

September 11 & Political Freedom

Asian Perspectives



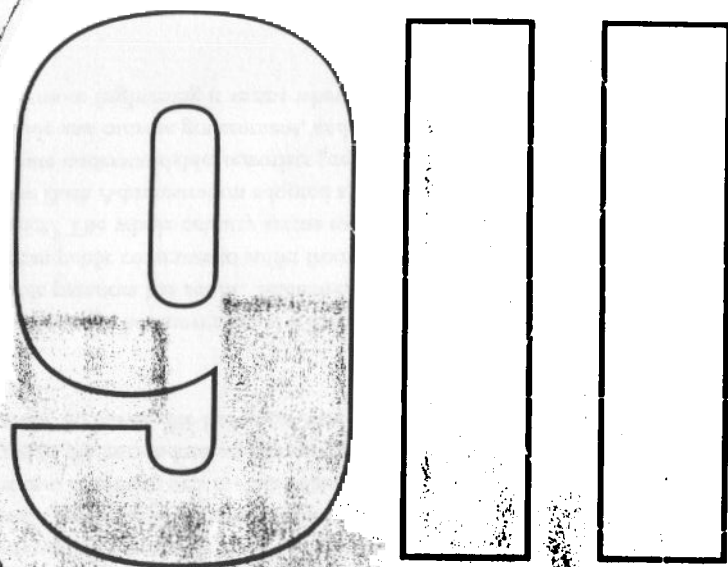
9/11

The graphic features the numbers '9' and '11' in a large, red-outlined, sans-serif font. The '9' is on the left, and the '11' is on the right. The '11' consists of two vertical bars. The entire graphic is overlaid with a green circular arc that passes through the top and bottom of the '9' and the '11'. Additionally, there are several green lines forming a grid-like pattern: a vertical line on the left, a vertical line on the right, a horizontal line across the middle, and a horizontal line below the '11'. There are also two green circles: one centered on the top of the '11' and another centered on the bottom of the '11'.

Edited by
Uwe Johannsen, Alan Smith, James Gomez

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US Anti-Terrorism Policy and Asia's Options

Lyal Sunga

Introduction

Asia is no stranger to terrorism nor terrorism to Asia.² A glance at Asian regions from West to East serves as a reminder that it is not only dissidents, but frequently Governments themselves that have resorted to terrorist tactics: in Asia minor - Azerbaijan (over Nagorno-Karabakh and tension with the Armenian minority); Cyprus (Greek-Turkish tension); Georgia (over Abkhazia); Turkey (over the Kurdish question); in the Arab and Middle Eastern countries of Asia - Afghanistan (mainly ethnic conflict, not to mention Al-Qaeda bases); Iran (fundamentalist Islamic support for Hezbollah and fringe Islamic terrorist groups); Iraq (Government support for terrorist groups and criminal persecution of the Kurds and marsh Arabs); Israel (over the Palestine question, particularly in the Israeli Occupied Palestinian Territories); Bahrain, Kuwait and Jordan (fundamentalist Islamic opposition to monarchy); in the former Soviet Socialist Republics of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan (mainly ethnic conflict as well as fighting against the banned Islamic Movement of Uzbekistan); in the South Asian countries of Bangladesh, Bhutan, India (all suffering from ethnic and religious conflict), Nepal (Maoist insurgency), Pakistan (Islamic fundamentalism), Sri Lanka (ethnic and religious conflict); and in the Southeast Asian countries of Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Thailand and Vietnam (mainly ethnic and religious conflict with some secessionist claims). Violent acts perpetrated to intimidate the population or government for political objectives have long been a part of the ordinary political scene in many Asian countries since before Genghiz Khan. More recently, terrorism has been a chronic feature of the Asian political scene owing mainly to longstanding ethnic conflict that in some cases has taken the form of extreme nationalism and a drive for secession. In ancient times, hostage-taking, arbitrary and summary executions, mass murder and rape, wholesale

¹ I wish to thank Ms. Ilaria Bottiglieri, who kindly assisted me with this paper at all stages, for her very valuable comments.
² A glance at Asian regions from West to East serves as a reminder that it is not only dissidents, but frequently Governments themselves that have resorted to terrorist tactics: in Asia minor - Azerbaijan (over Nagorno-Karabakh and tension with the Armenian minority); Cyprus (Greek-Turkish tension); Georgia (over Abkhazia); Turkey (over the Kurdish question); in the Arab and Middle Eastern countries of Asia - Afghanistan (mainly ethnic conflict, not to mention Al-Qaeda bases); Iran (fundamentalist Islamic support for Hezbollah and fringe Islamic terrorist groups); Iraq (Government support for terrorist groups and criminal persecution of the Kurds and marsh Arabs); Israel (over the Palestine question, particularly in the Israeli Occupied Palestinian Territories); Bahrain, Kuwait and Jordan (fundamentalist Islamic opposition to monarchy); in the former Soviet Socialist Republics of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan (mainly ethnic conflict as well as fighting against the banned Islamic Movement of Uzbekistan); in the South Asian countries of Bangladesh, Bhutan, India (all suffering from ethnic and religious conflict), Nepal (Maoist insurgency), Pakistan (Islamic fundamentalism), Sri Lanka (ethnic and religious conflict); and in the Southeast Asian countries of Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Thailand and Vietnam (mainly ethnic and religious conflict with some secessionist claims).

destruction of villages, torture, all the way to genocide, have been perpetrated by imperial authorities, militia and dissidents alike. Even the word "assassin" originates from the Middle East of a thousand years ago to refer to Muslim mercenary followers of Hassan-i-Sabah who were closely associated with the traffic in hashish, a series of murders and other criminal activity.³ Authoritarian rule and repressive policies have not ended with colonial domination. Democracy, human rights and the rule of law still grace few Asian countries and the harsh policies typical of many Asian Governments have probably done more to institutionalize conflict and to guarantee sporadic outbreaks of terrorism rather than to address underlying grievances. That terrorism is nothing new in Asia might explain why many Asians seemed to have reacted to the horrendous attacks on the World Trade Centre on 11 September 2001 with: 'So what? We have been struggling with terrorism for years!'⁴

