

# Toward a Global Rule of Law

**Daniele Archibugi and Iris Young**

**T**HE ATTACKS on the World Trade Center and the Pentagon in September 2001 can appear within two different frames of interpretation. The first sees them as attacks on the United States as a state and its people. The second views them as crimes against humanity. The difference in interpretation is not technical, but political, and each implies different strategies of reaction. Although some public figures recommended the second interpretation shortly after the attack, we know that the first has prevailed. Here we question the statist response to the terrorist attacks and offer some vision of how the United States and other global actors might conceive their possibilities for action under a more cosmopolitan interpretation of the situation.

## The Statist Interpretation

The Bush administration framed the attacks as an act of war against the United States, for which military retaliation is the appropriate response. This frame meant finding a state or states to engage in war, and the United States chose Afghanistan on the grounds that the Taliban government harbored and supported al-Qaeda. The United States has singled out Iran, Iraq, and North Korea as additional states toward which military action may be taken. The construction of a response to the attacks as a state-to-state military conflict, however, has never fit well. Even within a traditional state-centered world politics, the fact that the government of Afghanistan allowed al-Qaeda leaders to run camps in its territory is a shaky justification for making war on the state and eliminating its government. Aware of that shakiness, the United States shifted its reasons for the war against the Taliban from a rationale of self-

defense to a humanitarian defense of freeing the Afghan people, especially its women, from oppression. We find this rationale cynical and opportunistic, since neither the Bush nor the Clinton administration publicly worried before about the plight of the Afghan people.

Responding to the terrorist attacks in the frame of the states system, thus making a war against a state, does not fit the case, nor has it been effective in making a safer world. Although the war may have destroyed some al-Qaeda bases and the United States has captured some members of that group, as yet the world has no reason to think of them as specifically connected to the nineteen suicidal attackers of September 11. Widely circulating estimates of civilian deaths in Afghanistan give a minimum of 1,000 and as many as 3,700, and hundreds are likely to die from unexploded bombs. The numbers of refugees suffering hunger and frost because of the war is impossible to calculate. There is no reason to think that the war has deterred other would-be terrorists around the world. The war may have contributed to destabilizing central Asia with consequences yet to be seen.

Although the United States has not acted alone in prosecuting the war, it has called the shots. The United States decided with whom to cooperate and assigns roles to other actors. It is difficult not to interpret U.S. policy in recent months as an effort to consolidate even more firmly its position as sovereign of the world. In the last decade, the United States has used its military force in the Persian Gulf, Somalia, Panama, the Balkans, and many other places. In every case, the U.S. interventions have had victims, but few have been Americans. The magnitude of U.S. military and economic power and the willingness of the United States to wield it asymmetrically and with only the thinnest veneer of multilateralism elicits hostile reactions all over the world, even from

people thought to be allies. A survey conducted by the Pew Research Center and the *International Herald Tribune* in December 2001 found that most of the non-Americans among the 275 political and business leaders polled believe that the United States wrongly uses its power and that some of its policies are responsible for growing global disparities in well being. In response to such hegemony, it seems to us imperative that leaders and citizens all over the world should envision a global rule of law and should try to shame and pressure the United States to act more in conformity with such a vision.

### An Alternative Vision

Aspirations to a global society governed by fair rules should be counted among the casualties of September 11. The fall of the Berlin Wall brought hope of constituting a world order founded on international legality and with strengthened institutions of international cooperation. Recent debates and demonstrations about the policies and procedures of international trade and financial organizations have assumed the emergence of more global-level governance. The question has been whether global regulatory regimes will represent solely the interests of the world's most powerful actors or can include the voices and interests of the global majority in transparent and accountable institutions.

We base a vision of an alternative response to terrorism on these aspirations for just and democratic global governance. Hitherto, discussions of an international rule of law and global regulatory systems have paid less attention to the prevention and investigation of crimes and their prosecution in an international system than to such matters as international trade, investment, or environmental protection. We propose two premises for reasoning about what an alternative response to the terrorist attacks of September might have been and still can be. First, the situation should be conceptualized in people-to-people, rather than state-to-state, terms. The attackers were not representatives of a state, but members of private organizations, and those whom they killed were, for the most part, private individuals from at least seventy different countries. Second, the

events should be conceptualized as crimes, not acts of war, to which the proper response is criminal investigation and prosecution within a rule of law and legally mandated measures of preventing and deterring more such crimes.

