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# Minerva 29

Citizens for Global Solutions  
WORLD FEDERALIST INSTITUTE



*“Might I sound a note of caution?”*

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*We need to respond to terrorism,  
not only by legislative means and security measures,  
but with the armory of common values, common standards  
and common commitments on universal rights  
that define us as one global community  
and which enable us to reach beyond our differences.*

**Mary Robinson**

## Armory for Human Security

A frequently asked question: why refer to Minerva, goddess of war?

Pursued for a time, in her helmet and cuirass of mail, by Mars, Minerva is not a mere amasser of armaments or trophies of martial power. In the merging of Greek, Etruscan and Roman traditions, she is the inventor of numbers and musical instruments, and possible mother of the Muses. Responsible for domestic skills, such as spinning and weaving, and for all arts, she is patroness of painting, sculpture, poetry, pedagogy, and medicine. She may well be as fierce as the god of war, but her mandate is broader and recognizes the safeguarding constraints of civilization. Revered by women, Minerva also was “worshipped by men who sought cunning, prudence, and courage in military affairs” (Robert E. Bell, *Women of Classical Mythology*).

It might be prudent to reflect on that congeries of qualities in this season of alarming impotence and heightened insecurity. For when violence is abroad in the land, as it usually is, fear blindly props up the intolerance that perpetuates whatever is feared. And, as paranoid extremes clash, courage requires an element of caution that is difficult to calibrate to a degree of strength & skill that can overcome vain posturings or preemptive strikes and can rise above pernicious eschatological fantasies.

Fear of terror, merging with fear of alien people & cultures & faiths that is shared with presumed enemies, is distorting the political scene in many places, while fear of unrelenting poverty & disease engulfs much of the world, where terror is only one among many far more pervasive threats with which to contend. The violence being committed t/here is everyone’s responsibility.

A paper presented in 1996 by Pat Duffy Hutcheon to a conference of the Interna-

tional Sociological Association reminds us that Hannah Arendt warned young revolutionaries of the 1960s that power and violence should not be confused. “Violence can destroy the old power, [Arendt] said, but it can never create the authority that legitimizes the new. Violence is therefore the poorest possible basis on which to build a government. ‘To substitute violence for power can bring victory, but the price is very high; for it is not only paid by the vanquished but it is also paid by the victor’ [*On Violence*, p53]. She considered this particularly dangerous because ‘the means ... of destruction now determine the end — with the consequence that the end will be the destruction of all [legitimate] power’. Only terror is left!”

These days much explicative attention is expended on terror as a tool of the powerless, even though most of the most powerless — women — use it least. Meanwhile, torture and other forms of sanctioned terror do not display impressive power, as its perpetrators imagine, but expose suppressed intimations of illegitimacy. And, when allegedly used for “intelligence”, they clearly signal its lack. Government well founded on freely exchanged information and minimal deceit does not need to resort to violent displays of empty power. Inviting disrespect, fear-mongering dissemblers in leadership roles are terribly pathetic as well as dangerous.

Even without experiencing — yet — the full panoply of totalitarian machinery, how can we (as Americans) escape from rule by fear when that is itself so fearsome? Why have we (as humankind) learned so little from the history of this dilemma? If we are afraid of anarchy but can’t talk honestly about our expectations of government and about the beneficial arts of politics rather than the exclusionary advantage-seeking perversions of it, what hope can we have? How do we (as world citizens) propose to build deepest legitimacy and widest benefit into the transnational institutions & protocols that need creation or rehabilitation?

Various explorations of these questions are presented in each issue of *Minerva*; many more are needed from people already living with the courage of their world citizenship convictions — and from people who recognize the testament of Burmese prisoner of conscience Aung San Suu Kyi, the 1991 Nobel Peace Prize laureate: “Fearlessness may be a gift, but perhaps more precious is the courage acquired through endeavor, courage that comes from cultivating the habit of refusing to let fear dictate one’s actions.”

In ancient legend, Minerva, like her counterparts in Vedic and other traditions, exemplifies that courage. In contemporary history, each of us can personify it in pursuit of authentic, hopeful, multifaceted human security.

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*A world of true security is only possible when the full range of human rights — civil & political, as well as economic, social and cultural — are guaranteed for all people. What we need now is a new approach — which begins with a broader understanding of what defines human and global security. We must craft a policy that manages and balances our increasing interdependence with our increased vulnerability. Governments from both the North and the South must expand their thinking and policies to encompass a broader understanding of security beyond the security of states.*

- **Mary Robinson**, former UN High Commissioner for Human Rights

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*The so-called soft threats — hunger, lack of safe drinking water & sanitation, and endemic diseases — kill millions each year, far more than so-called hard or ‘real’ threats to security. They cannot be ignored until the hard threats have been taken care of.*

- UN Assistant Secretary General  
**Ramesh Thakur**

*In this interconnected world, security threats to people in faraway places have a way of migrating.*

- **David Brancaccio**,  
hosting the Stanley Foundation  
documentary, “Security Check:  
Confronting Today’s Global Threats”

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# Minerva

This twice-yearly collation, now supported by the World Federalist Institute of Citizens for Global Solutions, is named in honor of one of the four women signers of the UN Charter, Minerva Bernardino (1907–1998), who helped found the UN Commission on the Status of Women.



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# Renewing the Commitment to the Rule of Law and Human Rights: The Way Forward

*Mary Robinson*

This Dankwart A. Rustow Memorial Lecture, presented by the Ralph Bunche Institute for International Studies and the CUNY Graduate Center Department of Political Science on 21 September 2004, is published by permission of **Mary Robinson**, former President of Ireland (1992–1997), UN High Commissioner for Human Rights (1997–2002), and Executive Director of Realizing Rights: The Ethical Globalization Initiative.

[Opening amenities] . . . By observing the 100th anniversary of [the birth of Ralph Bunche], you have paid tribute to an extraordinary individual's contribution to academia, to the work of the United Nations and to the promotion of peace. But you have done something more. The Ralph Bunche centenary anniversary has served as a timely reminder of this country's proud history of leadership and commitment to international law and institutions. It has also been a reminder of how much that kind of leadership is needed today, here at home and around the world.

I would like to speak this evening about why I believe there is such an urgent need for the United States to reflect on its own historic role in establishing a global system of rules and institutions. And why I believe the time has come for this country to renew its commitment, in words and deeds, to the rule of law, and to the international human rights standards and system it did so much to establish. Equally important, there is a need to recognize how both connect to the goal of ensuring true human security for all people.



I make this call for a renewed commitment, not as a critic, but as a long time friend and strong supporter of the United States. I was privileged to come to this country as a student, nearly forty years ago, and was inspired by the American people and American democracy. Years later, as President of Ireland, I saw in new ways the deep connections between our peoples and our systems of government. And as United Nations High Commissioner for Human Rights, I witnessed how vital this country's role was in giving leadership on human rights around the world.

