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The UN's 'War' on Terrorism

JOSÉ E. ALVAREZ*

While those of us in the United States have become accustomed to talking about *our* war on terrorism and its consequences, including its effects on civil rights, we should not ignore the fact that the international community, and specifically the United Nations, is conducting its own 'war' on terrorism. I will be addressing the General Assembly's and especially the Security Council's war on terrorism and the challenges these efforts present, including to international human rights.

In the wake of 9/11 the Bush Administration rediscovered the UN. As movies like "Independence Day" remind us, there is nothing like the discovery of a common enemy to unite all adversaries. Even that reluctant multilateralist, the United States, has found the need to rely on the kindness of strangers to wage battle against Al Queda. Few were surprised when, in the wake of 9/11, the U.S. Congress – including remarkably Sen. Jesse Helms himself – took steps to pay the US's outstanding UN dues even while the Administration proposed forceful action by the UN Security Council – including what became Resolutions 1368 of Sept. 12th and 1373 of Sept. 28th.

The UN's response to terrorism has been historically limited by that organization's commitment to the collective right to 'self-determination' – a right solemnly proclaimed among the UN's 'purposes' in its Article 1. The UN, the most successful decolonization machine ever invented, has been for a long time favorably disposed to those who wave the banner of "self determination," even while leaving dead civilians in its shadow – whether that claim is made by Hamas, the IRA, the ANC, or groups defending Kurdish rights in Iraq. Self determination, the most ostensibly legitimate group right

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in the international law pantheon, has long been invoked as political goal, legal principle, moral aspiration, philosophical stance, social movement, potent ideology. The post 9/11 appropriation of the term – as counterweight to the diverse, diffuse threats posed by globalization – is merely the latest manifestation. As a legal principle, neither the "self" nor the "determination" components of this right has ever been satisfactorily defined. The "self" applies to ambiguous 'peoples,' equally capable of encompassing nations as well as political, ethnic or racial groups battling them. And the 'process' embraced by 'determination' has not fared better. It seems capable of including everything from violent secession to devolutionary and conciliatory forms of accommodation.

The effort to limit the concept of self determination to the rights of colonized peoples, coming just as colonialism was ending, has been seen by many as a cynical ploy to limit a right to one without potential beneficiaries. Self determination is now an all-purpose, if legally incoherent, rallying cry, cited both by opponents of the state such as Al Qaeda as well as by its strongest defenders, such as the United States. Even the US's asserted right to self defense is, after all, but a manifestation of its sovereign right to protect itself from those who would pose an external threat to our continued exercise of the right of self determination.

This Janus-faced aspect to self determination has bedeviled all UN efforts to define and combat terrorism. When in 1972 the UN Secretary General attempted to begin negotiations towards a comprehensive treaty banning terrorism, the non-aligned movement proposed instead a study of the underlying causes of terrorism and sought to exclude from criminalization violence of whatever form undertaken by groups engaged in 'struggles for national liberation.' These UN members sought a terrorist parallel to 'just war.' As is suggested by the General Assembly debate last October regarding terrorism, these controversies continue to simmer beneath the surface – despite global condemnation of 9/11. The lack of consensus is particularly apparent among Islamic states. The Kuala Lumpur Declaration adopted a few months ago at the Islamic Conference continues to distinguish terrorism, including 'state sponsored terrorism,' from legitimate struggles against foreign aggression and by those under colonial or alien domination or foreign occupation and it includes the Palestinian people in the latter categories. A further sign of the international community's continued inability to come to terms with the interplay between self determination and terrorism lies in the piecemeal nature of most of the dozen or so global counter-terrorism

conventions now in existence, especially those negotiated under the auspices of the *International Civil Aviation Organization (ICAO)*. Since we have been unable to define collectively who a 'terrorist' is, we have until fairly recently only been able to agree that certain targets are out of bounds: such as violence at international airports, on board civil aircraft, or directed at diplomats. This helps to explain why, at least until recently, technocratic organizations like *ICAO* and not politicized ones with a broader mandate like the UN's General Assembly, have been at the forefront of global counter-terrorism efforts.