The United States however had never faced a catastrophe of such scale in peace-time and palpable paranoia has set in. Mainstream media have reported that the general American public continues to suffer from a kind of collective post traumatic stress disorder.⁵ The whole country seems to have rallied around the American flag while the Bush Administration adopted a highly defensive bunker position. This is all quite understandable: terrorists prey upon the vulnerability of ordinary people inside and outside government, and the less experience one has with terrorism, the more frightening it seems when it rears its ugly head up close.⁶

3. See generally Farhad Daftary, *The Assassin Legends: Myths of the Isma'iliis*, I.B. Tauris & Co. Ltd, London, 1994.
4. Following 9-11, many newspaper articles and editorial opinions in both Arab and Israeli newspapers linked the discussion of terrorism to the Palestine question. See for example, the Barry Robins' article of 28 September 2001 in the Jerusalem Post and of Adel Darwish, "Mideast Fulcrum", in The Washington Post of 2 October 2001 at A25. Darwish notes in a Mideastnews article of 16 September 2001 that "The most shocking response to the terrorist attacks on New York and Washington shown by many in Syria, Egypt and the Gulf was that America had it coming. We all saw the pictures of Palestinians and Iraqis dancing in the streets" and that "The first images coming from the Middle East suggested that citizens of Arabic-speaking countries were either indifferent to, or actually enjoying, the American suffering." See generally articles in Al Arab, Arab News, The Jerusalem Post, Ha'aretz, the Khao Sod (e.g. article of 31 May 2002). A November-December 2001 Gallup Poll International study of public opinion in 60 countries on US military action in Afghanistan "shows disparate levels of support whilst US foreign policy is generally not seen as having a positive effect on many countries." See <http://www.gallup-international.com/terrorismpoll2001.htm>, last accessed on 5 August 2002. Many other newspapers have reported on the ambivalence of Malaysian, Indonesian and Filipino public opinion over 9-11 and US counterterrorism measures.
5. A Time/CNN poll found that eight months after 9-11, almost two-thirds of Americans think about the 9-11 attacks at least several times every week; "The Science of Anxiety", Time Magazine (Asian Edition), 8 July 2002.
6. Recent polls in the US show a marked shift in public opinion over the level of threat faced by ordinary citizens in America. On 25-28 October 2001, in response to CBS News Poll asking: "How likely do you think it is that there will be another terrorist attack in the US within the next few months?" 53% responded 'very likely'; 35% 'somewhat likely'; only 8% 'not very likely' and only 4% 'not at all likely or don't know'. On 27-28 June 2002, Newsweek Poll asked people whether they thought there would be further terrorist attacks against major US cities, buildings or national landmarks during the 4 July US holiday and they responded as follows: 'very likely' 12%; 'somewhat likely' 45%; 'not too likely' 28%; 'not at all likely' 11% and 'don't know' 4%. Fox News / Op Dynamic Polls reported that in response to a 4-5 June 2002 question "Do you think your life is in danger due to terrorism?" 25% answered 'yes', 68% 'no' and 7% 'not sure'.

While most countries around the world have long had in place comprehensive, regularly tested anti-terrorist measures and strategies, somehow the United States, for the first time since the attack on Pearl Harbour on 7 December 1941, has suddenly had to reckon much more realistically and pragmatically with terrorism perpetrated on its own soil by relatively sophisticated and well organized terrorist groups operating beyond its borders. The 9-11 attacks rudely shattered the myth of American invincibility at home and produced a political crisis in America as much as a crisis of confidence around the world in the US national security and anti-terrorism system.⁷

Faced with the fact that it failed to detect or prevent the 9-11 attacks and that it cannot provide credible guarantees against future terrorist attacks perpetrated on US soil, the US Administration had to initiate aggressive diplomatic and military measures in order to identify, stigmatize and isolate the perpetrators, to force the terrorists back onto the defensive and to prevent further erosion in confidence in the enforcement power and reach of US foreign policy. In the days following 9-11, President Bush and his national security advisors must have debated which way to go in responding to the terrorist threat. On the one hand, it was clear that the US would face resistance from other governments if it were to attack Afghanistan and Al Qaeda without first consulting its allies in Europe, Asia and elsewhere, which implied that genuine efforts had to be made to obtain at least tacit support for military action to root out Al Qaeda and to hunt down Osama bin Laden. The US could not simply 'go it alone' this time. On the other hand, the Administration and the intelligence and defence community have always been extremely reticent to cooperate on anti-terrorism strategy with foreign governments they felt they could not really trust, particularly since the US has long been in a position to determine its own level of cooperation with other Governments in anti-terrorism matters, knowing that other governments needed the US more than the US needed them.

7. CBS News Polls taken before and after 9-11 highlight a shift in the level of confidence of US citizens in their own Government to protect them. Respondents on 10 August 2001 to the question "How much confidence do you have in the ability of the US Government to protect its citizens from future terrorist attacks?": 30% responded 'a great deal'; 55% responded 'fair amount'; 12% 'not very much'; 1% 'none'; and 2% 'don't know'. In contrast, on 25 October 2001, only 18% responded 'a great deal'; 58% responded 'fair amount'; 20% 'not very much'; 4% 'none'; and 0% 'don't know'. This perception may be worsening over time. A Newsweek Poll of 27-28 June 2002 reported that only 10% of respondents answered that they were 'very confident' that US intelligence and law enforcement agencies would be able to prevent future terrorist attacks on US territory in which large numbers of Americans would be killed, whereas 24% indicated that they were 'not too confident' and 16% considered themselves 'not at all confident'. An NBC News / Wall Street Journal Poll reported on 8-10 June 2002 that 60% of respondents indicated that the US is 'not adequately prepared' for a nuclear, biological or chemical attack. Significantly, in June 2002, ABC News / Washington Post Poll reported that 38% of respondents rated the job done by the FBI, CIA and other US intelligence agencies in analyzing and sharing information about possible terrorist attacks before 9 11 as 'poor'.

But 9-11 changed everything. The US could no longer feel secure without intensified cooperation from Asian countries to fight terrorism, particularly since Asia seems to have become home to some very dangerous terrorist organizations bent on attacking US interests. The dilemma for the US has become a sharp one.

