

An Alternative to War

BY MICHAEL RATNER AND JULES LOBEL

A number of organizations and people have asked us about alternatives to the use of military force, the legality of the United States employing military force, and what can and should be done under international law. Set forth below are some principles that should guide the United States actions, and steps the United States can and should take that are short of using force.

We believe that at this point it is crucial to prevent a unilateral and disproportionate response by the United States. Reliance upon the United Nations has the potential to do that; it will also provide a forum for the trials of those suspected of terrorism and crimes against humanity. We recognize that our suggestions are not long-term solutions. Those will only come when the government of the United States and others recognize that they must change their policies and make a more just world.

Key International Law Principles and an Alternative To the Use of Military Force

1. The UN Charter prohibits the use of force except in matters of self-defense. Article 2(4) and Article 51.

A country is not permitted to use military force for purposes of retaliation, vengeance, and punishment. In other words, unless a future attack on the United States is imminent, it cannot use military force. This means that even if the United States furnishes evidence as to the authors of the Sept. 11 attack it cannot use military force against them. To this extent the congressional resolution authorizing the President to use force against the perpetrators of the attack on Sept. 11 is a violation of international law. Instead, the U.S. must employ other means including extradition, and resolutions of the Security Council, which could eventually authorize the use of force to effectuate the arrest of suspects.

The United States will argue that the attack on Sept. 11 was an armed attack on the United States and that it has the right to use self-defense against that attack. Even though the attack is over, it presumably would claim that those who initiated the attack were responsible for prior attacks and are planning such attacks in the future. At the same time, President

Bush has stated that the “war” on terrorism would be lengthy, implying that it would go on for years.

In order to rely on this self-defense claim, the U.S. would need to present evidence to the Security Council not only as to the perpetrators of the Sept. 11 attack, but evidence that future attacks are planned and imminent. They have not yet done so. Even if the U.S. can put forth a legitimate self-defense claim, it is still to the UN Security Council where they ought to turn. Even in cases of self-defense, and particularly when there is sufficient time — weeks have passed since the attack and President Bush says we are in for a “lengthy” battle — turning to the Security Council may be required. It is certainly better policy and more in keeping with the UN Charter to do so.

2. The UN Security Council has the authority and the responsibility at all times “to take any actions as it deems necessary in order to restore international peace and security.” Article 51.

The Security Council can establish an international tribunal to try those suspected of involvement in the Sept. 11 attacks as it did with regard to Rwanda and the former Yugoslavia and request the extradition of suspects. It could apply sanctions to countries that refuse to comply as it did successfully against Libya — a strategy that resulted in the trials in Scotland. It can establish a UN force to effectuate arrests, prevent attacks or to counter aggression. Articles 41-50. Measures the Security Council can employ include interruptions of economic relations, rail, sea, air, postal, telegraphic, radio communications and severance of diplomatic relations. Article 41. It could apply sanctions to banks that refuse to cooperate in a freeze on the assets of suspects.

As a policy matter, all of these alternatives seem superior to that currently contemplated by the U.S. — the unilateral use of force against targets in Afghanistan and other countries. The UN may well offer a peaceful means of bringing the perpetrators to justice; it will make the fight against terrorism a worldwide responsibility and will hopefully lessen the resentment that unilateral U.S. action frequently engenders.

In light of these principles these are the

actions the U.S. should immediately undertake:

1. Convene a meeting of the Security Council.

2. Request the establishment of an international tribunal with authority to seek out, extradite or arrest and try those responsible for the Sept. 11 attack and those who commit or are conspiring to commit future attacks.

3. Establish an international military or police force under the control of the UN and which can effectuate the arrests of those responsible for the Sept. 11 attacks and those who commit or are conspiring to commit future attacks. It is crucial that such force should be under control of the UN and not a mere fig leaf for the United States as was the case in the war against Iraq.

We are hopeful that the UN alternative offers a way out of the violent course our nation is currently embarked upon. We see little risk in taking the steps we have outlined. We see great danger in ignoring the process that provides a path away from violence and toward peace. ■

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Teaching Ideas

Divide students into small groups. Ask students to imagine that they are responsible for bringing to justice the perpetrators of the Sept. 11 attacks. Their one requirement is that they must obey international law. Each group should devise a detailed plan.

Based on the information in this article, what principles of international law, if any, does it appear that the United States government has violated after Sept. 11?

Why do you think that the U.S. government chose not to work through the United Nations?

Stage a Tribunal on Terrorism. Divide students into small groups. Using evidence that they locate — including articles in this issue of *Rethinking Schools* — students should address three questions: What is terrorism? What is the root cause of terrorism? What can be done to eliminate terrorism?