Yet, a second generation of UN activity suggests that UN members are becoming more serious about taking steps to prevent or otherwise handle violence even when ostensibly undertaken in defense of self determination. Three examples come to mind:

(1) A new generation of declaratory resolutions by the GA. The single most prominent of these is the General Assembly's resolution of 1994 condemning acts "calculated to provoke a state of terror in the general public . . . whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them" and condemning as well as states that acquiesce in or encourage such activities within their territories.¹

(2) New, more expansive counter-terrorism conventions concluded under UN, and not *ICAO*, auspices. The UN sponsored *Convention For the Suppression of Terrorist Bombings* adopted in 1998 extends the usual 'prosecute or extradite' international criminal regime to a **general** technique – namely the delivery, placement, or detonation of "an explosive or other lethal device" in any place of public use, state or governmental facility, public transportation system or infrastructure facility.² The new *International Convention for the Suppression of the Financing of Terrorism*, opened for signature in 2000, makes it an international offence to provide or collect funds with the intention that

¹ Declaration on Measures to Eliminate International Terrorism, G.A. Res. 49/60, UN GAOR 6th Comm., 49th Sess., 84th plen. mtg., UN Doc. A/49/743 (1994). For a useful survey of the history of UN efforts regarding terrorism, see W. Michael Reisman, "International Legal Responses to Terrorism," 22 *Houston J. Int'l L.* 3 (1999).

² See article 2 of the *International Convention for the Suppression of Terrorist Bombings*, 37 ILM 249 (March 1998) (adopted at New York, Jan. 9, 1998).

they be used to further terrorist acts as defined in any of the nine older counter-terrorist conventions referenced in its annex.³ Though neither of these more recent conventions yet contains a comprehensive definition of the crime of terrorism, both criminalize a much wider spectrum of activity than in prior efforts.

(3) Perhaps most significantly we now have a newly revitalized Security Council flexing its muscles in pursuit of terrorists. The Security Council began to act seriously against terrorism when it adopted economic and diplomatic sanctions in 1993 against Libya in the wake of Lockerbie and again in 1996 when it sanctioned Sudan for terrorist acts.⁴ Long before 9/11, the Council was already taking action against Al Queda — as is clear from its Resolutions 1193, 1214, 1267, 1269, 1333, and 1363. It has shown particular zeal after 9/11, as in its Resolution 1373.⁵ Particularly in its post 9/11 counter-terrorism efforts, the Security Council has redefined the scope of its legitimate activity. The Council is apparently no longer content with seeing itself as the enforcement arm of norms that are legislated elsewhere by the international community. It is increasingly acting itself as legislator *and* executor of new rules for the international community. Through its post 9/11 resolutions the Council is ordering states, under its binding power to do so under Chapter VII of the UN Charter, to freeze the financial assets of particular individuals or organizations, prohibit future transactions with such persons or groups, to deny safe haven to these alleged terrorists, and to bring perpetrators of terrorist acts to justice while assisting others in doing the same. In Resolution 1373 what the Council did was in essence to carefully pick and choose portions of the recent *UN Convention against the Financing of Terrorist Acts* and impose these select obligations on all states without waiting for states to individually ratify that treaty. Moreover, this legislative action by the Council has been accompanied by 'executive action' in implementation not unlike what the U.S. executive does pursuant to domestic statutes like the *International*

³ *International Convention for the Suppression of the Financing of Terrorism*, 39 ILM 270 (March 2000) (adopted Dec. 9, 1999).

⁴ See *Security Council Resolution 748*, UN Doc. S/Res/748 (Mar. 31, 1992) (Libya sanctions); *Security Council Resolution 1054*, UN Doc. S/Res/1054 (Apr. 26, 1996) (sanctions on Sudan).

⁵ *Security Council Resolution 1373*, UN Doc. S/Res/1373 (Sept. 28, 2001).

Emergency Powers Act. In these resolutions we see the Council deploying powerful legislative and executive authority, unrestrained (as yet) by any clearly developed judicial check – a point to which we will return.

The Security Council's recent counter-terrorist efforts constitute particularly innovative forms of organizational development. These resolutions represent something of an on-going revolution in that body's interpretation of what constitutes an on-going 'threat to the international peace.' The Council's determination that a state's failure to extradite alleged terrorists can itself be a threat to the peace, controversial at the time of Lockerbie, now seems prescient given U.S. claims against the Taliban and other governments that shelter Al Queda. This determination represents a real change in the Council's stance. This was the same body, after all, which not long before had condemned or tried to condemn military action by Israel and the United States respectively taken in response to terrorist acts. At the same time, neither the new kinds of counter-terrorism conventions nor the new breed of Security Council resolutions have successfully overcome the formidable definitional hurdles posed by the ostensible right of self determination. Neither the Security Council nor the General Assembly has been able to clearly and unequivocally indicate just what the crime of 'terrorism' is.