On the one hand, the US found it suddenly had to cooperate fully with other governments, particularly those in Asia - even those allergic to democracy and human rights - to address terrorism that targets US interests, US citizens and the US Government, but which is planned, organized, funded and launched from outside US territory. On the other hand, to guard its national security, the US Administration wants to retain as much freedom of action as possible to avoid becoming constrained by the domestic priorities of other governments, or to become confined by diplomatic entanglements. This implies that the US must either engage only in limited cooperation, which however could prove less effective in fighting terrorism, or alternatively, persuade other governments to cooperate with it in fighting terrorism, but only on American terms and according to rules of engagement with the enemy that the US selects.

In this essay, I argue that in order to avoid being gored by one or other horn of the anti-terrorist cooperation dilemma, the US Administration must reconsider a third way to promote the strengthening of international cooperation to fight terrorism, and that is to change its isolationist and unilateralist course and to renew its commitment to genuine multilateralism instead, particularly with Asian governments. This way has already been firmly embraced by the great majority of states in the international community, and it remains one which is likely to prove to be among the more viable avenues for future cooperation in fighting terrorism and other crimes of concern to the international community as a whole.

On the other side, Asian governments would be well advised to strengthen and participate in genuinely multilateral approaches to fighting terrorism, rather than to rely primarily on bilateral approaches that place Washington at the centre of global anti-terrorism policy making. Terrorism is everybody's problem and as such, it demands genuinely multilateral responses. Terrorism will not go away or be beaten in Asia or elsewhere by slavishly following the policy priorities of only one country, even if that country remains the world's only superpower. The spirit of multilateralism is exemplified best in the international community's support for

the existing treaties that have been adopted over time to address terrorism, and in the International Criminal Court (ICC).⁸ While the ICC does not currently cover the crime of terrorism, it establishes a comprehensive framework for cooperation in criminal matters and provides the international community with an important new instrument to strengthen the rule of law and national security in all countries.

Washington's Post 9-11 Anti-Terrorism Policy and Asia

The coordinated 11 September 2001 hijackings and terrorist attacks that obliterated the twin World Trade Centre Towers in New York and damaged the Pentagon building, killing more than 3,000 people and causing more than 100 billion dollars in property damage, did much more than snuff out lives and wipe out a city block. The attacks struck fear into the American psyche and shocked the world, not only for their sheer audacity, but for the message that somehow terrorists could gain the upper hand and threaten to perpetrate such outrages again in future.

This was not the first time that the US or other countries have suffered terrorist attacks. Historically, the greatest number of terrorist attacks on US Government targets have been perpetrated in the US itself by US nationals, and some of these inflicted extensive damage, for example, the attack on the Alfred P. Murrah Federal Building in Oklahoma City on 19 April 1995 that took the lives of 168 persons including 19 children and injured over 490 others. However, the 9-11 attacks went beyond earlier terrorist acts in terms of sophistication in planning, coordination and execution, the symbolic character of the targets, and the massive damage they inflicted. Despite the fact that US intelligence agencies had kept Osama bin Laden under surveillance for years, they failed to intercept, analyse and interpret communications between him and his many confederates that might have disclosed the attacks in their planning stage. They also failed to penetrate the cell structure of Al Qaeda, an organization that was well known to counterterrorism agencies and experts long before 9-11. These failures exposed the fact that US intelligence and national security agencies had become weak, unfocused, inefficient and uncoordinated. If the world's only superpower could be so vulnerable to terrorism, who could consider themselves safe?

⁸ Statute of the International Criminal Court, adopted in Rome in a non-recorded vote, 120 in favour, 7 against and 21 abstaining at the United Nations Diplomatic Conference of Plenipotentiaries on 17 July 1998 (A/CONF. 183/9), entered into force on 1 July 2002 - just less than four years after its adoption despite the trenchant opposition of the US and six other countries.

The US Administration knew it had to respond quickly to 9-11. Building upon established US counterterrorism policy, the US Administration reiterated that it would make no concessions to terrorists and would not strike deals with them. Second, it announced it would make all efforts to bring terrorists to justice, although this approach was reversed in Afghanistan by bringing 'justice' directly to terrorists with a 'bomb first, ask questions later' policy. Third, the Administration would isolate so-called 'rogue states' and pressure them into abandoning their sponsorship and support for terrorism. Unfortunately, this isolation policy found expression in Bush's State of the Union Address in which he tried to stigmatize the Governments of Iraq, Iran and North Korea as 'evil countries'.⁹ Finally, the US would further support foreign governments that seemed more willing to cooperate with the US and which might need assistance in fighting terrorism.

These counterterrorism policies were not entirely new, but the way in which they were consolidated, institutionalized and implemented was. The Administration's declaration of the 'War on Terrorism' from the White House strengthened the Department of State's lead role on the diplomatic front and raised coalition building with other governments to fight terrorism to a much higher political level. Simply strengthening existing cooperation between US and foreign intelligence and law enforcement authorities might have been too uneven and ad hoc. Less than two weeks after 9-11, the US adopted the Terrorist Sanctions Executive Order 13224 of 23 September 2001 on "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism". On 5 October 2001, following consultations with the Attorney General and the Secretary of the Treasury, the Secretary of State named foreign terrorist organizations. On 26 October 2001, President Bush signed the Anti-Terrorism Bill which conferred stronger anti-terrorism enforcement powers upon a number of US Government agencies, arguably at a substantial cost to civil liberties and fundamental freedoms.

9. During his State of the Union Address of 29 January 2002, President George W. Bush resolved to prevent Iran, Iraq and North Korea from acquiring chemical, biological or nuclear weapons and then said that "States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world." This ill-advised comment provoked ridicule from many quarters of the diplomatic community, not to mention the leaders of these three countries. Former US Secretary of State Madeleine Albright called the President's comments "a big mistake" and NATO's Secretary General Lord Robertson and Russian Prime Minister Mikhail Kasyanov each expressed doubts as to whether there existed sufficient evidence to back up such a claim.

