

**THE NOTIONS OF GLOBAL LAW: FRIEND OR FOE IN THE FIGHT  
AGAINST TERRORISM**

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**Abstract**

*The title of this paper sets forth its basic theme: terrorism and globalization are locked in a symbiotic relationship. Globalization has contributed greatly to the increased threat that terrorism now poses, and part of this threat is the negative impact that terrorism may have on globalization. On the other hand, globalization, if developed along sensible, policy serving lines, may lead the way to more effective steps towards combating terrorism. This paper first discusses globalization and the impact it has had on the threat of terrorism, especially as demonstrated by the events of September 11.*

*It turns next to the response of the United States and the rest of the world community to these events and the impact (both negative and positive) it has had on globalization. Lastly, the paper considers the role that a sensible process of globalization might play in combating the threat of terrorism.*

**Keywords:** Globalization, terrorism, violence, security, September 11, international peace.

**INTRODUCTION**

In his letter confirming my participation, Dean Attanasio stated, "This conference, entitled '*Terrorism's Burdens on Globalization*,' posits that terrorism poses a systemic threat to globalization." I agree with this postulate, but would suggest that terrorism-especially the "catastrophic terrorism"<sup>2</sup> that occurred on September 11, 2001-may so "concentrate the mind

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<sup>2</sup> Letter from John B. Attanasio, Dean and William Hawley Atwell Professor of Constitutional Law, Southern Methodist University Dedman School of Law, to John F. Murphy, Professor of Law, Villanova University (Dec. 21, 2001) (on file with author).

wonderfully" <sup>3</sup> that we will finally give the problem of terrorism the kind of attention it deserves<sup>4</sup> as well as explore in greater depth the benefits and costs of globalization.

As an initial matter, it should be noted that both "globalization" and "terrorism" pose definitional difficulties. Although there are many definitions of terrorism, there is no worldwide agreement on an official definition.<sup>5</sup> For present purposes, the definitions employed by the U.S. Government for statistical and analytical purposes should suffice:

- (1) the term 'international terrorism' means terrorism involving citizens or the territory of more than 1 country;
- (2) the term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets by sub national groups or clandestine agents; and
- (3) the term 'terrorist group' means any group practicing, or which has significant subgroups which practice, international terrorism.<sup>6</sup>

## **RESEARCH METHODOLOGY**

### **(a) – NATURE OF STUDY:**

The doctrinal research methodology (also known as Non Empirical Research) would be used by researcher in creating an understanding for the impact of terrorism.

### **(b)- SOURCES OF DATA:**

This proposed research work being a Doctrinal and Non-Empirical research did not require any field data or sample collection. The data collection was restricted to only the primary and

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<sup>3</sup> This paraphrases, of course, the famous quote from Samuel Johnson, "Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS REQUESTED FROM THE CONGRESSIoNAL RESEARCH SERVICE 74 (Suzy Platted., 1989)

<sup>4</sup> For allegations that prior to September 11, the threat of terrorism was not receiving the kind of attention it deserved, see Dick Morris, Correction, While Clinton Fiddled, WALL ST. J., Feb. 5, 2002, at A18.

<sup>5</sup> See John F. Murphy, Defining International Terrorism: A Way Out of the Quagmire, 19 ISE. Y.B. HUM. RTs. 13 (1989).

<sup>6</sup> . Annual Country Reports on Terrorism, 22 U.S.C. § 2656f(d) (1990).

secondary sources. All the relevant sources were broadly classified into two basic categories namely Primary and Secondary sources.

- Primary sources used in this research are the judgments of Higher Judiciary (i.e. The Supreme Court and High Court) & Constitution of India and Indian Contract Act. These primary sources became the guiding star for the research.
- Secondary sources have included the study of all legal and non legal relevant texts, research articles, on-line resources (like reliable websites like manupatra, westlaw, Jstor, and others.) Due to the less availability of materials related to the research title, the researcher has not extensively used library and the books available thereof.