The UN's and especially the Security Council's new war on terrorism poses a number of challenges to international law.

The first and most visible challenge is dramatically presented by the Council's on-going debates with respect to how to deal with Iraq and allegations that it possesses or is developing 'weapons of mass destruction.' Neither the Council nor states as a whole have yet decided what is the permissible scope of individual or collective self defense in the age of terrorism. There are new and troubling uncertainties concerning the permissible scope of the use of force to combat either terrorism or those whose access to certain weapons make them potent potential allies of terrorists. We appear to be on the brink of moving from ostensibly settled rules concerning the legitimate use of force without quite knowing what the new rules will be. Quite apart from what the Council decides to do about Iraq, its post 9/11 resolutions invoke 'self defense' at least with respect to Afghanistan without explicitly authorizing, under Chapter VII, any and all US military actions against Al Queda whether in Afghanistan or elsewhere. The closest thing to such a general authorization to use force against terrorism, the language in

Resolution 1373 stating that "all states shall 2(b) take the necessary steps to prevent the commission of terrorist acts" appears to be a conscious attempt to avoid the familiar trigger language for Chapter VII authorized use of force as used in the Gulf War: namely a Council decision authorizing states to "use all necessary means." The context of Resolution 1373, limited to measures intended to prevent and suppress the financing of terrorist acts, makes it hard to read this language as a general license to use force. But the language of the preambles to both this resolution and Resolution 1368, reaffirming the inherent right of individual or collective self defense as recognized in the UN Charter, does suggest that the Council is opening the door to the United States' *own* invocation of self-defense – at least in cases of terrorism like those of 9/11.⁶ The Council's apparent endorsement of individual and collective self defense in the wake of 9/11, seen in light of the general acquiescence in the U.S.'s deployment of force in Afghanistan, could suggest three new rules with respect to the defensive use of force among states.

- Rule 1. Terrorist violence at least when of the scale of 9/11, even when undertaken by a non-state actor, may constitute an "armed attack" for purposes of the UN Charter's article 51 (recognizing the inherent right of individual or collective self defense);
- Rule 2. A state's assistance to, harboring of, or ratification of violent acts undertaken by individuals within its territory may make a state responsible for such acts and enable military action to be taken against such a state. In other words, such state involvement may constitute a breach of a state's duty not to use force in violation of the UN Charter's article 2(4); and
- Rule 3. The right to respond with military force against both terrorist individual and harboring state does not become impermissible retaliation or illegal anticipatory self defense in violation of the UN Charter merely because the threat of continued terrorist attack remains clandestine and unpredictable (as it has been since 9/11).

⁶ See Resolution 1373, *supra* note 5; *Security Council Resolution 1368*, UN Doc. S/Res/1368 (Sept. 12, 2001) ("recognizing the inherent right of individual or collective self-defence in accordance with the Charter").

None of these norms had been previously endorsed, at least clearly, by the actions of the Security Council or by determinations made by other UN bodies, such as the World Court. All remain controversial at least in part because unless new constraints emerge, states remain free to define for themselves just what constitutes a 'terrorist' act to which they may forcefully respond or what constitutes sufficient evidence of a viable threat of terrorism. Each individually and of course all cumulatively would make the resort to force all the more likely, if not probable.

It is not clear how far the international community or the UN will go in endorsing 'defensive actions' pursuant to the three ostensible new rules. Neither the normative basis nor the consequences of these rules are clear. Is the premise that the new terrorist threats, or the possibility of terrorists using weapons of mass destruction, so novel that the old rules no longer retain the confidence of states? If harboring or giving comfort to undefined terrorists can trigger military retaliation, is this because of a newly expanded concept of 'inherent self defense' that permits states to decide for themselves to engage in 'pre-emptive action'? May such pre-emptive action include toppling a regime that seems intent on continuing its support for terrorism, that is 'regime change'? While such an expansive notion of pre-emptive action has drawn some support from some officials in the Bush Administration, a new self-judging authorization for military force to topple governments that are *said* to be supporting 'terrorism' troubles many around the world – including of course international lawyers long accustomed to a much narrower conception of self-defense – that is, force that is only permitted in response to imminent threats of armed attack, objectively demonstrated. Others might suggest that to the extent military action is legally possible in situations that fall short of satisfying the traditional criterion of self defense, this is so only to the extent that the Security Council has made this possible through a specific finding of a 'threat to the international peace' and after a specific authorization of forceful Chapter VII action in response. Notice that those who would insist on such a multilateral basis for preemptive action of this kind do not base their argument on the premise that self-defense always requires Council preauthorization. The argument for Council preauthorization – as with respect to military action against Iraq – is based on the idea that military action taken against the threat of the *unproven possibility* of terrorist action (or as Rumsfeld puts it, action needed because 'we don't know what we don't know') may indeed be a 'threat to the peace' *without triggering* self-judging or 'inherent' self defense.

