns of human beings at the expense of the traditional security and sovereignty preoccupations of states. As was evident in the 1994 United Nations Development Programme (UNDP) *Human Development Report*, the focus on the security of the individual had developmental aspects as well, linking the security discourse of the UN to the redistributive welfare goals discussed above. In other words, one could argue that the balance among the core values promoted by the UN system had shifted and that the UN’s concern to defend norms of sovereignty had diminished to a degree in the face of peace and security concerns on the one hand, and rights concerns on the other, and that the link between peace and security and rights and welfare was more strongly integrated into the organization’s discourse and practice. Recalling the balance between individual and state rights discussed earlier, the 1990s appear to have been characterized by a shift in the balance between state and individual rights toward the latter. This occurred in the context of a growing multilateralization of governance in the areas of security and rights.

## September 11 and UN Values

The fundamental question posed by the events of September 11 and the responses to them is whether they are tilting this balance back toward unilateralism as process and toward the rights of states at the expense of those of individuals. In Europe and much of the rest of the world, the standard image one received in the post–September 11 context was of an increasingly hegemonic military superpower that showed little interest in the broad agenda of UN values (except perhaps to undermine them), that was indifferent or hostile to multilateral approaches to the problems that it faced, that increasingly regarded its own interests and was wedded to the unilateral use of force, that stretched the boundaries of legitimate self-defense, and that had returned to intervention as an instrument of policy, even when such intervention was not mandated by the Security Council.<sup>37</sup> This image was enhanced by the marginalization of international organizations in the response to Al Qaeda, the Taliban, and, until September 2002, the “axis of evil,” notably Iraq. It was encouraged by the bellicosity and dismissiveness toward multilateral approaches to resolving problems of global governance of many prominent members of the Bush administration. This dismissiveness appeared to extend beyond the UN to include NATO, the Organization for Security and Co-operation in Europe (OSCE), and certain multilateral arms control instruments (e.g., the withdrawal from the effort to strengthen the biological weapons convention). It went beyond the frame of security to include the environment (e.g., the withdrawal from the Kyoto process) and to some extent trade (e.g., the expansion of U.S. farm subsidies).

Yet it would be inaccurate to suggest that Washington had given up on multilateralism. In the first place, the Security Council played a role in the legitimation of the U.S. military response to the terrorist attacks.<sup>38</sup> Sixteen days later, the Security Council laid the groundwork for a substantial enhancement of international cooperation in the response to terrorism, notably in targeting the financial assets of terrorist groups and sympathizers; it called on all states to report within ninety days on their efforts to implement the resolution and established a committee to monitor progress in the implementation of the program laid out in the resolution. Resolution 1373 reflected the important point that many aspects of this new threat were not effectively manageable without strengthening functional multilateral cooperation in certain areas (intelligence, police, financial monitoring). To the extent this is so, one would expect a strengthening of Washington’s commitment to multilateralism in these areas.

It should also be noted that although the rhetoric of the military campaign had a distinctly unilateral flavor, its implementation in Afghanistan involved

close operational cooperation with a number of allies. Moreover, the United States made clear its preference for multilateral approaches to post-conflict peacebuilding and reconstruction in Afghanistan, not least because it apparently did not wish its forces to be distracted from purely military matters.

As attention turned to Iraq, the possibility of a unilateral and unmandated use of force raised serious concerns within the UN system, typified by Secretary-General Kofi Annan's opening statement to the 57th General Assembly. He stressed the necessity of multilateral cooperation in the struggle against terrorism and went on to assert that "choosing to follow or reject the multilateral path must not be a matter of simple political convenience." Acknowledging the threat that unilateral use of force would pose to the Charter-based system of norms, he observed that it would have "consequences far beyond the immediate context" and reminded his listeners that in the decision to use force to deal with threats to international peace and security, "there is no substitute for the unique legitimacy provided by the United Nations."<sup>39</sup>

In the period immediately prior to the General Assembly's opening in 2002, the UK and U.S. apparently agreed on the merits of exhausting the Security Council alternative prior to any attack on Iraq. President Bush reflected this conclusion in his address in New York where he called on the Security Council to enforce the many unfulfilled resolutions dealing with Iraq while reserving the right to act alone should the multilateral option fail.<sup>40</sup> In November 2002, Washington settled for Security Council resolution 1441, which fell short of mandating the use of force in the event of Iraqi noncompliance. In short, the U.S. did not abandon multilateralism outright for the simple reason that American policymakers appeared to believe that multilateral cooperation served their interests in the campaign in certain respects.<sup>41</sup>

Matters become more complex when one moves toward substantive values regarding the use of force. The United Nations has played an important role in the effort to entrench collective approaches to international peace and security and in embedding the illegality of the use of force by states except in self-defense.<sup>42</sup> The immediate response to the attack on the U.S. was not particularly problematic in this regard. The United States was a victim of aggression and acted in self-defense in a situation recognized by the council to be a threat to international peace and security in resolution 1368.