I wish to stress as well that I am acutely aware of the daunting challenges before us. We are confronted today with a dangerous array of threats to peace and security – from terrorists who are prepared to attack anywhere, at any time, without regard for human lives; to failing and failed states, unable to secure even the most basic structures of governance, and at risk of, or already becoming the breeding grounds for future terrorists. Other threats, from the proliferation of weapons of mass destruction to the global HIV/AIDS pandemic, to international criminal syndicates which traffic in everything from small arms to the most vulnerable human beings all require leadership and joint action. It is precisely these dangers, and the changing, more interconnected world we live in, that make respect for the rule of law and human rights so important today.

Standing up for those principles and the international systems which have been built to uphold them, requires, I believe, not only holding fast to long standing national and international obligations but also thinking in new ways about what security means here at home and for people around the world. It requires us to move outside our comfort zones and acknowledge a more expansive notion of human security. I believe that concept – human security – could serve as a bridge, a unifying framework, which reconnects the people of the United States with people from every part of the planet in greater awareness of our common humanity and our common future.

If we are to find that way forward, it is important to reflect on the events of recent years and how they look now both here and around the world. As we know, some have argued

that the terrible attacks of Sept. 11 2001 were so heinous, so unprecedented, that the only possible response was a global “war on terrorism”. These voices point out that the enemy is not a nation state and is not willing to respect fundamental standards of international law which protect civilians. Fighting terrorism, it is said, therefore requires new strategies and sometimes “exceptional measures”.

Three years after 9/11, I believe we must evaluate those assumptions and ask ourselves if such measures were justified. Were the decisions taken by the US government, for example, to hold detainees at Guantanamo Bay without Geneva Convention hearings, to monitor, detain and deport immigrants against whom no charges had been made or to put in question long held commitments, such as, forbidding the use of torture, justifiable actions to protect the American people?

Some believe strongly that they were necessary to guard against further terrorist attacks. What is clear is that the language of being “at war with terrorism” has had direct, and nefarious, implications. It has brought a subtle – or not so subtle – change of emphasis: order and security have become priorities that trump all other concerns. As was often the case in the past during times of war, the emphasis on national order and security frequently involves curtailment of democratic processes and results in violations of human rights. The bi-partisan Commission which has investigated the actions leading up to and following the events of 9/11 has prompted an important debate in this country about the effectiveness of these strategies, and how best to protect America in the future. That debate should continue.

***International law  
is no longer a specialty.  
... It is vital if judges  
are to faithfully discharge  
their duties.***

**Supreme Court Justice  
Sandra Day O'Connor**

A good start was made by the International Commission of Jurists, when, during its biennial conference at the end of August '04, 160 international lawyers from around the world adopted a Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism. That Declaration acknowledges that terrorism poses a serious threat to human rights, and affirms that all states have an obligation to take effective measures against acts of terrorism but it sets out the boundaries as follows:

“In adopting measures aimed at suppressing acts of terrorism, states must adhere strictly to the rule of law, including the core principles of criminal and international law and the specific standards and obligations of international human rights law, refugee law and, where applicable, humanitarian law. These principles, standards and obligations define the boundaries of permissible and legitimate state action against terrorism. The odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights.

“A pervasive security-oriented discourse promotes the sacrifice of fundamental rights and freedoms in the name of eradicating terrorism. There is no conflict between the duty of states to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine other rights. On the contrary, safeguarding persons from terrorist acts and respecting human rights both form part of a seamless web of protection incumbent upon the state. Both contemporary human rights and humanitarian law allow states a reasonably wide margin of flexibility to combat terrorism without contravening human rights and humanitarian legal obligations.”

The Declaration then affirms 11 principles which states must give full effect to in the suppression of terrorism and calls on all jurists to act to uphold the rule of law and human rights while countering terrorism. This Berlin Declaration, available at <[www.icj.org](http://www.icj.org)>, restores the balance which was lost in the aftermath of 9/11. It is a declaration which should hang in law offices and judges' chambers throughout the world. It is the rule of law charter to counter the imbalances of the “new normal”.

*[continued]*

As a non-citizen, but someone who is fortunate to be able to spend a good deal of time here in the United States and speak with Americans from many walks of life, I feel it important to raise issues that are less discussed here, namely, the consequences of US actions abroad. The reality is that by responding in the way it did to the attacks of 9/11, including through the subsequent wars in Afghanistan and Iraq, the United States has, often inadvertently, given other governments an opening to take their own measures which run against international human rights standards and undermine efforts to strengthen democratic forms of government.

I saw this first hand during my final year as High Commissioner for Human Rights. Repressive new laws and detention practices were introduced in a significant number of countries, all broadly justified by US actions and the new international war on terrorism. The extension of security policies in many countries has been used to suppress political dissent and to stifle expression of opinion of many who have no link to terrorism and are not associated with political violence. I will never forget how one Ambassador put it to me bluntly in 2002: "Don't you see, High Commissioner? The standards have changed."

The sad reality is that over the past three years, the view that governments will ultimately only rule by power and in their own interest, rather than by law and in accordance with international standards has been strengthened significantly. We must continue to challenge this approach and do everything possible to maintain the integrity of international human rights and humanitarian law norms in the light of heightened security tensions. Not just because it is the right thing to do, but because it is the most effective strategy in countering the forces which fuel terrorism. The United States can make a vital contribution to that effort through its own example, by living up to its time honored commitments to justice and respect for the rule of law, and by calling for greater concern for human rights at home and on the world stage.

But we must do more. We must also win the war of ideas and make the case that a

world of true security is only possible when the full range of human rights – civil and political, as well as economic, social and cultural – are guaranteed for all people.

What we need now is a major course correction — a new approach — which begins with a broader understanding of what defines human and global security. We must craft a policy that manages and balances our increasing interdependence with our increased vulnerability. Governments from both the North and the South must expand their thinking and policies to encompass a broader understanding of security beyond the security of states.

Again, we can and should look to the best traditions of US leadership for guidance and inspiration. President Franklin Roosevelt, in his 1944 State of the Union Address, argued that security "means not only physical security which provides safety from attacks by aggressors," but also "economic security, social security, moral security." He stressed that "essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want."

While in the United States and Europe the focus since 9/11 has been on state security and combating acts of terrorism, millions of other people on the planet have continued to be at daily risk from violence, disease and abject poverty. Their insecurity stems from worry about where the next meal will come from, how to acquire medicines for a dying child, how to avoid the criminal with a gun, how to manage the household as a ten year old AIDS' orphan – theirs is the comprehensive insecurity of the powerless.

For women, gender is itself a risk factor threatening human security: the secret violence of household abuse, the private oppressions of lack of property or inheritance rights, the lifelong deprivations that go with lack of schooling and the structural problem of political exclusion.

Freedom from want is an empty promise today for more than 800 million people who suffer from undernourishment, for the

30,000 children around the world who die each day of preventable diseases, for the thousand million people still without access to clean water supplies or the 2.4 billion who lack access to basic sanitation.

An unprecedented number of countries actually saw their human development indicators slide backwards in the 1990's. In 46 countries people are poorer today than in 1990. In 25 countries more people go hungry than a decade ago. The picture that emerges is increasingly one of two very different groups of countries: those that have benefited from more open markets, free movement of capital and new technologies and those that have been left behind.