The idea that we need the Security Council to authorize the use of force in such cases stems not merely from the *Realpolitik* need to muster a viable multilateral coalition or to bolster the political legitimacy of what otherwise might be seen as a U.S. 'crusade' against Islam. It arises from a concern for the continued viability of some kind of international constraint on the unilateral use of force, the very heart of the collective security scheme codified in the UN Charter. In cases such as Iraq – or other possible action against the many nations in which Al Quada operates – we are a long way from the kind of necessary military response envisioned by the Charter's drafters, that is, a defensive response to a military confrontation by an aggressor who has amassed an army across an international border. A contention that inherent self defense justifies military action whenever one state is *alleged* to be insufficiently cooperative in the war against terrorism or is amassing 'weapons of mass destruction' with no demonstrated intent to use them against any specific target would open up a hole in the Charter scheme for restraining the use of force of potentially devastating dimensions. It would suggest that international law now essentially licenses 'war' as the term was understood before the UN Charter or the preceding Kellogg-Briand pact – when nations had entered into no international legal constraints on whether to wage war.

A second set of related challenges emerges with respect to the choice of paradigms. We now have a network of 'extradite or prosecute' counter-terrorism treaties in place. When do these criminal regimes give way to the different regime governed by the rules of 'war'? At what point does a state's right to insist – as did Libya in the Lockerbie case – that it need only respond in strict compliance with extradite or prosecute treaties cease to apply?⁷ If preemptive military action is now justified against the threat of terrorist action, when does a state's right to demand the extradition or prosecution of alleged terrorists give way to the right to engage in military retaliation? Would the United States be justified in retaliating against an alleged state harbinger of terrorism without presenting evidence of culpability sufficient to satisfy the requirements of the typical anti-terrorism or extradition treaty? Does it make sense to require *less* evidence of probable involvement in terrorist acts from a state threatening to use force than from a state that is merely requesting the extradition of an alleged terrorist? If it does, and we are serious about the ties

⁷ See Case Concerning Questions of Interpretation and Application of the 1971 *Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United States and United Kingdom)*, Request for Indication of Provisional Measures, 1992 ICJ Rep. 114, 31 ILM 665 (1992).

between terrorist and other international crimes (such as narco-traffickers), are we comfortable with the dramatically new opportunities created for all states to claim the right to wage defensive war when their pleas for international criminal assistance are thwarted? And where does this leave the international community's new found willingness to prosecute those guilty of international crimes, including those committed on 9/11? If a state that in the recent past has harbored terrorists has a sudden change of heart and hands some or all of these individuals over to the new *International Criminal Court* for prosecution, is military reprisal against the state forbidden? It would have been under the old rules against reprisals but is this still the case given Israel's and perhaps the United States' new willingness to rewrite the rules on permissible retaliatory force against terrorism?

Thirdly the UN's new 'war' on terrorism poses threats to the age of human rights. Security Council 1373 is now presenting opportunistic states with a ready formula for trampling upon the rights of political or other opponents in the name of the war on terrorism. To date, most UN members have filed reports to the Security Council's *Counter-Terrorism Committee*, the *CTC*, a body created by the Council to examine such state reports with the intent of creating a 'template' of model counter-terrorism legislation to be emulated the world over. The alacrity with which states have responded to Resolution 1373's many demands for information should prompt suspicion – especially with respect to states, like Cuba, that in the past have shown considerable suspicion of the Council's dictates. Cuba's 143 page response to the Council is a litany of terrorist woes allegedly suffered by that regime but it is also a blatant attempt to justify Cuba's penal legislation against "saboteurs and terrorists" as well as to elicit international acquiescence in the Central Bank of Cuba's abundant efforts to patrol all "suspicious" financial transactions.⁸ Cuba's opportunism is not unique. Human rights groups are recording with alarm the number of perennial human rights violators – from Egypt to China – now lining up to justify new or old repressive criminal laws and procedures as well as procedures for handling immigration and asylum claims under the state reporting scheme established under Resolution 1373. To make matters worse, the Security Council has largely deflected attempts to have a representative from the UN's High Commissioner for Human Rights involved in examining states' reports and at least to date none of the six principal experts commissioned by the *CTC* includes anyone with human rights