However, as attention shifted to Iraq, the justification of force became more problematic. There is reason to question the direct linkage between U.S. policy in the war on terror and its position on Iraq. However, as noted above, September 11 played an important permissive role in the evolution of U.S. policy. Moreover, U.S. arguments regarding preventive defense relied directly on the alleged link between "rogue states" and terrorist groups.

One approach to dealing with the Security Council's reluctance to adopt a resolution explicitly authorizing force was to argue that in view of prior actions of the council, such a resolution was unnecessary. The post-September 11 resolutions were not promising in this regard. It is difficult to see how the coverage of resolution 1368 could be extended to states that had not attacked the United States and could not be proven to be harboring terrorists. Prior resolutions on Iraq provided more fertile ground. Iraqi failure to comply with other resolutions of the Security Council (for example, resolution 687 [1991]) could plausibly serve as a justification for military action. The last paragraph in resolution 687 stated that the council "decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the region." However, the Security Council reserved to itself the right of decision on this matter, leaving little space for unilateral state action to implement the resolution.

Resolution 678 (1990) provided an indirect justification for the use of force without a supplementary resolution, since it authorized member states to "use all necessary means" not only to "uphold and implement Resolution 660 (1990) and all subsequent relevant resolutions" but also to "restore international peace and security in the area." Elsewhere, resolution 686 (1991) affirmed that until Iraq complied with the cease-fire conditions listed in paragraphs 2 and 3 of the resolution,<sup>43</sup> the just-mentioned provisions of resolutions 678 remained in effect. This appeared to suggest that to the extent that Iraq had not complied with these conditions, member states were authorized to act without a further mandate.<sup>44</sup> However, the extent to which Iraq had complied with these resolutions was a matter of debate, particularly given the imprecise quality of much of the language. It was not clear that Iraq, even with the best of intentions, would have been able to comply with some of the conditions (e.g., those pertaining to the return of remains of prisoners and missing persons), given the fog of war. The phrase "to restore international peace and security in the area" was a weak reed, given that the war in Kuwait, which presumably was the principal manifestation of instability at the time resolution 678 was adopted, has been over for eleven years.

One might take comfort in the fact that this tortuous process of justification on the basis of Security Council resolutions suggested an underlying acceptance by the United States of the normative framework constraining the use of force. However, whether or not a legal pretext existed<sup>45</sup> and was valid, military action vis-à-vis Iraq in the face of substantial disagreement over its legality and in the absence of a further resolution that would settle the legal question weakened restrictive norms concerning the unilateral use of force by states.

A second, and more troubling, line of argument justifying force against Iraq, and one linked far more directly to terrorism, was based on reinterpretation of the right of self-defense. It was suggested that the possession of weapons of mass destruction by Iraq ipso facto constituted a threat to the United States, either because Iraq might use these things itself or because it might leak them to terrorists.<sup>46</sup> Therefore, the United States argued that the preemptive or preventive use of force to remove them could be considered self-defense. In the National Security Strategy of the United States adopted in September 2002, President Bush warned that “as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed.”<sup>47</sup> It would be difficult to square preemption or prevention with Article 51 of the Charter, which specifies that states have a right to self-defense “if an armed attack has occurred.”<sup>48</sup>

On the other hand, the strategy rightly noted that “international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack.”<sup>49</sup> In an age of weapons of mass destruction, strict adherence to Article 51 might constitute participation in a suicide pact. Practically speaking, no state could be expected to sacrifice its survival on the altar of legal principle. The key question here concerns imminence, or the slide between preemption and prevention.<sup>50</sup> If, as the Bush administration believed, the criterion of imminence should be relaxed in the face of the new strategic challenge posed by the marriage of radicalism and technology, then it is not clear how one would draw the boundary between legitimate acts of self-defense and illegitimate use of force.