Democratic states usually do not, and ought never, respond arbitrarily and with military power to terrorist attacks committed inside their borders. Spain in response to threats from the Basque separatist group ETA, Italy in dealing with the Red Brigades, the United States in response to the bombing in Oklahoma City—all mobilized the instruments of law and police power. Stepping out of legal bounds, as did the Spanish government for a while when it authorized some state agents to use extrajudicial methods to combat terrorism, seems to have the effect of increasing the risk of attack.

The world ought to respond to international terrorist organizations according to the same principles of the rule of law that these governments use in responding to domestic terrorist organizations. Responding to acts and threats of terrorism and to transnational terrorist networks under a global rule of law need not imply being "softer" on terrorists than using a state-to-state response led by a hegemonic state. On the contrary, a genuinely global cooperative law enforcement response would be more effective in identifying and apprehending culprits, as well as preventing future attacks, while at the same time harming fewer people and destroying fewer goods, than has the war against Afghanistan.

ULTIMATELY, THE creation of a more peaceful and just world implies basic changes in political, economic, and social institutions. We have to start somewhere, so we offer five principles that could guide international policy in meaningful responses to threats and problems while furthering such transformative aims.

#### (1) Legitimize and Strengthen International Institutions

Actions and policies that treat terrorism and threats of terrorism as involving all the world's peoples within a rule of law should utilize international organizations and legal instru-

ments. The United Nations is most important here. Although there are many flaws in its design and operations that should be changed, the UN is the only transnational institution with representation from nearly all the world's peoples. Institutions, policies, and conventions of the UN, moreover, cover many of the most urgent world problems.

Currently the UN is in an impossible position. On the one hand, it is called on the scene to restore peace, build governments and infrastructure, aid refugees, conduct health campaigns, and pursue many other activities, in dozens of regions of the world simultaneously. On the other hand, member states routinely deny the UN the means for carrying out such missions, not only by failing to provide funds, but also by limiting its authority. When the UN's efforts prove inadequate to solve problems, as often happens, world leaders regularly heap abuse on the organization for being unresponsive and inept. The United States and other world powers cannot continue to dump the consequences of their wars and economic decisions on the United Nations while at the same time encouraging people to disdain the organization.

The present organization of the UN Security Council, with its five permanent members reflecting global politics in 1945, needs serious reform. That Security Council, however, passed two resolutions after the attacks of September 11—Resolution 1368 (September 12) and Resolution 1373 (September 28)—that call for transnational cooperation among all member states to deter and investigate terrorist and other transnational criminal activity. If government leaders allied themselves with social movements, the United States could be pressed to enter more genuinely multilateral efforts to combat transnational criminal networks, efforts that would give more decision-making participation to the less developed world.

## (2) Coordinate Law Enforcement and Intelligence Gathering Institutions across the World

The U. S. Congress apparently has little interest in investigating how two of the most sophisticated investigative and intelligence or-

ganizations in the world, the Central Intelligence Agency and the Federal Bureau of Investigation, could have been caught so off guard by a crime of such huge proportions. One explanation is the state-centeredness of both agencies, along with the investigative and intelligence gathering agencies of most states. Simultaneous with increased transnational organization and movement of capital, labor, technology, and culture is the transnational organization and movement of crime. Intelligence and law enforcement institutions, however, lag behind this reality. Intelligence continues to be principally an instrument of a state against other states; in a spy culture the agencies of one state engage in secret activities in relation to other states, explicitly not trusting one another. Domestic law enforcement agencies, furthermore, each have their own systems that make communication and cooperation across borders difficult. The September attacks should serve as a wake-up call for reversing these structures of intelligence and law enforcement, to enable greater cooperation among agencies to protect *citizens* of the world, not states.