Of course, the reasons for this situation are many. For example, more and more people are conscious of the intolerable burden of debt on the poorest countries – a debt often incurred over long periods by former dictators which never benefited the general population. What is less appreciated is that poor countries are currently financing the huge deficit here in the United States. The World Bank's report, *Global Development Finance: Harnessing Cyclical Gains for Development*, puts it this way: "Since 2000, the developing world has been a net exporter of capital to the advanced economies". This is one of the global inequities we must bear in mind. Not only is more debt relief for the poorest countries essential but rich countries such as the United States should no longer borrow cheaply from poorer ones who need those resources for development at home.

Statistics give us the numbers we account for in addressing inequalities, but they fail to convey the humiliation, the hopelessness, the lack of dignity involved. Listening to a family living in absolute poverty it is this lack they speak of: the lack of self respect, the indignity and humiliation of a refugee camp, the invisibility of being homeless, the helplessness in the face of violence, including violence caused by those in uniform who should protect.

What I began to appreciate as President of Ireland – on visits, for example, to Somalia and Rwanda – and became convinced

of during my five years at the UN – is that the underlying causes of practically all human insecurity are an absence of capacity to influence change at personal or community level, exclusion from voting or participating in any way in local and national decision making, and economic or social marginalization. The key to change lies in empowering people to secure their own lives. For this people need the means to try to hold their governments accountable, at local and national levels.

This broader understanding of human security was examined by an independent Commission on Human Security, co-chaired by Amartya Sen and Sadako Ogata. Their report, *Human Security Now* (2003), proposes a new concept which shifts from a focus on the security of the state to the security of the people – to human security. The emphasis is on the extent to which human security brings together the elements of security, of rights and of development.

The report identifies two underlying concepts, protection and empowerment, which lie at the heart of human security. The first of these, protection, is primarily a state responsibility, but where states are unable or unwilling to address large scale abuses, an international responsibility to take appropriate action must be acknowledged, as was examined and clarified by the International Commission on Intervention and State Sovereignty in its report: *The Responsibility to Protect* (2001) which Tom Weiss and his colleagues here at the Ralph Bunche Institute contributed so much to producing.

The Commission on Human Security describes the second concept, empowerment, as: “People’s ability to act on their own behalf – and on behalf of others ... People empowered can demand respect for their dignity when it is violated. They can create new opportunities for work and address many problems locally. And they can mobilize for the security of others.”

I saw this for myself in every country I visited as High Commissioner. Human rights groups, women’s groups, environmental movements, child advocates, mi-

nority groups, those tackling poverty were all increasingly seeing the value of applying their governments’ human rights obligations to budget analysis, legislation and social policies to expose failures to implement progressively rights to the highest standards of health, to education and adequate housing among others. They were also challenging money spent on unnecessary military equipment or projects benefiting only a small elite. Invariably, the work was under-resourced, undervalued and often resented by those in power. But change was possible.

Now these groups have additional tools available in the commitments both developed and developing countries have made to achieve the Millennium Development Goals by 2015. . . . These eight goals, you will recall, include: halving those in extreme poverty and hunger by 2015; achieving universal primary education for boys and girls by 2015; and specific targets for promoting gender equality and empowerment of women; reducing child mortality; improving maternal health; combating HIV/AIDS, malaria and other diseases; ensuring environmental sustainability and developing a global partnership for development.

An opportunity presents itself to reinforce the empowerment of grassroots organizations in every region by linking two processes that provide them with tools of accountability. We should help them to link their country’s undertaking to achieve the Millennium Development Goals, and the country’s legal commitments to progressively implement economic and social rights under the relevant international treaties, together with developed countries commitment to substantial new resources for financing this development.

To date, large parts of civil society have not been actively engaged in promoting the MDGs and mobilizing to pressure their governments to take effective action. Indeed, my experience of speaking to audiences in this country, including political scientists, sociologists and economists is that a substantial majority has never heard of the MDGs! Some human rights groups have expressed concern that the Millen-

nium Goals sideline more pressing issues or ignore previous commitments such as the women’s rights platform of the 1990s including violence against women and reproductive rights. Another criticism is that the MDG process is top-down. Civil society was not involved in formulating the MDGs which are seen by some as an attempt at a one-size-fits-all approach.

While I recognize that these are legitimate concerns, we should not forget that the MDGs were placed within the context of commitments that governments reaffirmed in September 2000 in the Millennium Declaration, to promote human rights, democracy and good governance. These commitments:

- ❖ To respect and fully uphold the Universal Declaration of Human Rights
- ❖ To strengthen the capacity of all countries to implement the practices of democracy and human rights
- ❖ To implement the Convention on the elimination of discrimination against women (CEDAW)
- ❖ To ensure respect and protection for the rights of migrant workers and their families
- ❖ To work collectively for a more inclusive political process, allowing genuine participation by all citizens in all countries and
- ❖ To ensure the freedom of the media and public access to information are vitally important to achieving the development goals and should be given greater prominence.

Making more of the links between human rights, human development and human security could also have a positive impact on the allocation of resources. Additional money to support the MDGs was pledged by the United States at the 2002 Conference on Financing for Development held in Monterrey, Mexico, through the Millennium Challenge Account. The European Union has also increased its commitment. However, there is still a wide disparity between the global spending on official development assistance, which amounts to around \$60 billion a year, and the annual

amount developed countries spend on items such as agricultural subsidies in the amount of \$300 billion, and global military expenditure of \$900 billion.

It was estimated at Monterrey, by an eminent panel of economists chaired by former president of Mexico Ernest Zedillo, that an additional \$50-60 billion annually on development assistance would be needed to ensure full implementation of the Millennium Development Goals by 2015. If this extra expenditure would in fact make the world more secure, does it not seem like a good investment?

The project I now lead here in New York, Realizing Rights: The Ethical Globalization Initiative (EGI), is seeking to extend a human rights analysis and strong gender perspective into issues of trade and development; into health issues – particularly the pandemic of HIV and AIDS in sub-Saharan Africa – and into migration. We seek to be a catalyst which engages leaders in government, in business, the trade union movement, the women’s movement, and people of faith in thinking creatively about how – from different perspectives – we can create multi-stakeholder approaches to addressing global problems and help grassroots and social movement groups to empower themselves. We believe this empowerment can be strengthened with knowledge of the additional tools by which to hold their governments accountable for both their human rights commitments and the implementation of the Millennium Development Goals with additional resources over the next ten years.

Let me close by asking: what could all of you do to support such efforts? One possibility is to learn more about and engage with the emerging US human rights movement which is seeking to reclaim the full legacy and meaning of international human rights here at home. I see this movement taking shape in many places. For example, a growing number of US medical professionals and groups such as Physicians for Human Rights are pushing for greater recognition of the right to the highest attain-

able standard of health for all and demonstrating the impact this shift would have on the way decisions are made about health spending and access to health services, especially for the most vulnerable.