One can welcome the fact that the US Administration has shown itself capable of acting quickly to sharpen the weapons at its disposal to fight terrorism, and to involve many other Governments in this renewed effort. Moreover, the Administration's new measures seem to be designed to take a holistic approach to the terrorist threat by instituting a range of initiatives, not only to track down individual terrorists, but to target terrorist organizations by exposing their identity and strangling their sources of funding, while at the same time, putting governments that have been tolerant of or who have supported or promoted terrorist groups, on notice that this will no longer be considered acceptable. The Administration's approach in many respects combines well diplomatic initiatives, the restructuring of and coordination within and among counterterrorism agencies as well as measures to tighten immigration control and bilateral cooperation with foreign governments in criminal law enforcement, and even the use of joint military cooperation to suppress insurgent activity where it is connected to the international terrorist network.

The Governments of Afghanistan, Pakistan, India, Indonesia and the Philippines welcomed American logistical and technical assistance to target rebels linked to terrorist activity. The idea was to strengthen command and control over search and destroy missions targeting rebels in Aceh, Indonesia, Abu Sayyaf in the Philippines, Al Qaeda and their sympathizers along the northern frontier of Pakistan with Afghanistan and in Afghanistan itself as well as in Kashmir, and other terrorist groups in other places, according to the principle of 'interoperability' designed to mesh American logistical and technical capabilities with local ongoing anti-terrorist operations of mutual interest.

Despite all these counterterrorism initiatives the US has launched at home and abroad, many governments including its closest allies, have severely criticized the US Administration. While the US Government has been inviting, persuading and pressuring foreign governments to join with it in fighting terrorism globally, it has not only failed to respect the policy priorities of other sovereign countries in the process, but it has embarked on a remarkably short-sighted policy that is clearly at odds even with its own broad anti-terrorism goals.

On the one hand, the US has been pushing many governments to cooperate with it, even stating that 'You are either with us or you are against us'.¹⁰ Yet, instead of limiting its provision to technical assistance, the US has insisted on the presence of its military advisors in foreign countries while steadfastly refusing to accept that its troops be placed under the command of any foreign national. The result is that the US always retains control, and thus 'mutual assistance' and 'interoperability' have quickly become 'American command and control in foreign territory' to serve counterterrorism policy unilaterally decided by Washington. The human cost of swift but sloppily executed American policy has not gone unnoticed and it has tested the patience of responsible, neutral and objective parties, such as the International Committee of the Red Cross whose offices in Afghanistan were bombed twice by the Americans in Kabul on 16 and 26 October 2001, or even close allies such as Canada which on 18 April 2002 lost four soldiers and found eight injured, mistakenly targeted by American warplanes, or the families and relatives of thousands of Afghan civilians wiped out by American bombers that seemed not to have exercised the necessary level of due diligence in distinguishing between military and civilian targets. The US Government's refusal to recognize Al Qaeda and Taleban fighters as combatants or prisoners of war under the universally recognized Geneva Conventions of 12 August 1949, while at the same time shoving them into detention at Guantanamo Bay, Cuba, to prevent them from claiming the benefits of civil liberties extended under US law, provides yet another example of US policy deliberately designed to evade its clear international legal obligations.

On the other hand, the US has savagely attacked the ICC which was established to prosecute crimes under international law and to strengthen the rule of law internationally, on the grounds that the US could not allow US nationals in United Nations or other peace-keeping operations to be exposed to international criminal proceedings, even for such severe violations as genocide, war crimes or crimes against humanity. In May 2002, the US descended to the point of 'unsigned' the Rome Statute which President Clinton had signed on his last day of office (31 December 2000) – a move without precedent in the history of United Nations

10. In addressing an anti-terrorism summit in Warsaw by satellite phone on 6 November 2001, President Bush said: "You're either with us or against us in the fight against terror."

treaty making and diplomacy.¹¹ Next, on 30 June 2002, the US Administration took the extraordinarily provocative decision to veto the UN Security Council's peacekeeping mission in Bosnia-Herzegovina (UNMIBH) and threatened to withdraw its troops from all UN peacekeeping missions unless all US nationals serving in such missions around the globe were granted exemption from ICC jurisdiction. While the US contributed only 704 peacekeepers in UNMIBH out of a total of 45,159 stationed there, it pays one-quarter of all UN peacekeeping costs. Sudden US withdrawal could well have crippled UN peacekeeping efforts globally. With these pressure attacks, the US agreed to a further 15-day extension of the Bosnia mission but warned it would not agree to further extension unless UN peacekeepers were granted immunity from ICC prosecution. UN Secretary-General Mr. Kofi Annan registered his disquiet with the US stand, and in a letter dated 3 July 2002 to US Secretary of State Mr. Colin Powell, he stated that:

I think that I can state confidently that in the history of the United Nations, and certainly during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC. The issue that the United States is raising in the Council is therefore highly improbable with respect to United Nations peacekeeping operations. At the same time, the whole system of United Nations peacekeeping operations is being put at risk. It is of course for the United States to decide what is in its interest. But let me offer the following thoughts.

First, the establishment of the ICC is considered by many, including your closest allies, as a major achievement in our efforts to address the impunity that is also a major concern for the United States. The development of this matter is followed by many and, in particular, the States that have ratified the Rome Statute and by non-governmental organizations. I fear that the reactions against any attempts at, as they perceive it, undermining the Rome Statute will

11. On 6 May 2002, Assistant Secretary of State Mr. John Bolton indicated in a letter to the United Nations that it was official US policy to separate itself from all aspects of the ICC.

be very strong. Secondly, the method suggested in the proposal, and in particular its operative paragraph 2, flies in the face of treaty law since it would force States that have ratified the Rome Statute to accept a resolution that literally amends the treaty. My concern is that the only real result that an adoption by the Council of the proposal would produce since the substantive issue is moot is that the Council risks being discredited. The purpose of this letter is to ask you to consider this aspect. I am confident that you share my view that it is not in our collective interest to see the Council's authority undermined.