Accepting a broad right to preemptive and preventive self-defense would tear a large hole in the normative fabric of the UN regarding the non-use of force. If it works for Iraq, why not elsewhere? If it works for the United States, why not for other states? Arguments put forward by the Russian Federation with respect to Georgia display clear parallels. Elsewhere, Indian policymakers welcomed “the administration’s new emphasis on the legitimacy of pre-emption.”<sup>51</sup> In this context, French President Jacques Chirac termed the notion “extraordinarily dangerous,” for “as soon as one nation claims the right to take preventive action, other countries will naturally do the same.”<sup>52</sup> Or, as Condoleezza Rice noted in another context: “The overly broad definition of America’s national interest is bound to backfire as others arrogate the same authority to themselves.”<sup>53</sup>

Moreover, such an action would raise disturbing questions about the relationship between power and the universality of the principles promoted by the United Nations. If the action were not seen to constitute a precedent for

action by other states, it would seem to take on a distinctly Thucydidean flavor: “[T]he standard of justice depends on the equality of power to compel and . . . in fact the strong do what they have the power to do and the weak accept what they have to accept.”<sup>54</sup>

This argument for the use of force against Iraq was linked to the issue of intervention in the American embrace of “regime change” as a policy goal. It is not immediately obvious how this objective could be squared with Article 2.4’s prohibition of intervention. For reasons discussed above, one could act against Saddam’s regime on the basis of Articles 2.7 and 42. But this again would require the Security Council to identify the regime as a threat to international peace and security and authorize military action to remove it.<sup>55</sup> The prospects for a resolution embracing the objective of regime change were low in the days immediately preceding the withdrawal of the draft resolution by the U.S. and UK. While the fallout of the war in Iraq is yet to be seen, there is a risk that states will increasingly revert to unilateral intervention, thus derailing much of the progress in prohibiting intervention for political reasons in international society. To the extent that nonintervention is seen as one basis for international order, undermining the principle carries risks for the larger edifice of stability in international politics.

Another area of concern is human rights. The promotion of civil and political rights within the international system has always depended strongly on the commitment of major states to the cause. During the 1990s, much progress was made in holding oppressive regimes accountable for the violation of the rights of their citizens. Faced with the tradeoff between short-term stability and the longer-term objectives of democratization and the rule of law, the United States and other major Western players pushed authoritarian regimes toward empowering their own people and toward the protection of their citizens’ rights. In extremis, as seen above, international society (or at least the Security Council on occasion) accepted that intrusion into the domestic jurisdictions of states that would not, or could not, protect the basic rights of their citizens might be legitimate.

The evidence thus far would suggest that one consequence of September 11 is the danger of a reversal of these priorities. The key issue in relations with authoritarian regimes appears now to be whether they are capable of controlling their jurisdictions in such a way as to limit the prospects that their countries may give comfort to terrorists and whether their territory and infrastructure are useful in the wider struggle against terrorism. The countries of Central Asia are good illustrations. In Uzbekistan, despite the country’s abysmal human rights record, the United States expanded military and development assistance in return for President Karimov’s cooperation in the struggle



against Al Qaeda and the remnants of the Taliban. Elsewhere, Russia had attempted to convince the international community of states that the war in Chechnya has been a counterterrorist operation since the renewal of hostilities in 1999. Prior to September 2001, this characterization was resisted by key Western states. Subsequently, the level of criticism of Russia's conduct of the war diminished radically, and Russia appeared to have been granted *carte blanche* to bring the operation to term, which to date has involved massive violation of the rights of many of its Chechen citizens and Russia's failure to honor numerous international legal and political obligations in the contexts of the Geneva, OSCE, Council of Europe (COE), and Conventional Forces in Europe (CFE) treaties.<sup>56</sup>

To judge from the evolution of U.S. defense and military relations with Indonesia, moreover, where a state's capacity to participate effectively in the war on terrorism is doubted, Washington appears to have resumed relations with military and security establishments that previously had been pariahs because of their human rights records. To the extent that major states place military and strategic priorities of this type ahead of the promotion of human rights, the UN's capacity to foster a culture of rights is correspondingly reduced.