THERE ARE some international instruments on which to build for such a purpose. INTERPOL, the international police organization with 179 member nations, has worked for decades against terrorism, drug trafficking, money laundering, white-collar crime, computer crime, counterfeiting, organized crime, and traffic in women and children. Even though its budget is minuscule compared to the task, it maintains extensive databases of known and suspected terrorists and criminals. It organizes data on counterfeit passports and stolen credit card accounts that can be useful to law enforcement agents in nearly any country. Yet state-based intelligence agencies infrequently work with the organization to gain access to its data for their work.

At its millennium meeting in November 2000, the UN General Assembly adopted the Convention Against Transnational Organized Crime, which 140 countries, including the United States, have already signed. This convention requires states to strengthen domestic laws aimed at controlling organized crime and

encourages states to enhance systems of transnational cooperation in legal expertise, extradition, and criminal investigation. It specifically calls for providing technical assistance to less developed countries to upgrade their capacities for dealing with organized crime. Although at the moment this convention may be little more than a piece of paper, like some other UN negotiated treaties and conventions, it can be used by political leaders and social movements to demand institutions and resources that put its principles into action.

The United States, along with many other states, can act to advance international cooperation in law enforcement, both domestic and transnational, as well as to create and strengthen global law enforcement agencies. Doing so implies breaking down the statist distinction between domestically oriented police and internationally oriented spy agencies. Current policy in the United States and in many Western countries blurs this distinction in just the wrong direction. By allowing the CIA and FBI to cooperate inside the United States, the government fosters a more repressive internal state at the same time that it becomes more defensive and suspicious externally. Increased transnational law enforcement cooperation should come with procedures of accountability and transparency in order to protect the rights of individuals.

### (3) Increase Finance Regulation

One of the most efficient ways to strike at terrorist networks, and organized crime more generally, is to hit their money. It is surprising that though Osama bin Laden has been known to head and fund terrorist operations for years, al-Qaeda has had the liberty to move the necessary capital. Why has no one until now succeeded in attacking the finances? The answer lies partly in the fact that world business leaders resist financial regulation. Corporations regularly move their money around the world, for example, in order to avoid paying taxes.

Tracking and regulating the movement of funds can dry up the flow that supports criminal activities. A war on the free flow of money does not produce "collateral damage," create refugees, or pollute the air. The United States has indeed enhanced its capacity to investigate

and regulate money flows. In this area it is obvious that even the most awesome military power of the world must depend on the cooperation of other governments, especially governments that dislike U.S. foreign policy. Such necessary cooperation is difficult to maintain when the same governments or their allies face military threats or covert intelligence operations from the United States.

### (4) Use International Courts

The United States has put its response to the attacks and the threat of terrorism in a state-to-state frame only for as long as it suits its goals. By refusing to treat those captured in the war against Afghanistan as prisoners of war, the United States takes the picture out of the statist frame. The Bush administration argues that the prisoners are illegal combatants not covered by international law as stated in the Geneva Convention. At the same time, it has decreed that it will not apply its domestic principles of due process to non-citizen suspects apprehended in the United States or elsewhere. Thus the United States declares before the world that it will not afford any non-Americans whom it apprehends and claims to connect with terrorism the protection of law. This stance is so outrageous that it has fomented dissent even within the Bush administration and from within the ranks of its most loyal ally, Britain. In response, the administration has slightly altered its stated position, but not its treatment of prisoners.

U.S. vice president, Dick Cheney said, "Terrorists don't deserve the same guarantees and safeguards that would be used for an American citizen going through the normal judicial process" (*International Herald Tribune*, November 16, 2001). This statement reveals Cheney's scorn for the most elementary principles of due process: presumably it is up to judicial procedure to determine who is and who is not a criminal.

If the September 11 attacks are seen as crimes against humanity rather than against only the United States, an international tribunal instituted by the UN, based on the model of those for the ex-Yugoslavia and Rwanda, with the processing judges coming from Western and Islamic countries, would be appropriate.