Thus, the US made very clear its intention to prosecute and punish terrorists in any part of the world or at least 'bring justice to terrorists' whatever this may mean, while preserving for its own soldiers and commanders immunity from prosecution and punishment for these very same as well as other crimes. The Administration's policy demanded full cooperation from all other governments, not an equal basis to serve multilateral goals agreed upon by the international community as a whole, but to serve only its own short term political interests on a tailor made basis. Many governments found this double standard quite unacceptable and expressed serious disappointment with the US position in a special open UN Security Council debate held on 10 July 2002 to try to deal with the American ultimatum.¹²

On 12 July 2002, the US succeeded in pushing resolution 1422 through the Security Council.¹³ The resolution basically exempts any nationals of a State that has not become a Party to the Rome Statute who are serving or have served as

12. See Remarks of Canadian Ambassador Paul Heinbecker before the UN Security Council Open Debate on the Situation in Bosnia-Herzegovina of 10 July 2002 who emphasized that: "1. The issue is larger than the International Criminal Court; fundamental principles of international law are in question. 2. The Council is not empowered to re-write treaties; the resolutions that are circulating contain elements that exceed the Council's mandate and passage of them would undermine the credibility of the Security Council. [and that] 3. The issue is not a choice between peacekeeping and the ICC; options exist to resolve this issue that provide for the continuation of UN peacekeeping and that preserve the integrity of the international legal system and of the Rome Statute." See also the Statement of Danish Ambassador Ellen Margrethe Løj on behalf of the European Union, the Statement of German Ambassador Dr. Hans Schumacher as well as statements from the representatives of Iran, Jordan, Liechtenstein, Mexico, Mongolia and South Africa. Only India agreed with the US position to extend immunity from ICC jurisdiction to UN peacekeepers.

13. In paragraph 1 of resolution 1422, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, requests that "consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise". In paragraph 2, the Security Council expresses "the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary". Article 16 of the Rome Statute entitled "Deferral of investigation or prosecution" provides that: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

officials or personnel in a United Nations established or authorized operation from the jurisdiction of the ICC for at least a year. Only after resolution 1422 was adopted did the US agree not to veto Security Council resolution 1423 renewing the mandate of UNMIBH.

To add insult to injury, on 18 July 2002, a US House Senate Conference Committee passed the American Servicemembers' Protection Act not only prohibiting the US from cooperating with the ICC, but authorizing the President of the US to order US forces to invade The Netherlands to 'rescue' any American national who may have been transferred to Dutch soil for ICC prosecution! The bill was signed into law by President George W. Bush on 2 August 2002.¹⁴

In short, the current US Administration seems to expect full cooperation from all other governments, not an equal basis that serves the multilateral goals agreed upon by the international community as a whole, but to serve goals only the US determines in accordance with its short term political interests, even where this runs directly counter to the international community's painstaking multilateral efforts.

This makes the choice for Asian governments very clear. Should Asian governments follow a global counterterrorism policy decided in Washington, or rather, pursue genuinely multilateral counterterrorism strategies developed by the international community as a whole?

Multilateral Options to Fight Terrorism

As a broad concept, 'terrorism' as such has never been defined in international law, owing mainly to fundamental Cold War disagreement over the use of force by peoples in the legitimate exercise of their right to self-determination against colonial domination and alien occupation and against racist regimes.¹⁵ Governments

14. This law constitutes an element of the Administration's 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States.

15. See Article 1(4) of Protocols I additional to the four Geneva Conventions of 12 August 1949, adopted 8 June 1977, entered into force 7 December 1978, which recognizes "armed conflicts which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" as situations of international armed conflict within the meaning of the four Geneva Conventions, 1949.

on both sides of the ideological divide used the term 'terrorist' more as a rhetorical term to stigmatize not only real terrorists, but those who resorted to the use of force for reasons they did not share.

While neither treaty nor customary law provide for a comprehensive definition of 'terrorism',¹⁶ terrorist acts have become generally understood to involve the premeditated use or threat of violence calculated to intimidate the Government or a section of the population into changing a particular policy or course of action.¹⁷ The lack of a more precise definition has not prevented the international community from addressing crimes of terror through a number of specific multilateral conventions. Over time, the United Nations has adopted a number of anti-terrorism conventions that prohibit: hijacking;¹⁸ unlawful acts against civil aviation,¹⁹ maritime navigation²⁰ and fixed platforms at sea (such as oil rigs);²¹ crimes against internationally protected persons;²² and hostage-taking.²³ One could mention also

the Convention on the Physical Protection of Nuclear Material adopted on 3 March 1980, and the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection.²⁴ These conventions were followed by the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 and, on 9 December 1999, by the adoption of the International Convention for the Suppression of the Financing of Terrorism. At the regional and subregional levels, various international instruments to suppress terrorism have been adopted by: the Council of Europe;²⁵ the Organization of American States;²⁶ the Organization of African Unity;²⁷ the League of Arab States;²⁸ the Organization of the Islamic Conference;²⁹ the South Asian Association for Regional Cooperation;³⁰ and the Commonwealth of Independent States.³¹

In addition to the legally binding multilateral conventions on terrorism mentioned above, the General Assembly has also been valuable as a forum for states to develop standards in the form of non-binding resolutions that clarify the general sense of the international community on the issue. Among these must be mentioned the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations³² which states that: "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts". In 1994, the General Assembly adopted resolution 49/60³³ which outlines possible ways to eliminate international terrorism through a multilateral approach, and in its annex precludes anyone from seeking to excuse terrorist acts on grounds of "political, philosophical, ideological, racial, ethnic, religious or any other". Similarly, General Assembly resolution 53,³⁴ entitled 'Measures to Eliminate Terrorism', adopted on 11 December 1995, refers to the