US development and humanitarian NGOs are increasingly aware of the human rights covenants and conventions that have been ratified in the countries where they are working, they know what reports have been submitted by governments on their rights performance and the comments of the relevant treaty monitoring committees, and they know if there have been visits and reports by UN experts. They are linking this information to their own work and in particular how they seek to empower grass roots civil society groups in using this framework to push for results. Interest is growing in relation to issues such as fair trading and socially responsible investing. Consumer power can help shape corporate social responsibility.

Many challenges face this emergent US human rights movement. The government’s ongoing aversion to international law and institutions and the lack of awareness about international standards amongst the general public must be addressed. I would encourage all of you . . . to continue your work to make the example of leaders like Ralph Bunche known to wider circles of Americans. Sadly, many Americans aren’t aware of the Universal Declaration of Human Rights or the role this country played in creating the international human rights movement. You can help by joining those who are seeking to reclaim American traditions of engagement with international institutions and law as the best hope for a more peaceful and just world.

We live in difficult but hopeful times. The challenge of speaking out against the erosion of civil liberties, even during times of crisis, needs to be a priority in the foreseeable future. Calling on all nations to hold fast to their international legal obligations and to reaffirm their commitment to multilateralism will require concerted efforts. But we should also be hopeful. A

movement which is seeking a fairer world, where all people are guaranteed basic human security, is growing. The people of this country should join their voices to that growing chorus. The key lies in renewing the commitment here at home to human rights for all.

Let me borrow inspiration once again from a poem Seamus Heaney wrote for Amnesty International. The poem, “From the Republic of Conscience”, tells the story of a visit to a place where:

*You carried your own burden,  
and very soon  
your symptoms of creeping privilege  
disappeared.*

It explains that:

*At their inauguration, public leaders  
must swear to uphold unwritten law  
and weep  
to atone for their presumption  
to hold office.*

The poem concludes this way:

*I came back from that frugal republic  
with my two arms the one length,  
the customs woman  
having insisted my allowance was myself.*

*The old man rose and gazed into my face  
and said that was official recognition  
that I was now a dual citizen.  
He therefore desired me when I got home  
to consider myself a representative  
and to speak on their behalf  
in my own tongue.  
Their embassies, he said, were everywhere  
but operated independently  
And no ambassador would ever  
be relieved.*

The poem encapsulates beautifully the human rights concept of personal responsibility, which is at the heart of building an ethical globalization. May you all be dual citizens, and may none of you ever be relieved.

# Terrorism as an International Crime

*Leila Nadya Sadat*

**Leila Sadat**, Henry H. Oberschelp Professor of Law at Washington University School of Law, and Commissioner, US Commission on International Religious Freedom, is a member of the Board of Directors of the Citizens for Global Solutions Education Fund.

This excerpt from her essay, "Terrorism and the Rule of Law", in the *Washington University Global Studies Law Review*, 3:135 (Winter 2004), is reprinted by permission.

The essay opens with the following epigraph from **Thomas Hobbes**:

*Nature hath made men so equall, in the faculties of body, and mind; as that though there bee found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himselfe any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others. . . .*

- *Leviathan*, Ch. XIII

. . . Although the second half of the twentieth century witnessed tremendous growth in the normative content of international criminal law with the adoption of several important counter-terrorism treaties, including a series of treaties relating to air safety and airplane hijacking, maritime navigation, fixed platforms on the continental shelf, hostage taking, and the safety of internationally protected persons,<sup>37</sup> the international community was, nonetheless, not united in its condemnation of international terrorism. Persistent debates remained whether there was any uniform definition of the crime. In particular, members of the non-aligned group of countries argued for the exclusion of violent actions undertaken by groups fighting in the struggle of national liberation movements.

Moreover, despite the significant progress made in criminalizing particular offenses through the adoption of international treaties, there is little doubt that enforcement of those treaties was problematic. Most antiterrorism conventions impose a form of "universal jurisdiction by treaty",<sup>38</sup> which grants any state to which the alleged terrorist travels jurisdiction to prosecute him or her. Additionally, these treaties generally impose upon states the duty to try or extradite international terrorists (*aut dedere, aut judicare*), and in this manner create a net through which the terrorist has difficulty escaping. Yet these instruments notwithstanding, legal experts vigorously debated whether terrorism could generally be considered a universal jurisdiction crime, due, in part, to the difficulties concerning its definition. Additionally, the crucial enforcement mechanism of the counter-terrorism treaties, *aut dedere, aut judicare*, was generally not believed to be a norm of customary international law, although certain prominent scholars argued to the contrary.<sup>39</sup> Thus, to the extent a terrorist remained on the territory of a "friendly" or incompetent state, that is, a state which was either powerless or not inclined to investigate and punish the criminal in question, that terrorist could largely avoid the application of international law.

Many of these difficulties have been ameliorated in recent times, due to the tremendous progress not only with regard to the enforcement of international norms condemning terrorism, but in parallel areas of international criminal law. To begin with, in 1993 and 1994 the Security Council took the unprecedented step of establishing the two *ad hoc* tribunals for the Former Yugoslavia and Rwanda.<sup>40</sup> Although there was initial scepticism as to whether those tribunals would be able to indict and apprehend those thought most culpable in the wars and atrocities committed in Rwanda and the former Yugoslavia, they have been effective and successful, even if not perfect, institutions. Building upon those precedents, the International Criminal Court Treaty was proposed, negotiated, and adopted and entered into force decades sooner than most would have thought possible.<sup>41</sup> Those institutions' jurisdiction does not encompass the crime of terrorism, except to the extent that acts of terrorism could be considered crimes against humanity. But the Lockerbie trial, which did address acts of terrorism, is an example of international enforcement that was successfully undertaken by the international community.

The last decade also brought progress in achieving an international consensus on the *per se* illegality of widespread attacks on civilian populations. In 1994 the General Assembly took the position that "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable".<sup>42</sup> The Declaration also required states to "refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other states, or from acquiescing in or encouraging activities within their

territories directed towards the commission of such acts".<sup>43</sup> The 1994 Declaration was followed two years later by a second Declaration along the same lines, suggesting the general willingness of the international community to address the problem of terrorism and terrorist havens.<sup>44</sup>

The attacks of September 11th, like the tragic wars in the Former Yugoslavia, the Rwandan genocide, and the horrific bombing of Pan Am 103, presented the world with yet another opportunity to further strengthen the enforcement of international criminal law norms, and fill the gap in enforcement that has plagued efforts to control international terrorists. Indeed, if we leave aside the question whether the acts of September 11th were armed attacks or war crimes, they could clearly be characterized as acts of international terrorism<sup>45</sup> and crimes against humanity.<sup>46</sup> They involved the intentional killing (murder) of several thousand civilians and appear to have been carried out pursuant to a widespread and arguably systematic attack against a civilian population pursuant to the policy of the al Qaeda criminal organization, thus fulfilling the definition of crimes against humanity in the Rome statute for the International Criminal Court.<sup>47</sup> Moreover, there is no doubt that the attacks violated several of the international terrorism conventions referred to earlier,<sup>48</sup> and that the perpetrators could be prosecuted in US courts under several different federal statutes.<sup>49</sup>

The US government and the international community generally characterized the attacks of September 11th as criminal acts, as evidenced by the Security Council Resolutions adopted after the fact. Security Council Resolution 1373 is extraordinary in this regard. First, building upon the experience of the past decade, the Council assumed that the offenses were crimes of universal international jurisdiction that could be defined by the international community (and presumably could be the subject of adjudication by an international tribunal) and followed by international enforcement action. That is, the Security Council, invoking its Chapter VII authority, has suggested, through its pronouncements after the fact, that the acts of Sep-

tember 11th amounted to international crimes over which the international community (and presumably states, a subject beyond the scope of the present essay) may assert universal international jurisdiction.<sup>50</sup> Although this is consistent with the position the Council has taken in asserting jurisdiction over the crimes committed in the Former Yugoslavia and Rwanda, it is a dramatic extension of those precedents because it suggests that they now apply to acts of international terrorism.