September 11 also has had an impact on states' perspectives on civil and political rights within their own borders.<sup>57</sup> It was followed by significant changes in security legislation in numerous states—including the U.S., Britain, Canada, Australia, Italy, the Netherlands, India, and New Zealand. In general, these changes involved an expansion in the right of the state to freeze or seize assets and to hold individuals without charging them with a crime. They also reduced individuals' right to privacy. In some instances, law enforcement authorities were granted access to special courts outside normal judicial process to try cases related to terrorism. Finally, in North America and Europe, the capacity for rapid extradition with minimal or no judicial review was expanded or is likely to expand.<sup>58</sup> Former UN High Commissioner for Human Rights Mary Robinson registered her concern for the place of human rights in the normative framework of international society: "The United States could be a leader in combating terrorism while upholding human rights. Instead it has sought to put all the emphasis on combating terrorism and has not been fully upholding human rights standards. And that's having a ripple effect on other less democratic countries."<sup>59</sup>

These legal changes have differential impacts on different categories of people. The most obvious effect of September 11 has been the bending of, if not challenge to, international humanitarian law implicit in the detention of combatants at Guantanamo Bay and elsewhere. The treatment of detainees also raises questions about the states' compliance with their obligations un-



der the Convention against Torture.<sup>60</sup> It is reported, for example, that sleep deprivation and light deprivation are used against terrorist suspects held by the United States and that “they are held in awkward, painful positions.” Detainees who do not cooperate are allegedly turned over to foreign intelligence services with records of torture documented by human rights organizations and by the U.S. government itself. As one official is reported to have put it: “[I]f you don’t violate someone’s human rights, you aren’t doing your job.” The head of the CIA’s Counterterrorist Center said in September 2002 at a House and Senate committee hearing: “There was a before 9/11, and there was an after 9/11. After 9/11 the gloves come off.”<sup>61</sup> Such perspectives raise important questions about the strength and sustainability of the international regime against torture.

It is important to note, however, that such actions do not proceed in a political vacuum. As the experience of September 11 recedes, one may expect a growth in domestic pressure to mitigate these departures from accepted principles of human rights. The press report just cited, for example, provoked a serious challenge to the administration from Amnesty International, The Lawyers Committee for Human Rights, The Carter Center, Physicians for Human Rights, Human Rights Watch, and others, reminding the administration of its obligations under the Convention against Torture.<sup>62</sup> Moreover, U.S. government behavior with respect to detainees is subject to judicial review. It may be that as cases reach the Supreme Court, these trends may be reversed or attenuated. In short, the early retreat from or qualification of human rights principles evident in the response to September 11 was inconsistent with the Charter and the UN’s embrace of these values; how durable this trend is remains to be seen.

Generally, post–September 11 challenges to the human rights of individuals have affected noncitizens more substantially than citizens. This leads to brief consideration of state responses to the attacks on refugees and asylum-seekers. The international refugee regime was already in trouble prior to the attacks on the United States.<sup>63</sup> Its difficulties had much to do with the rising numbers of refugees, the domestic political reaction to this “flood” in Western Europe in particular, and the perceived connection between asylum-seeking and economic migration and between asylum-seekers and organized crime. September 11 strengthened the security rationale for restraint on movement. This has resulted in substantial constraint on asylum rights in a number of developed countries, among them the U.S., the UK, and Canada.

Specifically, among other measures, the United States temporarily suspended its refugee resettlement program, affecting some 20,000 cleared persons. New legislation permitted the holding of aliens suspected of terrorist

activity without charge for seven days. The possibility of deportation or of prohibition on entry without judicial review was expanded. In the UK, new legislation permits the home secretary to deny asylum to those deemed a threat to national security while broadening the right to detain those suspected of terrorism and to intern foreigners without trial<sup>64</sup> and curtail the right of appeal for some asylum-seekers. In Canada, screening has been expanded to ensure that those suspected of terrorist activities do not enter the asylum system, more resources have been allocated to the deportation process, and detention facilities for suspect aliens have been expanded. As Matthew Gibney put it:

A shiver ran down the spine of many people in the West on 11 September. The world they looked out upon now seemed a much less secure and more uncertain place. This changed world provided the rationale for new measures of exclusion and control on refugees, asylum seekers and, in some cases, foreign residents generally. . . . At times of high anxiety, political communities tend to become less tolerant, more insular places.<sup>65</sup>

Again, UN efforts to develop and strengthen norms in this area depend on the willingness of states to implement them. September 11 has had a significant chilling effect, to the detriment of many thousands of people in refugee processing and asylum systems. To the extent that the great powers defect from, or qualify their support for, the regime, it becomes more difficult to persuade other states in the system to abide by their obligations under the convention.

The final issue for consideration is the effect of September 11 on the redistributive values promoted by the United Nations. The early focus of American commentary on September 11 was retributive justice—effective punishment of the perpetrators of crime—“root ’em out, get ’em running, and hunt ’em down, wanted dead or alive.” Those who suggested that the terrorist acts might in some sense be a result of an unjust distribution of resources in the international system and the consequent hopelessness, despair, and resentment felt by large numbers of people, particularly in the developing world, were pilloried for justifying terrorism.

