

The world's fight' U.S. must promote international norms: U.S. must promote international norms

by [David Little](#) in the [February 27, 2002](#) issue

Nine days after the events of September 11, when President Bush laid out the grounds and directions of the U.S. response to terrorism in a speech to a joint session of Congress, he declared that this is “not . . . just America’s fight. And what is at stake is not just America’s freedom. This is the world’s fight.” Those important words were subsequently reinforced by other statements and actions of the U.S. government, as well as by other governments and international organizations, such as the United Nations.

Nevertheless, it appears that the Bush administration has not fully comprehended the depth and range of obligations that are entailed in the president’s words. The record so far indicates a deep reluctance by the U.S. to set its policy resolutely in an international context and to accept the consequences of so doing.

The primary reason the “war on terrorism” is not just America’s fight is that the attacks of September 11 constituted a “crime against humanity,” as Mary Robinson, UN high commissioner of human rights, put it. Such a crime is understood as any sort of “systematic attack against any civilian population,” in the words of the Rome Statute of 1998 (the founding document of the International Criminal Court). Or, as the 1977 supplements to the Geneva Conventions state, “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.”

In short, the events of September 11 were an assault on international norms, including the principles and mission of the UN, and the instruments of humanitarian and human rights law that, since World War II, have come to define the laws of armed combat and the basic standards of political order throughout the world.

Robinson has gone on to underscore that, because of these standards, any response to terrorism must rigorously uphold human rights and humanitarian principles. If terrorism is a basic violation of international norms, then it can only properly be subdued in keeping with the requirements of those norms. Otherwise, the response becomes indistinguishable from the offense.

In addition, Robinson has called attention to the importance of U.S. leadership in promoting international norms. As the single superpower, the U.S. bears special responsibility to set high standards and enlightened precedents. If the response to terrorism is, after all, the “world’s fight,” then U.S. policies will need to be particularly transparent and disciplined—setting a good example.

On September 12, the UN Security Council adopted a resolution (No. 1368) that acknowledged the U.S.’s “inherent right of self-defense” in response to the attacks a day earlier; stressed that such acts “represent a threat to international peace and security,” and called on “the international community to redouble their efforts to prevent and suppress terrorist acts” and “to work together urgently to bring to justice the perpetrators, organizers, and sponsors of these attacks.” Two weeks later, the Security Council followed with a second antiterrorism resolution (No. 1373), which enjoins all states to “prevent and suppress the financing of terrorism, as well as criminalize the willful provision or collection of funds for such acts.” UN Secretary General Kofi Annan has publicly referred to these resolutions on several occasions and has accordingly affirmed UN authorization for the U.S. and its allies to use force against terrorism.

U.S. reaction to these determinations has been highly ambivalent. On the one hand, the Bush administration has acknowledged UN authority in several ways. For example, as required of a UN member, the U.S. informed the Security Council of its intention to respond to the attacks of September 11 by employing armed force against “al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan” in order “to prevent and deter further attacks on the U.S.” The authority cited for such action was article 51 of the UN Charter, which reads: “Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN, until the Security Council has taken measures necessary to maintain international peace and security.”

Also, President Bush and Secretary of State Colin Powell have on a few occasions explicitly invoked Security Council authority for U.S. actions. On November 10, in a speech before the UN, the president reiterated that “every nation has a stake in this cause,” and called for broadening the international coalition to fight terrorism. He also stated that “the most basic obligations of this new conflict have already been defined by the UN,” including the responsibility to share intelligence and coordinate law-enforcement efforts. “When we find terrorists,” said the president, “we must work together to bring them to justice.” He also committed the U.S. to “work with the UN to support a post-Taliban government that represents all of the Afghan people” (in accord with Security Council Resolution 1378).

Secretary Powell gave a similar speech at the UN the following day, adding this important thought: “No greater threat to international peace and security exists in the world today [than terrorism]. And, through this body, we have established and are establishing the tools to build a more robust defense.”

There is, then, good reason to conclude that the U.S. is acting not just in its own behalf, but under the specific authority of the UN Security Council, and that the U.S. is, therefore, bound to act explicitly and expressly as an agent of, and in accord with, the wider mission and objectives of the United Nations, including, of course, international norms.

But there’s the rub. Apart from the instances mentioned, the Bush administration has made very little effort to set—and in places has actively resisted setting—its counterterrorist efforts, and those of its allies, explicitly and systematically within a wider international context.

In the president’s September 20 speech to Congress, he made not one reference to the UN or to article 51 of the Charter, nor has he shown in subsequent speeches the slightest interest in the subject. The same is true of senior members of the administration, not excluding Secretary Powell. Until the recent controversy over the pertinence of the Geneva Conventions to the “detainees” at Guantánamo base, Defense Secretary Donald Rumsfeld virtually ignored international norms in his regular televised briefings on military action in Afghanistan. Moreover, neither the Joint Congressional Resolution of September 18, which authorized the use of armed force against terrorism, nor the president’s statement uttered as he signed it, made any reference to UN authority or to the international obligations of the U.S.

After taking a pummeling at home and abroad regarding the prosecution and treatment of prisoners, the administration may be moving toward greater compliance with international expectations. Unfortunately, a large part of the problem with the president's misbegotten order authorizing irregular military tribunals was its utter indifference to, if not defiance of, human rights and international rule-of-law standards. As the administration may now understand, international norms are not entirely inflexible in face of the legal perplexities that attend a struggle against terrorism. At the same time, the administration has learned—the hard way—that international norms have by now achieved considerable valence here and elsewhere, and that they may not be trifled with without consequence.

A similar approach has been revealed on the issue of the prisoners at Guantánamo. The administration at first disregarded the application of international norms—in this case, the Geneva Conventions—to persons detained in connection with military action in Afghanistan. It asserted without any serious justification that such persons are “unlawful combatants” rather than prisoners of war, and thus not eligible for protection under the conventions. In reaction to international and domestic pressure, the administration then declared, somewhat grudgingly, that the conventions will be enforced, but only selectively, and at the discretion of the U.S.

In response to what is widely perceived as extreme highhandedness on the part of the U.S., the administration has partially relented one more time in the direction of somewhat closer compliance with international norms. Reversing an earlier decision, the president recently declared that the third Geneva Convention, guaranteeing humane treatment for prisoners of war, will now apply to Taliban captives, but they still will not be called prisoners of war. Neither prisoner-of-war status nor the Geneva Conventions will apply to al-Qaeda detainees, and both groups will continue to be classified as “unlawful combatants.”

This is a makeshift policy—neither clearly explained nor defended—that involves some concessions to international opinion. On the other hand, it will continue to provoke controversy, particularly in regard to the meaning and status of “unlawful combatant,” and the failure to submit questions concerning prisoner-of-war status to a “competent tribunal,” as the third Geneva Convention requires.

Meanwhile, certain governments are beginning to use the campaign against terrorism as a pretext for settling scores at home and abroad. That is one of the

difficulties with President Bush's now famous declaration on September 20 that "any nation that continues to harbor or support terrorism will be regarded . . . as a hostile regime." Without nuance or qualification, such a statement seems to cast all enemies in the image of Mullah Mohammed Omar or Osama bin Laden, and thereby justifies treating those enemies in the same way the U.S. and its allies have treated al-Qaeda and the Taliban in Afghanistan. As urgent as the need to combat terrorism is the need to contain the passions and excesses that terrorism is designed to enflame.

In response to the events of September 11, the U.S. has incurred a set of international obligations. So far, it has only partly and half-heartedly begun to discharge those obligations.