Moreover, as alluded to above, there was substantial debate prior to September 11th, 2001, whether terrorism was a universal jurisdiction crime at all. Many national tribunals had opined that it was not, and the Princeton Principles of Universal Jurisdiction, adopted in January 2001, nine months prior to the attack, omitted terrorism from the list of crimes over which States could presumptively exercise universal jurisdiction.<sup>51</sup> Whether Resolution 1373 is the codification of custom, instant custom, or a new form of Security Council "legislation",<sup>52</sup> its adoption suggests a sea change in *opinio juris* on the issue of terrorism as a universal jurisdiction crime, enacted against the backdrop of a custom that had already been evolving in that direction.

In addition, Resolution 1373 appears to suggest that the principle *aut dedere, aut judicare* is also a matter of customary international law. That is, to the extent a crime is a universal jurisdiction crime, this principle appears to apply as a matter of customary international law. This would represent a tremendous advance in the enforcement of international criminal law norms by national legal systems. Resolution 1373 also provides that states must "deny safe haven to those who finance, plan, support, or commit terrorist acts or provide safe havens", suggesting, like General Assembly Resolutions 49/60 and 51/210,<sup>53</sup> that states may not serve as safe havens for terrorists without running afoul of international law. The question that remains is, of course, what consequences flow from a state's breach of this obligation.

Given the general prohibition in the UN Charter against the unilateral use of force

by states in resolving international disputes, the course of action that appears most consistent with the existing framework of international law is to request the Security Council to intervene in cases involving terrorist attacks launched from one state against the territory of another. Although some have made the case for the legality of the October 7th military response of the United States despite the absence of any explicit authorization of the Security Council, it should be noted that the facts of that case are quite unique. The Afghanistan situation involved attacks significant both in scale and symbolism, prior demands from the Security Council to the Taliban to turn over the individuals suspected of their organization, at least some evidence of complicity between the terrorist organization and the *de facto* government of Afghanistan, virtually universal and worldwide condemnation of the attacks themselves, and few questions as to their source. In other cases, the responsibility of a state may be much less evident, and the unanimity of the international community much less sure. In the case of September 11th, the United States could have obtained a third Security Council Resolution to enforce Resolution 1373. This final Resolution, like the famous Resolution 678 that authorized operation Desert Storm, would have required the Taliban regime of Afghanistan to turn over Osama bin Laden and his accomplices, based upon evidence establishing the equivalent of "probable cause"<sup>54</sup> that he and the al Qaeda network were responsible for the attacks of September 11th. The resolution could have set a deadline for doing so, and authorized states to use "all necessary means" to effectuate his capture if the Taliban refused to surrender him, just as Resolution 678 did in 1990 with regard to the Iraqi invasion of Kuwait.<sup>55</sup> There is no doubt that this hypothetical international "arrest warrant" would have been issued by the Security Council at the United States' urging — the world expressed both its sorrow and solidarity with the United States in the wake of the September 11th attacks, and at the time Resolutions 1368 and 1373 were adopted, bin Laden was threatening the United Nations as a future target of his terrorist network. In this way, the US-led military action and response to interna-

tional terrorism would have set an important precedent and would have reinforced the normative content and institutional framework of international law.

#### IV. CONCLUSION

The temptation to jettison legal constraints is understandable when faced with a hostile enemy that does not itself obey the law. Perhaps there are times when law fails, or when civil disobedience is appropriate if law itself becomes illegal or immoral. But the attacks of September 11th did not present such a case. Indeed, the hideousness of the acts themselves so shocked the international community that they provided a unique opportunity to strengthen a growing international consensus condemning attacks on civilians whatever the motivation.<sup>56</sup> This is not to suggest that a military response was necessarily illegal under the circumstances, only that any military actions taken must, to be effective in the long term, employ force in service of the rule of law. The ultimate test of America's strength will not be its ability to respond militarily to threats all over the world, threats that are by definition, random, designed to inflict terror, and carried out by very small numbers of individuals willing to die in the process of carrying out their criminal design. Instead, America's strength will lie in its ability to persuade others to join its cause against international terrorism and to establish international institutions and international norms to do so, norms which states are

willing to enforce domestically.<sup>57</sup>

The attacks of September 11th presented the United States with an extraordinary opportunity to reshape the norms of international law to promote their effective enforcement. International conventions against terrorism that proved ineffective to the extent terrorists could take refuge in states that had either unwillingly or willingly become accomplices to their action were to be enforced by Security Council action in the event that other means proved ineffective, and the terrorists' activities threatened the maintenance of international peace and security. Moreover, international military action, guided by law and explicitly authorized by a Resolution of the Security Council, would seemingly have proven no less effective than a military campaign launched on more ambiguous terms. Viewing the anti-terrorism campaign in Afghanistan as an international criminal law enforcement operation, rather than an act of retribution would also have created a positive precedent for future cases. The present unilateralist approach provides states wishing to do so with the opportunity to eliminate dissidents and those otherwise opposed to their rule, including governments or rebels in neighboring states, by labeling them "terrorists", and therefore not subject to the normal legal constraints that govern the use of force.<sup>58</sup> This erosion of the rule of law is in the interest of no state in the world, not even the world's only superpower. While the terrorists of September 11th may have

been self-styled warriors, they and their ilk are not combatants engaged in international armed conflict, but pathological criminals that require arrest and deterrence.<sup>59</sup> Although it is now fashionable to suggest that we must abandon liberal regimes in favor of a new Hobbesian reality when faced with the menace of ruthless international criminals, Hobbes himself did not suggest that "going it alone" was the solution to survival in the state of nature. Instead, because even the strongest man can be felled by the weakest, with a knife in the back as he sleeps, cooperation and trust are prerequisites for survival in a world where life is, otherwise, nasty, brutish and short.<sup>60</sup>

One can only hope that, with time, the United States government will return to the measured process of building effective multilateral regimes, and abandon the unilateralist path it now appears to tread. There may be a place or even a need for the use of force in response to the deadly acts of international terrorists, but military power must be employed judiciously and subject to the constraints of international law. Bombing bin Laden may salve the pain of those victimized by his crimes, but it is unlikely either to bring him to bay or prevent the commission of future atrocities.<sup>61</sup> This is particularly true if the military action and subsequent policies of the US government further erode respect for the rule of law, and lessen the moral leadership that the United States could otherwise provide.