16. See Louis Ren Beres, *The Meaning of Terrorism: Jurisprudential and Definitional Clarifications*, 28(2) *Vanderbilt Journal of Transnational Law* (1995). See also Robert A. Friedlander, *Reflections on Terrorist Havens*, in 68 *Readings on International Law from the Naval War College Review*, (ed. Moore and Turner) (1995) at 378, who has put forward certain criteria as minimum elements of terrorism: "Terror violence, either international or transnational, must include at least one of the following elements: (1) the act or series of acts must take place in more than one State; (2) the act or series of acts must involve citizens of more than one State; (3) the act or series of acts must be directed at internationally protected persons; (4) the act or series of acts must occur outside of an exclusively national jurisdiction; (5) the act or series of acts must be directed against internationally protected property. If one or more of these elements is satisfied, then the act or acts in question are no longer merely common criminality but rather international crimes affecting world public order." See further, Walter Laqueur (ed.), *The Terrorism Reader: A Historical Anthology* (1978).
17. Article 1 of the Council Framework Decision of the European Union of 13 June 2002 on combating terrorism; *Official Journal of the European Communities* of 22 June 2002 (2002/475/HA) provides a valuable step forward in the elaboration of a comprehensive definition of terrorism. It obliges each Member State to take the necessary measures to ensure that certain acts are deemed as terrorist offences in national law wherever these acts are committed which "given their nature or context, may seriously damage a country or an international organisation where committed with the aim of "seriously intimidating a population", or "unduly compelling a Government or international organisation to perform or abstain from performing any act" or "seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation" and then enumerates terrorist offences as: attacks upon a person's life which may cause death; attacks upon the physical integrity of a person; kidnapping or hostage taking, causing extensive damage to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; seizure of aircraft, ships or other means of public or goods transport; manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons; release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life; interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life; or threatening to commit any of the foregoing acts. See Article 1 of the Council Framework Decision of the European Union of 13 June 2002 on combating terrorism; *Official Journal of the European Communities* of 22 June 2002.
18. Tokyo Convention on Offences and Certain Other Acts Committed on Aircraft, 1963, signed 14 September 1963, the 1963 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, signed 16 December 1970, entered into force 14 October 1971, 106 UNTS 860, 10 *International Legal Materials* (1971) 133.
19. See the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971, signed 23 September 1971, entered into force 26 January 1973, 10 *International Legal Materials* (1971) 1151; and Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.
20. See the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted in Rome on 10 March 1988, General Assembly resolution 34/146, GAOR, 34th Session, Supp. 46. See Malvina Halberstam, *Terrorist Acts against and on Board Ships*, 19 *Israel Yearbook on Human Rights* (1989); and Christopher C. Joyner, *Suppression of Terrorism on the High Seas: the 1988 IMO Convention on the Safety of Maritime Navigation*, 19 *Israel Yearbook on Human Rights* (1989).
21. See the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, adopted at Rome on 10 March 1988.
22. UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, adopted 14 December 1973, entered into force 20 February 1977; 13 *International Legal Materials* (January 1974) 41.
23. International Convention against the Taking of Hostages, adopted by General Assembly resolution 43/146, 17 December 1979, 18 *International Legal Materials* (November 1979) 1460.

24. Adopted on 1 March 1991 in Montreal.

25. The European Convention on the Suppression of Terrorism, adopted 10 November 1976, opened for signature 27 January 1977, entered into force, 24 August 1978, 15 *International Legal Materials* (November 1976) 1572.

26. See the OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance, adopted on 2 February 1971 in Washington; (UN Doc. A/C.6/418); 10 *International Legal Materials* (1971) 255, entered into force on 16 October 1973.

27. OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July 1999.

28. Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998.

29. The Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999.

30. The SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987.

31. Treaty of Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999.

32. Resolution 2625, adopted by the General Assembly on 24 October 1970.

33. Adopted on 9 December 1994.

34. See General Assembly resolution 53 of 29 January 1996, adopted on 11 December 1995; A/Res/50/53.

need for further international cooperation to combat terrorism and urges “all States to strengthen cooperation with one another to ensure that those who participate in terrorist activities, whatever the nature of their participation, find no safe haven anywhere” and recalls “the role of the Security Council in combatting international terrorism whenever it poses a threat to international peace and security.”

The day after 9-11, the UN General Assembly adopted resolution 56/1 condemning the attacks, and on 26 November 2001, the Sixth Committee of the UN General Assembly adopted resolution 593 entitled “Measures to Eliminate International Terrorism” emphasizing “the need to strengthen further international cooperation among States and among international organizations and agencies, regional organizations and arrangements and the United Nations in order to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomsoever committed, in accordance with the principles of the Charter, international law and relevant international conventions”. In paragraph 12 the resolution welcomes “the efforts of the Terrorism Prevention Branch of the Centre for International Crime Prevention at Vienna, after reviewing existing possibilities within the United Nations system, to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism.”³⁵

One should not forget that international legal norms prohibiting terrorism are to be found also in the context of the law of armed conflict, in particular, in the four Geneva Conventions, 1949, and the two 1977 Protocols additional thereto. Article 33 of the fourth Geneva Convention relative to the protection of civilians in time of international armed conflict provides that: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”

Article 34 of the same Convention prohibits the taking of hostages. These provisions were further updated by Article 51(2) of 1977 Protocol I relating to international armed conflict which stipulates that: “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

35. See General Assembly resolution A/56/593, adopted by the General Assembly on 12 December 2001.

population are prohibited.” With respect to non-international armed conflicts, Article 3 common to the four Geneva Conventions pertains to terrorist acts by prohibiting ‘violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; ... taking of hostages; ... outrages upon personal dignity, in particular, humiliating and degrading treatment’. Article 4(2)(d) of Protocol II, which updates and supplements Article 3 common to the four Geneva Conventions, explicitly prohibits ‘acts of terrorism’.

Prior to 9-11, the Security Council had also taken action on specific terrorist incidents on a number of occasions. For example in 1989, the Council adopted resolution 635 in reaction to the terrorist attack on a civilian aircraft over the Sahara which claimed the lives of over 400 individuals, and on 21 January 1992, the Council adopted a resolution in relation to the shooting down of Pan Am 103 over Lockerbie, Scotland, which paved the way for sanctions on Libya as well as eventual criminal trials of the perpetrators.³⁶

The day after 9-11, in resolution 1368, the Security Council underlined the need for urgent international cooperation to address the issue of terrorism in practical terms. This was followed up by the adoption of Security Council resolution 1373 of 28 September 2001 in which the Council explicitly invoked Chapter VII of the Charter of the United Nations which makes the resolution legally binding on all States. Resolution 1373 qualified the 9-11 terrorist attacks as constituting ‘a threat to international peace and security’ ‘like any act of international terrorism’, and it recognized “the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism”. Moreover, the Security Council called upon States to cooperate through bilateral and multilateral arrangements to prevent and suppress terrorist attacks and to take action against terrorists as well as to ratify the relevant international conventions on terrorism. Above all, resolution 1373 establishes a ‘Counter-Terrorism Committee’ under the authority of the Security Council comprising all Security Council members to be responsible for monitoring implementation of the resolution with the assistance of appropriate expertise. The resolution calls upon all States to report to the

36. Resolution 731, adopted on 21 January 1992 by the Security Council, S/23574. See further, Lyal S. Sungu, *The Emerging System of International Criminal Law: Developments in Codification and Implementation* (1997) at 197.