⁸ See Report of the Republic of Cuba submitted pursuant to paragraph 6 of *Security Council Resolution 1373* (2001), contained in UN Doc. S/2002/15 (Jan. 2, 2002).

expertise.⁹ In the end, states' predictable opportunism may be the least of our worries. The Council itself may produce and endorse a template of 'model' counter terrorism domestic legislation that condones or ignores universal human rights standards. At a minimum, the Council is already providing human rights violators with a potent new excuse that may be used, perhaps to good effect, before international human rights watch dog bodies and even domestic courts: 'the Council made me do it.' Since it is not at all clear whether any court, including the World Court, has the power to second guess a binding Council decision duly made under Chapter VII, this may indeed be a potent excuse. In the U.S., 9/11 has triggered a rigorous public debate between defenders of John Ashcroft and civil libertarians. *Council Resolution 1373* and the unique implementing committee it creates, the *CTC*, is now triggering comparable debates at the international level.

And the problems with the Security Council's new willingness to order states to take decisive action against individuals and organizations contained in its lists of alleged terrorists or fellow travelers may well pose fundamental problems for the UN Charter order, including the authority of the Security Council. I just returned from a conference in Amsterdam at which a number of European lawyers addressed an increasing number of judicial challenges to the Council's orders for financial sanctions against designated individuals.¹⁰ As implemented by domestic legislation and European Union regulations, individuals are now being denied total access to funds while being stigmatized as a 'terrorist' in faithful compliance with the Council's lists but without being able to challenge this designation before any judicial body.¹¹ Courts at Luxembourg, Strasbourg, as well as national courts in Europe are facing a number of challenges from individuals who proclaim their innocence and yet are not supposed to have a day in court either to challenge the denial of access to funds in their bank accounts or to clear their names. In the Aden case heard before a Swedish court, 3 Somali nationals identified by the Council's sanctions committee as implicated in terrorism who proclaimed their innocence faced a total inability to pay their rent or heat or even put food on the table and were

⁹ See the reports and other documents filed for the *CTC* at the UN website, www.un.org/Docs/sc/committees/1373/comp.htm (Last visited 10/28/2002).

¹⁰ University of Amsterdam, Center for International Law, Seminar on Judicial Review of the *Security Council* by Member States after 11 September 2001, October 11, 2002 (proceedings forthcoming from the Center).

¹¹ See, e.g., Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP).

denied a remedy by a court whose hands were ostensibly tied by binding Council action, implemented via Community legislation.¹² Although that case appears to have a happy ending – due to the Swedish government’s active efforts on their behalf, including an approach to the U.S.’s Office of Foreign Assets Control and success in ultimately getting the Security Council to delist them¹³ – many in Europe are understandably troubled by Council action that appears to anticipate serious criminal sanction on individuals without any of the forms of due process, including access to a fair, independent and impartial tribunal required by international human rights norms contained in the *ICCPR* or the *European Convention on Human Rights*. The Council and its *CTC* are branding people as terrorists without creating any mechanism at the international level for impartial judicial review of such determinations and, in some cases, apparently assuming that no such review would be possible before either international tribunals or national courts. The Council’s procedures for ‘delisting’ those wrongly accused of terrorism apparently put the burden of proving their innocence on the individuals who are listed, and not on the Council or the individual governments who request that certain individuals or organizations be listed.¹⁴ This burden is particularly difficult to carry given the context. Individuals are, after all, being accused of what is essentially a new crime in most jurisdictions – that is, of providing undefined ‘material’ assistance to an equally ill-defined person, namely a terrorist. Worse still, these individuals are being accused of this crime and having their assets frozen as a result through procedures that are shrouded in secrecy given the ostensible need to protect informants and national security. At this European conference, a number of those present, including those associated with governments or the European Union, were advocating forms of ‘judicial review’ over the Council’s actions, even if such review had to be undertaken, in the absence of other recourse, by national courts.¹⁵

¹² See Presentation by Thomas Olsson, at Conference, *supra* note 11 (discussing the decision rendered by the Tribunal of First Instance in *Aden v. Council of the European Union* (May 7, 2002)).