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#### ENDNOTES

37. See Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219; Hague Convention on the Suppression of Unlawful Seizure of Aircraft (Hijacking), Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage) *opened for signature* Sept. 23, 1971, 24 U.S.T. 564, 974 U.N.T.S. 177; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (*opened for signature* Mar. 10,

1988), 1678 U.N.T.S. 349; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf *opened for signature* Mar. 10, 1988, 1678 U.N.T.S. 201 (1988); International Convention against the Taking of Hostages *opened for signature* Dec. 17, 1979, T.I.A.S. No. 11081, 1316 U.N.T.S. 205; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents *opened for signature* Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167.

38. JORDAN J. PAUST ET AL., *INTERNATIONAL CRIMINAL LAW: CASES AND MATERIALS* 157 (2d ed. 2000).

39. See generally M. CHERIF BASSIOUNI & EDWARD M. WISE, *AUT DEDERE, AUT JUDICARE: THE DUTY TO EXTRADITE OR PROSECUTE IN INTERNATIONAL LAW* (1995).

40. The ICTY was Established by S.C. Res. 808, U.N. SCOR, 48th Sess. 3175th mtg. at 2, U.N. Doc. S/Res/808 (1993). The Tribunal's statute appears in an Annex to the Secretary-General's report, *Report of the Secretary-General Pursuant to Para-*

graph 2 of Security Council Resolution 808, S.C. Res. 808, U.N. SCOR, 48th sess., U.N. Doc. S/25704/Add. 1 (1993). The Security Council adopted the Secretary-General's draft of the statute without change in Resolution 827. S.C. Res. 827, U.N. SCOR, 48th sess. 3217th mtg., U.N. Doc. S/Res/827 (1993); The ICTR was Established by Security Council Resolution 955, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., at ¶ 2, U.N. Doc. S/Res/955 (1994).

41. See generally LEILA NADYA SADAT, THE INTERNATIONAL CRIMINAL COURT AND THE TRANSFORMATION OF INTERNATIONAL LAW: JUSTICE FOR THE NEW MILLENNIUM (2002); Sadat & Carden.

42. Declaration on Measures to Eliminate International Terrorism, G.A. Res. 49/60, U.N. GAOR 6th Comm., 49th Sess., 84th plen. mtg., U.N. Doc. A/49/60 (1994).

43. *Id.*

44. Declaration on Measures to Eliminate International Terrorism, G.A. Res. 51/210, U.N. GAOR 6th Comm., 51st Sess., 88th plen. mtg., U.N. Doc. Res/51/210 (1996).

45. This Essay, admittedly, does not address the often difficult question of terrorism's definition. For a discussion of this question, see generally James A.R. Nafziger, *The Grave New World of Terrorism: A Lawyer's View*, 31 DENV. J. INT'L L. & POL'Y 101 (2003).

46. To the extent that the al Qaeda movement indiscriminately targets persons of particular nationalities for extermination, its actions could even be considered genocidal in character. See also *id.* at 108.

47. Rome Statute, art. 7(1)(a).

48. See *supra* note 37 and accompanying text.

49. Obviously, the death of the Sept. 11 hijackers precludes their prosecution. However, the indictments of other notable terror suspects are instructive regarding possible criminal charges brought against their accomplices. For example, the indictment of John Phillip Walker Lindh included the following charges: conspiracy to murder nationals of the United States, in violation of 18 U.S.C. §2332(b)(2) (2002); conspiracy to provide material support and resources to foreign terrorist organizations (Harakat ul-Muhahideen and al Qaeda), in violation of 18 U.S.C. §

2339(b) (2002); conspiracy to contribute services to al Qaeda, in violation of 31 C.F.R. §§ 595.205 and 595.204 and 50 U.S.C. § 1705(b) (2002). Lindh pled guilty to a charge of supplying services to the Taliban, in violation of 50 U.S.C. § 1705(b) (2002), 18 U.S.C. § 2 (2002). United States v. Lindh, 227 F. Supp.2d 565 (E.D. Va. 2002). Richard Reid was indicted for attempted use of a weapon of mass destruction, in violation of 18 U.S.C. §2332a(a)(1) (2002); attempted homicide, in violation of 18 U.S.C. § 2332 (2002); placing explosive devices on an aircraft, in violation of 49 U.S.C. §§ 46505(b)(3) and (c) (2002); attempted murder, in violation of 49 U.S.C. § 46506(1) (2002) and 18 U.S.C. § 1113 (2002); interference with flight crew members and attendants, in violation of 49 U.S.C. § 46504 (2002); attempted destruction of aircraft, in violation of 18 U.S.C. §§ 32(a)(1) and (7) (2002); using destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c) (2002); and attempted wrecking of mass transportation vehicle, in violation of 18 U.S.C. § 1993(a)(1) and (8) (2002). Note that Reid's motion to dismiss the final charge has been granted. United States v. Reid, 206 F. Supp.2d 132 (Mass. 2002). Finally, Zakarias Moussaoui was indicted for the following: conspiracy to commit acts of terrorism transcending national boundaries, in violation of 18 U.S.C. §§ 2332b(a)(2) and (c) (2002); conspiracy to commit aircraft piracy, in violation of 49 U.S.C. §§ 46502(a)(1)(A) and (a)(2)(B) (2002); conspiracy to destroy aircraft, in violation of 18 U.S.C. §§ 32(a)(7) and (34) (2002); conspiracy to use weapons of mass destruction, in violation of 18 U.S.C. § 2332(a)(a) (2002); conspiracy to murder United States employees, in violation of 18 U.S.C. §§ 1114 and 1117 (2002); and conspiracy to destroy property, in violation of 18 U.S.C. §§ 844(f), (i), (n) (2002). United States v. Moussaoui, 333 F.3d 509, 509 (E.D. Va. 2003). The prosecution in the case was recently barred from seeking the death penalty and from bringing forth testimony that Moussaoui "had any involvement in, or knowledge of, the September 11 attacks" as a sanction for the United States' refusal to allow enemy combatant detainees to testify on Moussaoui's defense. United States v. Moussa-

oui, 2003 U.S. Dist. LEXIS 17253 at 16 (U.S. Dist., 2003).

50. SADAT, *supra* note 41, at ch. 5.

51. THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION, Principle 2(1) (Princeton Program in Law and Public Affairs, 2001). The Restatement of Foreign Relations Law (Third) suggests that certain acts of terrorism are increasingly accepted as universal jurisdiction crimes, such as "assaults on the life or physical integrity of diplomatic personnel, kidnapping, and indiscriminate violent assaults on people at large." RESTATEMENT THIRD OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 404 cmt. (a) (1986).