Committee within 90 days on the steps they have taken to implement the resolution.

As per the terms of resolution 1373, the Security Council met again on 12 November 2001 and adopted resolution 1377 which recognizes that States might require assistance to implement resolution 1373 (2001). In this vein, the Counter-Terrorism Committee (CTC) invited all States to contribute to the compilation of a directory of sources of expertise in the areas of legislative and administrative practice with a view to pooling expertise and making it available to States on such matters as the drafting of counterterrorism legislation, and the law and practice relating to pertinent aspects of financing, customs, immigration and extradition, as well as policing, law enforcement and the illegal traffic in arms.

Once the Counter-Terrorism Committee began to receive State reports as required under Security Council resolution 1373, the Committee realized that in order to analyse the information and recommendations received and to arrive at a best practices guide to assist States in systematically institutionalizing counterterrorism measures in coordination with other States, it would have to rely on existing expertise on terrorism within the UN system. The Committee therefore turned to the UN Office of Drug Control and Crime Prevention, located in Vienna in order to anchor its work solidly within established avenues of multilateral cooperation. In this sense, Sir Jeremy Greenstock, Chair of the Security Council's Counter-Terrorism Committee, said:

Let me just explain what I am doing in Vienna. What is this Security Council Committee that is beginning to obtrude in the lives of other parts of the UN system and indeed beyond.

There are two main channels to the reaction to what happened on 11 of September. One is to go out and pursue and bring to justice those we know did something and have to be stopped. The Americans are in the lead on all of that and it is mostly happening in Afghanistan although it is spreading elsewhere. Catch those who did it. The other channel is stop those we do not know and have not identified who may have the potential to do something in the future.

Who is looking after that? Who is doing that? And the

answer is primarily the United Nations through its Member States. The reaction to stop the potential of future terrorism or actual terrorists who may do future acts has to be globally coordinated or else terrorism migrates to where its safer for them to be. And the job of my Committee is to follow up resolution 1373 that was passed by the Security Council on the 28 September and make sure that the obligations instigated by the adoption of that resolution on every Member State are implemented by every Member State. In other words, we are trying to raise the capacity of every member of the United Nations to defeat terrorism.³⁷

The advantage of taking international action on terrorism through the Security Council is that the Council is the only United Nations organ that can adopt and enforce mandatory measures binding on all States regardless of the State's consent or non-consent. However, the obvious disadvantage of Security Council action is that, as a political body, it is *prima facie* subject to the criticism that it is guided mainly by political considerations, and as we have seen above, may be held hostage by any of the five permanent members.

As the world grows more interdependent, and States are forced to work more closely together to suppress international terrorism, much more broad based regimes are required. Widespread recognition of the need to involve all States in genuinely multilateral solutions to deter crimes under international law has driven the rapid growth of international criminal law and the establishment of the ICC as a permanent, standing, universal institution to prosecute and punish genocide, war crimes, crimes against humanity and the crime of aggression once this has been defined for the purposes of international criminal prosecution.

The ICC makes no reference to 'terror', 'terrorism' or 'terrorist' and covers only genocide, war crimes, crimes against humanity, and the crime of aggression which is currently in the process of being defined by the Preparatory Commission of the ICC which meets in New York. A number of governments took the position

³⁷ Press Briefing of the UN Office of Drug Control and Crime Prevention on Combating International Terrorism, Vienna, 4 June 2002.

that terrorism should be included among the crimes within the ICC's jurisdiction and many governments expressed their concern over the seriousness of terrorist acts. However, in the negotiations leading up to the Rome Conference and in the Rome Conference itself, the majority of governments realized that defining terrorism might bog down the whole process to arrive at broader consensus on the ICC, and that it would therefore be better to amend the Rome Statute if and when terrorist acts could be defined and covered in the Rome Statute.³⁸ It must be remembered that among the fundamental principles of criminal justice are *nullum crimen sine lege, nulla poena sine lege*, in other words, 'there can be neither crime nor punishment unless law so declares'. Without a clear, precise and widely accepted definition of 'terrorist acts' it would have been counterproductive at the Rome Conference to try to include terrorism in the ICC's jurisdiction at that particular stage.³⁹

Nevertheless, terrorist acts can come within the jurisdiction of the ICC in a less obvious way. Many of the kinds of acts that terrorists typically perpetrate, such as murder, extermination, torture or enforced disappearances, unlawful confinement, hostage-taking, intentional attacks against civilian objectives or employing poisonous or other unlawful weapons, also qualify in the Rome Statute's definitions of 'crimes against humanity' or 'war crimes'. However, one has to bear in mind that, in order for an individual to be prosecuted by the ICC, other jurisdictional grounds must be met. First, the crime must be of sufficient gravity to constitute a matter of international concern.⁴⁰ Second, for an act to qualify as a crime against humanity, it must have been "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" which implies a certain scale, magnitude and pattern to the violations. Similarly, for terrorist acts to qualify as war crimes, they must be perpetrated in the context of an armed conflict, and by Article 8 of the Rome Statute, "in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes".

38 See Lyal S. Sunga, *The Crimes within the Jurisdiction of the International Criminal Court (Part II, Articles 5-10)*, Vol. 6/4 (European Journal of Crime, Criminal Law and Criminal Justice (1998) 377-399).