In time, discussion has become more reasoned. It is now acceptable to suggest that one necessary element of coping with the problem of terrorism is coping with the problem of inequity both between and within societies through serious efforts at development. This is hardly a dominant theme in policy circles in the United States or beyond it. However, the Bush administration’s initiatives to expand development assistance (e.g., President Bush’s speech to the Inter-American Development Bank in March 2002 and the follow-up at

the Monterrey Conference on Financing International Development, which led to the \$5 billion Millennium Challenge Account) suggest some renewed recognition that stability and peace are linked to development. The link is made far more directly in the statements and policy papers of allies in the fight against terrorism. This general point is linked to a widely held belief that failed states cannot simply be left to their own devices after a crisis has ended. There may exist among the major states a growing realization that development and redistributive justice are not merely ethical propositions but security interests in an increasingly transnationalized world where it is difficult for the wealthy to insulate themselves from the consequences of widespread poverty and disempowerment. Flows of official development assistance declined in the 1990s in part because the strategic rationale for them had disappeared with the end of the Cold War. The renewal of a strategic rationale for such assistance may reverse the decline.

## Conclusion

This chapter has explored the impact of September 11 on the pursuit of the values espoused in the United Nations Charter. The analysis suggests that the attacks on the U.S. and international responses to them place pressure on reasonably well-embedded norms regarding the use of force. The notion of “regime change” that was practiced in Afghanistan and further articulated with regard to Iraq draws into question Charter-based norms concerning sovereignty and nonintervention. The effort to uncover terrorist networks has had a negative influence on state compliance with international humanitarian law and with broader principles of human rights. It has also negatively affected the already troubled international refugee regime. More positively, consideration of the roots of terrorism may draw greater attention to the inequalities of globalization and to broader issues of distributive justice.

In short, the record shows a degree of shift away from the liberal and cosmopolitan element of the UN’s agenda of values and back toward a statist, power-based, and security-oriented focus in international society. That is hardly surprising, given the dimensions and political and psychological significance of the events themselves. However, to suggest that the balance is tilting back toward unilateralism and the prerogatives of states at the expense of the rights of individuals is not to say that the major power in the system has abandoned the multilateral enterprise or that the progress in embedding justice concerns in international society will be undone.

Despite the temptations of going it alone, the United States government appears to have recognized that there is value in multilateralism in security.

The cooperation of other states remains necessary in the war on terror. Multilateral regimes provide a degree of control over the behavior of other states in the system. The costs of defection are difficult to measure but possibly substantial across a broad range of issues. Moreover, although the implications of the international response to terror for the human rights agenda of the UN Charter are disturbing, there are substantial domestic (e.g., within judicial systems and public opinion) and transnational (e.g., regarding the role of international human rights NGOs and international judicial institutions) impediments to the abandonment of the human rights regime. In short, there is evidence of a return to more traditional modes of state practice, but it is unlikely that the international system can return to the pre-1990s version of international society. Although the normative constraints that deepened in the post-Cold War era may be weaker, they will remain a significant constraint on state behavior.

## Notes

1. Zuleta Angel, "Chairman's Statement" at the opening of the first part of the first session of the General Assembly, January 10, 1946, 41. Available online at <http://www.un.org/Depts/dhl/landmark/pdf/a-pv1.pdf>.

2. The emphasis here is on "preliminary." It will be years before the long-term impact of these events becomes clear. The author is grateful to discussants at the September 2002 seminar at the Ralph Bunche Institute for International Studies and to the editors for their comments on earlier drafts; he also benefited from discussions with officials of Canada's Department of Foreign Affairs and International Trade in the preparation of this chapter.

3. Adam Roberts and Benedict Kingsbury, "The UN's Roles in International Society," in Adam Roberts and Benedict Kingsbury, eds., *United Nations, Divided World: The UN's Roles in International Relations*, 2nd ed. (Oxford: Oxford University Press, 1993), 19.

4. As Zuleta Angel went on to say: "Without social justice and security there is no real foundation for peace, for it is among the socially disinherited and those who have nothing to lose that the gangster and the aggressor recruit their supporters." "Chairman's Statement," 43.

5. See, for example, Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, N.J.: Princeton University Press, 1984).

6. Judith Goldstein and Robert Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca: Cornell University Press, 1993); and Alexander E. Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, no. 2 (Spring 1992): 391–426.

7. In view of the expansion of international institutions of governance and the increasing number and weight of non-state actors, one might question whether anarchy and the preeminence of the state are constants, but that is beyond the scope of this paper.