52. See generally Paul C. Szasz, *The Security Council Starts Legislating*, 96 AM. J. INT'L L. 901 (2002).

53. See *supra* notes 42-44 and accompanying text.

54. For the argument that "clear and convincing evidence" of a State's complicity should be the standard for a unilateral action based on self-defense in response to a terrorist attack launched from the territory of that State, see Mary Ellen O'Connell, *Evidence of Terror*, 7 J. CONFLICT & SECURITY L. 19, 21-28 (2002). This is not quite the same issue as what evidence should be required in order for the Security Council to issue the equivalent of an "arrest warrant" for the capture of a suspect in a case of international terrorism. 55. S.C. Res. 678, U.N. SCOR, 45th Sess. U.N. Doc. S/Res/678 (1990). For an excellent treatment of recent Security Council practice involving Chapter VII see Mary Ellen O'Connell, *The U.N., NATO, and International Law after Kosovo*, 22 HUM. RTS. Q. 57, 67-70 (2000).

56. Anne-Marie Slaughter, *The Future of International Law: Ending the U.S.-Europe Divide*, in A DEFINING MOMENT — INTERNATIONAL LAW SINCE SEPTEMBER 11, Crimes of War Project, <http://www.crimesofwar.org/sept-mag/sept-contrib.html> (visited Sept. 6, 2003).

57. Cf. JOSEPH S. NYE, JR., THE PARADOX OF AMERICAN POWER (2002).

58. This has occurred in Russia, in China, in Israel, and in Uzbekistan, for example.

59. See also W. Michael Reisman, *International Legal Response to Terrorism*, 22 HOUSTON J. INT'L L. 3.

60. Of course, under Hobbes' scheme, for cooperation to work there must be some power of enforcement, which is why he has often been cited for the proposition that the state of nature is preferable to cooperation in international affairs, unless it can be argued that the current collective secu-

rity mechanism of the U.N. or the new International Criminal Court can provide such an enforcement mechanism. Thanks to Professor Larry May for bringing his wonderful analysis of Hobbes to my attention. See LARRY MAY, CRIME AND HUMANITY: PHILOSOPHICAL RE-

FLECTIONS ON INTERNATIONAL CRIMINAL LAW (forthcoming).

61. Cf. Michele L. Malvesti, *Bombing bin Laden: Assessing the Effectiveness of Air Strikes as a Counter-Terrorism Strategy*, 26 FLETCHER FOR. WORLD AFF. 17 (2002).

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## NOTES: Borders and People at Risk

Border control is one of the most emotional issues of the so-called "globalized" world. It tends to jumble together the plights of refugees, asylum-seekers, immigrants, temporary migrants, and trafficked persons and, increasingly, to confuse them with enemies or potential terrorists. The UN endeavors to define these shifting populations, their enduring rights, and the responsibilities of others in relation to them.

### Refuge

The new UN High Commissioner for Refugees, interviewed in this issue, reminds everyone that "refugees are very often the first victims of terrorism". And the wider environment for them is increasingly hostile, seriously hampering the UNHCR's efforts to protect them, said Erika Feller, the agency's Director of International Protection, to its 68-nation governing executive committee (Geneva, 5 October). The difficulties range from arrests of UNHCR-sponsored lawyers taking up cases such as rapes in camps to executions by irregular armed groups.

Feller described the past 12 months as a time of sharp contrasts – "one of high rates of voluntary return and falling asylum numbers, but also of protracted refugee situations and waning generosity on the part of certain host states. Abuse of children, violence against women, *refoulement* of refugees and restriction of basic rights, such as freedom of movement, are endemic in many displacement situations. There has been marked progress in the building of asylum systems in a number of host states, while others have tightened their controls

for anti-terrorism reasons and because of an increasingly complex migratory situation. Refugees have been repeatedly mischaracterized as criminals or 'possible terrorists', or as illegal migrants whose protection is considered a secondary issue. ..."

She reiterated that protection is not a choice, but an obligation. "States have conferred on [UNHCR] quite a specific mandate, one that allows for no choice in whether to implement it; it is obligatory, not discretionary in its character," she said. "We understand that, on occasion, the exercise by UNHCR of its protection responsibilities may be uncomfortable for some governments. This is inherent in a mandate which requires UNHCR not only to provide assistance and technical advice, but also to step in to defend the rights of refugees where these are in jeopardy, including in the face of inaction, inability, or deliberate acts of concerned state actors. UNHCR does this as a humanitarian, non-political act, as the agent of the international community. No judgement is implied going beyond that the situation of persons of concern to us demands such a protection intervention. States have formally declared – and this in the 1951 Convention – that giving asylum cannot be construed as a hostile act. It is a humanitarian necessity."

"UNHCR's competence to provide international protection to refugees and to determine eligibility for protection under its mandate exists independently of states' obligations to provide international protection under the 1951 Convention and its 1967 Protocol," Feller said. "The mandate of the office is contained in a statute which has no geographic boundaries; it applies in any state, signatory or non-signatory."

### Migration

Meanwhile, international migration reportedly has more than doubled in the past four decades. According to the *World Migration Report 2005*, released in June by the International Organization for Migration (IOM), by the end of 2004 there were 185 million migrants worldwide, or roughly one of every 35 persons, with flow patterns changing in unexpected ways. "Migration today touches every country in the world, with all 191 sovereign states now either points of origin, transit or destination, and often all three at once," observes Brunson McKinley, IOM Director General ("Migration is here to stay, so get used to it", *International Herald Tribune*, 24 June 2005).

In countries around the world, migration is seen variously as a means to contribute to economic growth by way of money sent from abroad by scattered workers, as a threat to the labor market of the country of employment, or as a drain on the public services of the host country.

Mr McKinley notes that "the perception that migrants represent a financial burden on host countries is not sustained by research. A study by Britain's Home Office calculated that in 1999 and 2000, migrants contributed \$4 billion more in taxes than they received in benefits. A recent study by the Institute for Public Policy Research found that the contribution of immigrants to public finances is significant and growing, from 8.8 percent of Britain's tax receipts in 1999-2000 to 10.0 percent in 2003-2004. In Germany, according to research conducted by the International Labor Organization, the average immigrant makes a positive net contribution of  $\approx$ 50,000, or \$60,630, during his or her lifetime." He adds that "costs are more appar-

ent when effective management policies are not in place” and acknowledges that the costs of social and cultural tensions are harder to assess.

But while these “cost-benefit” equations of migration are being debated, the migrant herself struggles. “Vilified by politicians and the popular media, often subject to discrimination and human rights violations, many migrants live their lives on the margins of societies unwilling or unable to accept or integrate them fully,” observes Amnesty International. “The vulnerability of migrants . . . is exacerbated significantly in the case of ‘irregular’ or ‘undocumented’ migrants. There is a high demand, emanating from governments and societies in many diverse regions of the world, for cheap and flexible labor. This demand is often filled through the recruitment of migrant workers into the informal sector of the economy; these migrant workers and members of their families are ‘irregular’.