39 The so-called 'treaty crimes' of terrorism, illicit trafficking in narcotic drugs, and crimes against UN and associated personnel, remained under consideration for inclusion in the Statute until the final week of the Rome Conference. See e.g. Discussion Paper issued by the Bureau of the Rome Conference, A/CONF.183/C.1/L.53 of 6 July 1998. Excessively vague definitions of crimes increase the opportunity for abuse by Prosecutor and perpetrator alike, which is why Delegates to the Rome Conference took care to exclude also the 'threat of aggression', 'intervention', and 'colonial domination' from Article 5 of the Rome Statute.

40 See Article 17(1)(d) of the Rome Statute.

For the sake of discussion, had the Rome Statute been in force, and looking strictly at the nature of the crimes and not other jurisdictional issues, it is probable that the 9-11 attacks would have qualified as a 'crime against humanity' given the scale of death and destruction, as well as their premeditated character and the requirement that the act must be part of an attack on a civilian population. Perhaps an even more significant contribution that the ICC will bring lies in general law enforcement because of the cooperation regime the ICC institutes. The ICC is designed as a truly multilateral enforcement agency of the international community as a whole that will operate in regard to situations in countries only where that country's judiciary is unwilling and unable to act. As such, the Rome Statute fully respects, and is indeed based upon, the sovereign will of each and every State that chooses to accept it. Part 9 of the Rome Statute provides for a comprehensive framework for international State cooperation to enable the ICC to provide fair and effective international criminal justice according to the highest standards of human rights.⁴¹

Finally, nothing prevents the Assembly of States Parties to the Rome Statute from including terrorism in the jurisdiction of the ICC in future if the international community decides to define 'terrorism' more for this purpose. Article 121 of the Rome Statute allows States Parties to propose amendments to the Statute following the expiry of a period of seven years from the Statute's entry into force. Also, Article 124 obliges the UN Secretary-General to convene a review conference which will be open to the Assembly of States Parties to consider amendments to the Statute including *inter alia* "the list of crimes contained in Article 5".

Concluding Remarks

It is particularly regrettable that during and since the Rome Conference that adopted the ICC Statute, the US Government has pressured a number

41 In particular, Part 9 of the Rome Statute on International Cooperation and Judicial Assistance makes clear that the ICC provisions imposes mandatory obligations on domestic jurisdictions. Article 86 provides that: "States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in the investigation and prosecution of crimes within the jurisdiction of the Court". Article 88 is particularly important in relation to the observance of international human rights standards by cooperating domestic States because it obliges States Parties "to ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part". In the case of State non-cooperation, Article 87(7) authorizes the ICC to refer the matter to the Assembly of States Parties or where the Security Council has already referred the situation to the Court, to the Security Council. Article 89 concerns procedures for the surrender of a person to the Court. The rest of Part 9 provides procedures to address provisional arrest, competing requests for surrender of the suspect to the Court, contents of request for arrest and surrender, and other forms of cooperation and issues related thereto.

of Asian governments not to join the ICC regime. In fact, this very unfortunate approach on the part of the US Administration to avoid exposing its troops in foreign countries at all costs, for example the some 53,000 peacekeepers stationed in South Korea, or those in Japan and elsewhere, to criminal responsibility even in cases of genocide, war crimes and crimes against humanity, accounts at least partially for the slow pace of Asian governments to become parties to the Rome Statute. While a closer look at the position of each Asian country on the ICC lies beyond the scope of this essay, it suffices to note that some Asian governments remain concerned that certain Rome Statute legal obligations would conflict with constitutional or other provisions in domestic law, for example, those on immunity from prosecution for the Head of State or other government officials, the non-extradition of nationals abroad for criminal prosecution, or the use of the death penalty in national law.⁴²

It should always be kept in mind, that once the US considers that it has achieved its own specific anti-terrorism goals in foreign countries to its own satisfaction, its troops will pack up and go home more or less at a moment of its own choosing. Bilateral anti-terrorism measures dictated by Washington are intended to respond on a flexible, but of course also very ad hoc manner, to terrorism as Washington alone defines it, rather than to serve the local interests of foreign governments.

Terrorism does pose a serious threat to domestic security and national sovereignty, but it reaches beyond national borders and must be tackled squarely on a global basis. This implies that a truly multilateral approach is needed, rather than one which is either heavily unilateralist, or one that involves US-led efforts to deal with each Government in Asia on a bilateral basis - an approach that prevents Asian countries from developing regional frameworks to promote cooperation according

42 For example, some Arab States in Asia objected that the Rome Statute does not permit the death penalty as punishment and which a number of Arab Governments consider should be imposed for the crimes of genocide, war crimes and crimes against humanity over which the ICC exercises jurisdiction. For other countries, such as Thailand, Laos, Mongolia and Vietnam, there have been difficulties in translating the Rome Statute into the local language which have hindered key Government ministries from proposing specific legislative adjustments that are required to make ratification possible. See further Lyal S. Sunga, *The Attitude of Asian Countries Towards the International Criminal Court*, 2 *Indian Yearbook of International Humanitarian Law and Refugee Law* (forthcoming 2002).

to their own political priorities and concerns.⁴³ Such an approach of course puts Washington at the centre of international political and legal responses to terrorism, but can meet with only limited success over the longer term because it cannot provide a comprehensive approach to battling the tentacles of terrorist networks in the interests of the international community as a whole. Not only that, but many governments seem to have been getting quite fed up with what they perceive to be the arrogance of the current US Administration.

Asian governments have a clear choice. They can either participate fully in multilateral criminal law conventions, including the Rome Statute and those on terrorism, that have been carefully developed by the international community as a whole to serve common interests and values, or they can follow Washington's lead in battling today's terrorism scourge wherever this dance takes them and however long the music plays. Whether Asian governments choose to adopt a more multilateral approach in fighting the global problem of terrorism in a way that places them on an equal footing with other equally concerned sovereign States of today's international community, or whether, they continue to rely more on Washington-centric bilateral engagement while the US descends into the dark depths of isolationism, will influence not only their success in fighting terrorism over the longer term, but also how they will be viewed and treated by the rest of the international community.

43 On 1 August 2002, the Governments of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, as members of ASEAN, signed with the United States, the "United States of America-ASEAN Joint Declaration for Cooperation to Combat International Terrorism", in Bandar Seri Begawan, to develop a framework for cooperation to combat international terrorism.