¹³ Presentation by Olsson, *supra* note 13.

¹⁴ In response to complaints from a number of states about the procedures for listing and delisting individuals pursuant to *Council* resolution (see Second Report of the Monitoring Group established pursuant to *Security Council Resolution* 1363, UN Doc. S/2002/1050 (Sept. 20, 2002), the *Security Council* agreed on the steps individuals and groups can remove themselves from the *Council’s* terrorism lists. See Edith M Lederer, “UN Agrees on Returning Frozen Assets, Associated Press,” Aug. 16, 2002 (available on line, no page indicated).

¹⁵ See, e.g., comments by Erika de Wet, Conference, *supra* note 11.

As is suggested by Sweden's need in the Aden case to turn to the U.S. government authorities to find relief for individuals within its jurisdiction, there is also the increasing perception that at the operational level the UN's ostensible multilateral war on terrorism is in reality being conducted by the United States or at best by the U.S. and its closest allies, such as the United Kingdom. Certainly those in a position to know the UN's abilities to conduct viable criminal investigations into allegations of terrorism equate the UN's real resources as equivalent to 'two guys and a dog.' The UN's counter-terrorism enforcement or police capacities are consciously kept on a shoestring. The Council, the *CTC*, and the Council's Sanctions Committee (which is actually responsible for compiling the lists of 'alleged terrorists' to be sanctioned) are forced to rely on national authorities, particularly those of the United States, for information. While the lack of transparency with which the Sanctions Committee operates makes speculation hazardous, it would appear that those in control of the information are in a position to dictate the result – including crucial decisions of whom to list or delist. I returned from Amsterdam convinced that absent dramatic change in the Council's untransparent accustomed mode of operating, the UN's war on terrorism could de-legitimize the world institution among some of its erstwhile strongest supporters, such as Sweden.

The Council's turn to 'smart' (primarily financial) sanctions in the war against terrorism poses yet another set of dangers. There is evidence within the United States that the increasing resort to fighting major offenses such as drug trafficking by following the money trail has prominent disadvantages. Critics of money laundering prosecutions within the US argue that such prosecutions have had a limited effect on the overall goal – namely eliminating drug crimes or deterring them because: (1) prosecutions and police tend to go for the crimes that are easy to detect – namely money laundering itself or attempts to evade the reporting or other obligations associated with such smart sanctions – rather than the drug offenses themselves; (2) there is limited capacity to detect the more serious offenses since sophisticated drug dealers and the leaders of criminal syndicates find ways to evade money laundering (such as resort to less detectable financing, including gold and diamonds) and (3) attempts to 'follow the money' have defused the ability and capacity to go after the actual drug dealers at the top.¹⁶

¹⁶ See, e.g., Marian-Florentino Cuellar, *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance* (forthcoming publication) (draft on file with author).

There is a risk that the Security Council's fixation on financial freeze orders of alleged terrorists could produce the same effects in the war against terrorism, namely a diffusion of international and national efforts to enforce the predicate financial offenses at the expense of doing the more difficult job of striking at the social, cultural, economic causes of support for terrorism and getting to the sophisticated terrorist whose trade in diamonds or gold rather than currency is much harder to detect. There is a danger that the Council's war on terrorism, like the US's war on drugs, even if conducted with greater sensitivity to human rights concerns, will nonetheless result in disproportionate penalties on low level operators or fellow travelers of terrorists without doing much to strike at the heart of those truly responsible for acts as heinous as those on 9/11.

A Final Word

International lawyers frequently complain about the tendency for the United States to 'go it alone' or ignore multilateral approaches. The UN's war on terrorism reminds us that the problems do not end when we turn to multilateral forums endorsed by international law. Hard questions arise not just because the United States is apparently inclined to respond with unilateral military force to alleged terrorist threats but because the UN (or at least the Security Council) is apparently endorsing much of what the United States wants. 'War' poses risks to the rule of law no matter how it is conducted – unilaterally or multilaterally. While the grave dangers posed to the UN Charter order by those inclined to act alone are formidable, they are obvious. The risks posed by the 'multilateral' war on terrorism in a world increasingly dominated by a sole super power are more novel and only now becoming clearer. The United States cannot alone rewrite the rules concerning the use of force or human rights but it and the Security Council together might be able to do so. Whether the rest of us will like the result remains to be seen.