Such a tribunal would also have the advantage of posing the conflict not as one between the United States and Islam but as one between the entire international community and a limited group of criminals. In the end, ad hoc tribunals should be handed over to a permanent International Criminal Court, approved by treaty in Rome in July 1998 (with opposition from the United States), and slowly being ratified by states around the world.

We have heard several arguments against using international courts to prosecute persons suspected of performing or materially contributing to terrorist acts: It's too slow, too expensive, and would wrongly give terrorists a forum in which to air their ideas. We find all these reasons disingenuous. It should not be any slower to pursue due process on an international level than at a state level; the speed the United States seeks seems to be at the expense of due process. Likewise, it should not be much more expensive to pay for an international trial than a state-level trial, if both are fair. Finally, any public court proceeding, at any level, offers opportunities for actors to express their point of view on the alleged crimes; that is what they are for, and that is, of course, why the military tribunals planned by the Bush administration will not be open to public view.

##### (5) Narrow Global Inequalities

Since September 2001, many commentators have suggested that the vast disparities in wealth and well being between northern hemispheric societies such as the United States, the European Union, or Japan on the one hand, and the Middle East and South Asia on the other hand, be taken into account in understanding what causes and motivates individuals to join or form terrorist groups. We agree with those who respond that these structural injustices neither justify nor excuse criminal acts. Nor do these circumstances even explain terrorist acts, for there are many poor places that appear not to nurture people who join international terrorist organizations.

Still, a huge portion of the world's population lives in horrible poverty. We believe, as do many others in both the less developed and more developed parts of the world, that this poverty persists at least partly because of poli-

cies of the rich states, private corporations based in those countries, and international organizations in which those states and corporations have disproportionate power. Even those skeptical of this claim, however, should condemn the apparent unwillingness of the people and governments of the United States, Europe, and Japan to effect significant transfers of capital, technological capacity, and goods to raise the quality of life of the world's poorest people. There is no doubt that such indifference amid affluence fosters resentment in many corners of the world and endangers peace and prosperity for many outside the shanty towns.

At another tragic moment in history, with the defeat of fascism at the end of the Second World War, the United States understood that its security and prosperity depended on the rebirth of Europe. To enable this rebirth, the United States dedicated a huge amount of resources to the Marshall Plan, to rebuild the infrastructure of devastated European societies. No development aid program since that time has been so large in scale and so effective. That this was done once should give hope that having the will opens the way to invest in poor societies to enable them to flourish. For decades social movements and governments in the less developed world have demanded that the powerful economic actors of the world stop exploiting their resources and workers and start programs of real investment in the infrastructure and human beings of poor countries. The developed world remains largely unresponsive to this plea. Official development assistance from the countries in the Organization for Economic Cooperation and Development in 1998 was 0.24 percent of their combined GNPs, and private funding is also paltry.

Even the Bush administration cannot avoid acknowledging this moral imperative. It could not stay away from the UN-sponsored conference on rebuilding Afghanistan in January 2002, as it walked out on the Conference on Racism in August 2001 and the Climate Change Conference in December 2001. At the January conference the United States pledged a mere \$300 million for the first year, and Japan and Europe each pledged \$500 million for the first two and a

half years. The World Bank estimates that at least \$4.9 *billion* is required for two and a half years to help rebuild Afghanistan at the most minimal level. Even at this moment of crisis, the rich countries of the world remain unbelievably stingy, and the poor people of the world are watching.

The world will not be able to move toward fair, inclusive, and effective global governance without major reallocation of economic, technological, and organizational capacities to reduce existing global disparities in the quality of life and institutional order. For such ends we need new and strengthened international institutions that better represent the voices

and perspectives of all the world's peoples, with more ability to promote global redistribution than existing international finance and development institutions such as the World Bank. Without the global equivalent of the Marshall Plan, even the best designed cooperative efforts to respond to transnational organized crime can only be defensive and intermittent in their effectiveness. No justice, no peace. ●

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DANIELE ARCHIBUGI is a member of the Italian National Research Counsel in Rome and IRIS YOUNG teaches political theory at the University of Chicago.

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