8. Kenneth Waltz, *Theory of International Politics* (New York: McGraw Hill, 1979).
9. Adam Roberts, "Order/Justice Issues at the UN," in Rosemary Foot, John Gaddis, and Andrew Hurrell, eds., *Order and Justice in International Politics* (Oxford: Oxford University Press, 2003), 51.
10. On this point, see S. Neil MacFarlane, *Intervention in Contemporary World Politics* (London: Oxford University Press for the International Institute for Strategic Studies, 2002).
11. The term comes from Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 887–917.
12. On this point, see "Introduction," in Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno, eds., *U.S. Hegemony in an Organized World: The United States and Multilateral Institutions* (Oxford: Oxford University Press, 2003).
13. Some General Assembly resolutions and declarations, such as the "Declaration of Principles of International Law Governing the Friendly Relations among States in Accordance with the Charter of the United Nations" (General Assembly resolution 2625, October 24, 1970), are seen by many as having the status of law. For a summary of relevant literature, see Gene Lyons and Michael Mastanduno, "State Sovereignty and International Intervention," in Gene Lyons and Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention: Reflections on the Present and Prospects for the Future* (Baltimore: Johns Hopkins University Press, 1995), 250–265.
14. For this reason, although the International Court of Justice is one of the six principal organs established by the Charter and although certain of its judgments (e.g., the Corfu Channel and Nicaragua cases) bear significantly on issues dealt with here, I have chosen not to include it in the discussion.
15. Arnold Wolfers, *Discord and Collaboration: Essays on International Politics* (Baltimore: Johns Hopkins University Press, 1965).
16. The first purpose of the organization, mentioned in Article 1.1: "To maintain international peace and security, and to that end: to take collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." See also Article 1.2 on friendly relations and the peaceful settlement of disputes and the strengthening of international peace.
17. Article 51 reserves the "inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken steps necessary to maintain international peace and security." The article also requires immediate report to the Security Council of any exercise of this right. Roberts rightly points out that the role of the UN has been far stronger in *jus ad bellum* than in *jus in bello*, the latter being left largely to other organizations (e.g., the ICRC) and processes. Roberts, "Order/Justice Issues at the UN," 67. For this reason, although there are interesting things to say about the effect of September 11 on various legal principles (e.g., discrimination and the treatment of prisoners) associated with *jus*

*in bello*, I do not consider this question here. For further comment, see Samuel Makinda, “Global Governance and Terrorism,” *Global Change, Peace and Security* XV, no. 1 (February 2003): 43–58.

18. International Court of Justice, “Corfu Channel Case (Merits): Judgment of 9 April 1949.” Available online at <http://www.icj-cij.org/icjwww/idecisions/isummaries/iccsummary490409.htm>.

19. “Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,” annex to General Assembly resolution 2131, December 21, 1965, 11–12. See also the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations,” annex to General Assembly resolution 2625, 24 October 1970, 121–124. Roberts points out that this declaration went farther in extending the prohibition from single states to “groups of states.”

20. It is worth acknowledging that while the evolution of this norm was clear, its effect on practice was limited, given superpower and proxy interventions in support of one side or another in many of the internal conflicts of the Cold War period. See MacFarlane, *Intervention in Contemporary World Politics*, 38–40.

21. Preamble, Article 1.3, Article 7.1, Article 13.1, and Chapter IX.

22. Cited in UNDP, *Human Development Report 1994* (New York: UNDP, 1994), 3.

23. In time, and again with the General Assembly playing a significant role, retributive justice arguments gained influence in the UN system. The “Declaration on a New International Economic Order” and the “Charter of Economic Rights and Duties of States” both appear to rest on the argument that since the North was responsible for underdevelopment in the first place, it was also responsible for righting this historical wrong through restitutive redistribution.

24. Preamble and Articles 13, 55, 56, 62, 68, 76.

25. Elsewhere they note the distinction between the Charter and the League Covenant in this regard, suggesting that the founders recognized that human rights and associated economic and social problems needed to be addressed “if the world was to be spared another catastrophe.” Leland Goodrich, Edvard Hambro, and Anne Patricia Simons, *Charter of the United Nations: Commentary and Documents* (New York: Columbia University Press, 1969), 10, 34.