In many situations documented by Amnesty International, it appears that the ‘irregularity’ of these migrant workers and their families has led policy-makers to the conclusion that these migrants do not have fundamental human rights in spite of the fact that they make a substantial social and economic contribution to the communities they reside in. Many are treated as less than human.” Common abuses — even of children — include detention, threats, beatings, sexual assault, other torture, and arbitrary expulsion.

During the lengthy period that Irene Fernandez (introduced in *Minerva* #12, 1998) was on trial for exposing horrendous treatment of migrant workers in Malaysian detention camps (she was charged in 1995 with maliciously publishing false news and sentenced in 2003 to one year in jail, under appeal), conditions there reportedly have worsened, and in 2004 the government planned to expel up to one million “irregular” migrants. Large-scale expulsions also have occurred in Europe; for example, the deportation this year of hundreds of people of African & Middle Eastern origin to Libya from the Italian island of Lampedusa has raised questions about the Italian government’s determination to deal fairly with migration challenges.



**Irene Fernandez**, founder of Tenaganita (Women’s Force) in 1991, has been awarded one of the 2005 Right Livelihood Awards, to be presented at the Swedish Parliament on 9 December. “The award recognizes our work and brings into focus the plight of hundreds and thousands of migrant workers who suffer constant abuse, harassment and exploitation,” she told Inter-Press Service (5 October). “The recognition will spur us to work even harder.”

Despite the many serious risks, the ‘World Survey on the Role of Women in Development’ (a December 2004 report to the United Nations General Assembly from Secretary-General Kofi Annan) says that “gender inequality can be a powerful factor in precipitating migration when women have economic, political and social expectation that opportunities at home do not meet.” And women migrants may move to situations where they have greater importance to their families or home communities or “where they are empowered to exercise greater autonomy over their own lives”. Alternatively, women who do not migrate when husbands or children do, may “find themselves taking on new, decision-making roles and responsibilities”. There is still a “dearth of data”, however, especially data broken down by gender and age, so no one is sure how these factors influence local and national attitudes toward women’s rights & opportunities in relation to international standards.

In an August report prepared for the current General Assembly session, Mr Annan says that, with worker migration becoming increasingly feminized (60% of the annual Jamaica migrant labor force and 70% of the Indonesian, for example) it is more important than ever to allow women residency status independent of men, to ratify and implement international instruments prohibiting violence against women, and to offer effective support for women migrant victims of violence, including giving them access to shelters, legal aid and medical, psychological, social and economic assistance. Much more education about their rights is needed for migrant women and the general public. It should highlight the positive contributions made by women migrant workers and dispel the misinformation that leads to xenophobia & racism in destination countries and can put migrant women at risk of violence and abuse, he says.

Mr Annan urges all states to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which came into force in July 2003, to provide that all migrants, irrespective of their immigration status, should be able to enjoy certain fundamental rights: the right to be free from torture, the right to equality before the law and in conditions of work, and the right to urgent medical care. As of last International Migrants’ Day (18 December 2004), 27 states had ratified the convention and must report to the UN Committee on Migrant Workers.

Although migratory pressures are intensifying, “no international migration institution or mechanism frames or manages the rights of people who move between countries,” notes Mary Robinson’s Ethical Globalization Initiative (EGI). “At the national level, policies tend to focus overwhelmingly on the legal exclusion of unauthorized migrants, making the need for a policy framework to guide this phenomenon ever more urgent.”

Promoting “a broader and more informed international and national policy debate on global migration policy” is one of the EGI’s main tasks. To that end, it

- endeavors to shape public opinion on the issue of migration;
- convenes global high-level working group meetings to coincide with regional meetings of the Global Commission on International Migration (GCIM) that bring together national and global leaders and migration and human rights experts; and
- issues policy papers on migration and development in Africa for consideration by the GCIM.

The December 2003 establishment by UN Secretary-General Kofi Annan of the Global Commission on International Migration (GCIM <[www.gcim.org](http://www.gcim.org)>) — to which Mary Robinson has been appointed — was intended to provide “an opportunity to . . . influence new thinking on global migration policy”. It has “a unique mandate — and finite lifespan [end of 2005] — in which to analyze gaps in current policy approaches to international migration and provide a framework for a coherent, comprehensive and global response”. The GCIM is committed to “reframe the current debate on migration in a way that grips the public and political imagination”.

The Global Commission’s report (5 October), “Migration in an interconnected world: New directions for action”, calls for better behavior by recipient, source and transit countries, and recommends that the UN create a new “Interagency Global Migration Facility” to coordinate worldwide immigration policy. Some critics, such as Gregory Maniatis, from the Migration Policy Institute in Washington, reportedly object to emphasis on a global agency instead of “national and regional solutions” or faulted the report’s insufficient “concreteness”, while acknowledging that the report “has captured some important current ideas, such as a new emphasis on temporary or circular flows, where migrants move for a period and then return” (*Financial Times*, London, 5 October). The Commission says the “facility” is not meant to be a new agency but rather a short-term way to manage overlaps and gaps among existing institutions.

While the Secretary General studies the GCIM’s marshalling of six general principles and related recommendations, the Commission wants the core group of 32 countries behind its existence to promote its proposals ahead of a ‘high-level dialogue’ on international migration and development next October.

Meanwhile, the European Commission has welcomed the GCIM report as a tool that will allow “a balanced approach in the migration and asylum field” and an “important step towards the development of a comprehensive approach to international migration at the global level”.

### Trafficking

Anti-trafficking movements, while not keeping pace with trafficking networks, are becoming more vigorous, although hobbled by harsh controversies about sex, prostitution, and religion.

According to the US Department of State’s *Trafficking in Persons Report* (2004), every year an estimated 600,000-800,000 people are trafficked across international borders; 70% of them are female and 50% are children. This number, growing at an alarming rate, is in addition to an indeterminate but far larger number of people trafficked within national borders.

Trafficking victims may be forced into commercial sex work, sweatshop, farm or domestic labor, or forced to work as child soldiers. Involuntary servitude involves two common aspects of the suffering of trafficked persons: coercion and the denial of freedom. Amnesty International notes that “trafficking places individuals in extremely vulnerable circumstances where their basic human rights are violated, including the rights to life, liberty, personal security, privacy, mental and physical integrity, freedom from slavery, and freedom from torture and other forms of inhumane or degrading treatment. . . . Trafficking exposes its victims to grave physical and psychological health risks.”

“. . . The complex issue of trafficking is of growing international concern. Under the UN Protocol to Prevent, Suppress and Pun-

ish Trafficking in Persons, governments are held responsible to curb trafficking within their state and across international borders. It is also the responsibility of governments to ensure that victims of trafficking have access to appropriate housing, adequate counseling and information in regard to their legal rights, medical, psychological, and material assistance, and employment, educational and training opportunities” (AIUSA Women’s Human Rights Online Bulletin, October 2005).

On 7 October, the United States Senate gave its advice and consent to ratification of the Trafficking Protocol.

*By its very nature,  
[human trafficking]  
constitutes an acute  
violation of human rights  
and reports today suggest  
that more people are  
being trafficked than  
ever before.*

**Louise Arbour,**  
UN High Commissioner for Human Rights  
Beijing, August 2005