26. The latter was accompanied by an optional protocol. Several other more specific documents are worthy of mention in this context, notably the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Convention Relating to the Status of Refugees (1951), the Declaration of the Rights of the Child (1959), the Convention on the Rights of the Child (1989), the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (1963), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Declaration on the Elimination of Discrimination against Women (1967), the Convention on the Elimination of All Forms of Discrimination against Women (1979), and the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). All these documents applied universally, except the refugee convention, in which the rights

established pertained essentially to Europeans displaced across borders prior to 1951 (Article 1.2). The 1967 Protocol Relating to the Status of Refugees recognized the desirability of equality of status for post-1951 refugees and universalized the status established in the convention.

27. See also later General Assembly considerations of the underpinnings of humanitarian assistance in war: “Human suffering should be addressed wherever it is found. The dignity and rights of all victims must be respected and protected.” General Assembly resolution 46/182 (1992), as summarized in “Draft Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies” (Geneva, May 2002, Version 4.1), 6.

28. On this point, see David M. Malone, “US-UN Relations in the UN Security Council in the Post-Cold War Era,” in Foot, MacFarlane, and Mastanduno, eds., *U.S. Hegemony and International Organizations*, 81.

29. The resolution did, however, refer to General Assembly resolution 1514 and called upon the UK to reestablish conditions whereby the people of Southern Rhodesia could exercise their right to self-determination.

30. Hedley Bull, *The Anarchical Society* (New York: Columbia University Press, 1977).

31. For an elaboration of this argument, see MacFarlane, *Intervention in Contemporary World Politics*.

32. Boutros Boutros-Ghali, *An Agenda for Peace—Preventive Diplomacy, Peacemaking and Peace-keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January, 1992 (A/47/277-S/24111)*, June 17, 1992, paragraph 3.

33. Nico Schrijver, “The Changing Nature of State Sovereignty,” *The British Year Book of International Law 1999* (Oxford: Clarendon Press, 2000), 69–70.

34. In 2000, the council abandoned its case-specific consideration of these issues in resolution 1296 and recognized the general point that deliberate targeting of civilians, massive and systematic violations of human rights, and the denial or impeding of access by humanitarian organizations all could constitute threats to international peace and security.

35. Kofi A. Annan, “Reflections on Intervention,” 35th Ditchley Foundation Lecture (June 26, 1998), in Kofi A. Annan, *The Question of Intervention: Statements by the Secretary-General* (New York: UN, 1999), 6. The reference to peoples here is anomalous, since the relevant articles in the Charter emphasize the sovereign jurisdiction of member states of the organization. See also Javier Pérez de Cuéllar, *Report of the Secretary General on the Work of the Organization (A/46/1 [1991])*, September 13, 1991; and Boutros Boutros-Ghali, *An Agenda for Peace*, paragraph 17.

36. UNDP, *Human Development Report 1994*; UNHCR, *State of the World’s Refugees: A Humanitarian Agenda* (New York: Oxford University Press, 1997). See also S. Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN: A Critical History*, a forthcoming volume from the UN Intellectual History Project (Bloomington: Indiana University Press).



37. For an able representative analysis, see Makinda, “Global Governance and Terrorism.”

38. The Security Council’s resolution 1368 of September 12 recognized the inherent right of individual and collective self-defense, condemned the terrorist attacks as a threat to international peace and security, called on states to cooperate in bringing the perpetrators to justice, and stressed that states and others harboring the guilty would be held accountable. The resolution departs from traditional interpretations of Article 51, which envisage it to apply to relations between states. It deserves to be noted, however, that the United States was careful to ensure that no references to UN or Security Council oversight of its military activities were included in the resolution. On this point see Malone, “US-UN Relations in the UN Security Council,” 89.

39. The Secretary-General, “Address to the General Assembly,” September 12, 2002. Available online at <http://www.globalpolicy.org/secgen/annan/2002/0912ga.htm>.

40. “Statement by President Bush, United Nations General Assembly, UN Headquarters, New York,” September 12, 2002. Available online at <http://www.un.org/webcast/ga/57/statements/020912usaE.htm>.

41. One could of course argue that this is multilateralism à la carte. And so it is. But the United States is no different from most other states in this regard.

42. On the other hand, the resolutions of the 1990s dealing with humanitarian crisis, mass migration, and the overthrow of democratic regimes suggested some dilution of the restriction on the multilateral use of force.

43. The resolution includes the following principles: compliance with prior resolutions; rescinding of actions purporting to annex Kuwait; acceptance “in principle” of liability for loss, damage, and injury in Kuwait or in third states resulting from the invasion and occupation; release of prisoners and remains beginning with the return of all Kuwaiti property; and provision of information on mines, booby traps, and so forth, in Kuwait and in areas of Iraq where member state forces were cooperating with Iraq.

44. I am indebted to Jennifer Welsh for bringing this point to my attention.

45. The U.S. and British discussion of the legality of the action reminds me of a story about W. C. Fields, who was seen reading the Bible. When asked why he was doing so, he said he was looking for loopholes.

46. As George W. Bush put it on September 12, 2002, “[O]ur greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale.” See also “President Bush Outlines Iraqi Threat,” Cincinnati, Ohio. Available online at <http://www.whitehouse.gov/news/releases/2002/10/20021007-8.html>.

47. George W. Bush, “Introduction,” in *The National Security Strategy of the United States of America* (Washington, D.C.: The White House, 2002). See also Section V. Available online at <http://www.whitehouse.gov/nsc/nss.html>.

48. As one observer commented: “Such an approach renders international norms of self-defense—enshrined by Article 51 of the Charter—almost meaningless.” John Ikenberry, “America’s Imperial Ambition,” *Foreign Affairs* (September/October 2002): 51.



49. See *The National Security Strategy of the United States*, Section V.

50. Preemption involves “striking an enemy as it prepares an attack.” Prevention covers “striking an enemy even in the absence of specific evidence of a coming attack.” Although there may be place for preemption in *jus ad bellum*, “prevention is a far less accepted concept in international law.” Michael O’Hanlon, Susan E. Rice, and James B. Steinberg, *The New National Security Strategy and Preemption*, Policy Brief No. 113 (Washington, D.C.: The Brookings Institution, December, 2002), 4.

51. *Ibid.*, 7.

52. As cited in Elaine Sciolino, “Chirac Offers Iraq Plan,” *International Herald Tribune*, 10 September 2002, 1.

53. Condoleezza Rice, “Promoting the National Interest,” *Foreign Affairs* LXXIX, no. 1 (2000): 54.

54. Thucydides, *History of the Peloponnesian War* (Harmondsworth: Penguin, 1986), 402. See also Ikenberry, “America’s Imperial Ambition,” 44.

55. In this context, it should be noted that Security Council resolution 688 concerning the repression of the Kurds and Shiites fell short, as it was not adopted under Chapter VII. I am indebted to Nico Schrijver for this point.

56. For a discussion of this point, see S. Neil MacFarlane, “What the West Can Do to Settle the [Chechen] Conflict,” *Central Asia and the Caucasus*, no. 4 (2000): 150–152.

57. Indeed, this was necessitated to some extent by the binding and comprehensive package of measures included in resolution 1373.

58. For a useful summary, see “Security: The Cost for Human Rights,” *The Guardian*, 9 September 2002, 5. For an extensive and useful discussion of the evolving situation in the United States, see The Lawyers Committee for Human Rights, *A Year of Loss: Reexamining Civil Liberties Since September 11* (New York: Lawyers Committee for Human Rights, 2002).

59. Cited in Julia Preston, “UN Rights Chief Stepping Down, Criticizes U.S.,” *International Herald Tribune*, 13 September 2002, 5. Robinson’s expression of such concerns was likely one reason she was not renewed as high commissioner in late 2002.

60. See Article 1.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), where torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Available online at <http://www1.umn.edu/humanrts/instree/h2catoc.htm>.

61. The quotations in this paragraph are from Dana Priest and Barton Gellman, “For CIA Suspects Abroad, Brass-Knuckle Treatment,” *International Herald Tribune*, 27 December 2002, 1, 7.

62. See the January 14, 2003, letter from William Schulz, Ashley Barr, Kenneth Roth, et al. to Deputy Defense Secretary Paul Wolfowitz; available online at [http://www.lchr.org/us\\_law/us\\_law\\_let\\_011403.pdf](http://www.lchr.org/us_law/us_law_let_011403.pdf).

63. See Adam Roberts, "More Refugees, Less Asylum: A Regime in Transformation," *Journal of Refugee Studies* XI, no. 4 (December 1998): 375–395.

64. In Britain, eleven individuals were arrested in late December 2001 on suspicion of terrorism. They have been held ever since in high-security prisons. They were initially denied access to legal counsel. None has been charged, none has been officially interviewed, and none has seen the evidence on which the arrest was made. Under existing legislation, there is apparently no limit to the period of time that they can be held. Audrey Gilian, "No Names, No Charges, No Explanations: The Plight of Britain's Interned 'Terrorists,'" *The Guardian*, 9 September 2002, 5.

65. Matthew Gibney, "Security and the Ethics of Asylum after 11 September," *Forced Migration Review*, no. 13 (2001): 40, 42.