#### **(c)- SOURCES OF DATA COLLECTION:**

This proposed research work is a Doctrinal and Non-Empirical Research. Hence, this research work is purely based on the resources collected from e-libraries archives and online databases and various e-learning resources.

#### **(d)- LIMITATION OF THE STUDY**

The scope of this study can be well defined by considering the following limitations:

- Due to limitation of time and resources the proposed research work is mostly confined within the Indian legal regime but references have been made to laws of other developing countries, in order to know the status of consent in the Indian medical practice in comparison to other countries.
- This research being a Doctrinal and Non-Empirical type of research has not required collection of any field data or sampling, etc.

## **GLOBALIZATION'S CONTRIBUTION TO THE THREAT OF TERRORISM**

For its part, globalization has been the subject of considerable and growing literature that reflects a great variety of approaches to the topic.<sup>7</sup> Dean Attanasio has suggested, "*At bottom, globalization involves the free movement of people, goods, information, and capital.*"<sup>8</sup> One might add to this list, at minimum, new, virulent and lethal strains of bacteria and viruses; environmental pollution; and political, economic, social, and cultural ideas.

According to Joseph S. Nye, Jr., globalization is "the growth of worldwide networks of interdependence." S Nye notes that globalization is "virtually as old as human history," but suggests that today's version is new in that "the networks are thicker and more complex, involving people from more regions and social classes." Moreover, as British sociologist Anthony Giddens has observed, "*Globalization is not just the dominance of the West over the rest; it affects the United States as it does other countries.*" The most salient example of terrorism "affecting" the United States is, of course, the attacks of September.

In his perceptive study, Nye notes that the end of the Cold War resulted in "military deglobalization-that is, distant disputes between the superpowers became less relevant to the balance of power." But, he suggests, over the last several decades, there has been a substantial increase in "social globalization, i.e., the spread of peoples, cultures, images, and ideas, and this has resulted in "*new dimensions of military globalism: humanitarian intervention and terrorism.*" Humanitarian concerns, interacting with global communications, led to pressure for military interventions in places such as Somalia, Bosnia, and Kosovo." And fundamentalist reactions to modern culture interacted with technology to create new options for terrorism and for asymmetrical warfare.

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<sup>7</sup> See generally THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* (1999); ANTHONY GIDDENS, *RUNAWAY WORLD: How GLOBALIZATION IS RESHAPING OUR LIVES* (2000); JOHN MICKLETHWAIT & ADRIAN WOOLDRIDGE, *A FUTURE PERFECT: THE CHALLENGE AND HIDDEN PROMISE OF GLOBALIZATION* (2000).

<sup>8</sup> Letter from John B. Attanasio to John F. Murphy, *supra* note 1

Perhaps the most salient example of social globalization resulting in terrorist military globalization is the worldwide expansion of the al Qaeda network, said to operate in more than sixty countries." These "worldwide networks of interdependence" included "an amalgam of private enterprises, corporate shells and charities that are structured like a financial archipelago with connections hidden beneath the surface. At a time when state sponsorship for terrorism was in decline, Mr. Bin Laden undertook a privatization of terror, creating a far more diffuse network than any faced in the past.<sup>9</sup>

And this diffuse network has been useful to al Qaeda in many ways besides the financing of its activities. In particular, it has created a large population of people who, although themselves not willing to engage in terrorist acts, have considerable sympathy with bin Laden's fundamentalist rhetoric and are willing to lend him and his colleagues various kinds of support, including, for example, the provision of safe houses for al Qaeda operatives, ideological assistance in the form of supportive broadcasts or newspaper articles, forgery of key travel documents such as passports and visas, provisions of transportation, and various forms of tacit support, in the form of failure to warn of an attack or of refusal to cooperate with intelligence and police officers. Al Qaeda's network has also been supported and strengthened by the failure of many Arab-Muslim states to deal effectively with the conditions within their own countries that gave rise to Islamic fundamentalism. Thomas L. Friedman, the New York Times foreign affairs columnist, has written widely and well on this problem. According to Friedman:

Many Arab-Muslim states today share the same rigid political structure. Think of it as two islands: one island is occupied by the secular autocratic regimes and the business class around them. On the other island are the mullahs, imams and religious authorities who dominate Islamic practice and education, which is still based largely on traditional Koranic interpretations that are not embracing of modernity, pluralism or the equality of women. The governing bargain is that the regimes get to stay in power forever and the mullahs get a monopoly on religious practice and education forever.

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<sup>9</sup> JOSEPH S. NYE, JR., THE PARADOX OF AMERICAN POWER: WHY THE WORLD'S ONLY SUPERPOWER CAN'T GO IT ALONE 78 (2002).

Bin Laden's challenge was an attempt by the extreme Islamists to break out of their island and seize control of the secular state island. The states responded by crushing or expelling the Islamists, but without ever trying to reform the Islamic schools-called madrasas-or the political conditions that keep producing angry Islamist waves. So the deadly circle that produced bin Ladenism-poverty, dictatorship and religious anti-modernism, each reinforcing the other-just gets perpetrated.<sup>10</sup>

The spread of technology through globalization, many have noted, has greatly empowered less powerful actors, such as al Qaeda and a variety of other terrorist groups. Although the al Qaeda hijackers used the long-standing technology of civil aviation to carry out their attacks on September 11, there is increasing concern that terrorists in the future will carry out so-called "catastrophic terrorism" through the use of weapons of mass destruction nuclear, chemical or biological."<sup>11</sup> This threat is compounded by the risk that nuclear, chemical and biological weapons may spread throughout the world, aided by globalization.

## **THE IMPACT OF SEPTEMBER 11 ON GLOBALIZATION**

### **OVERVIEW:**

Others at this conference are addressing the impact of September 11 on the economic dimensions of globalization-trade, finance, and investments. There is no doubt, of course, that September 11 has had a highly negative impact. It is worth noting, however, that the process of economic decline began long before September 11. Indeed, 2000 may have been, in economic terms, globalization's best year. For example, the value of world merchandise exports exploded by more than 12 percent in 2000, and trade in services expanded by 6.1 percent. Both were more than triple the previous year's growth rate. For its part, foreign direct investment increased spectacularly

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<sup>10</sup> Thomas L. Friedman, Breaking the Circle, N.Y. TIMES, Nov. 16, 2001, at A25. For articles sounding a similar theme, see, e.g., Susan Sachs, Despair Beneath the Arab World's Rage, N.Y. TIMES, Oct. 14, 2001, at B1; Amir Taheri, Islam Can't Escape Blame For Sept. 11, WALL ST. J., Oct. 24, 2001, at A22.

<sup>11</sup> Kurt Eichenwald, Terror Money Hard to Block, Officials Find, N.Y. TIMES, Dec. 10, 2001, at A1.

in 2000, growing from \$1.08 trillion in 1999 to \$1.27 trillion in 2000, compared with only \$203 billion in 1990, due, in substantial part, to extensive merger and acquisitions activity by multinational firms) This strong global economic activity and various events associated with the millennium also precipitated the most expansive growth in global tourism in at least a decade, and the number of Internet hosts (computers that allow users to communicate with one another along the Internet) grew by 44 percent in 2000.<sup>24</sup> "In short, levels of global integration reached new highs in 2000, capping a decade of dramatic expansion in global economic flows and political engagement as well as the increased mobility of people, information, and ideas."<sup>12</sup>

As many have noted, the history of the early twentieth century clearly demonstrates that globalization is reversible. In 1914, it was derailed by war and in the 1930s it suffered a coup de gras by misguided economic policy that exacerbated the worldwide depression. As *The Economist* has recently noted, "This time, global integration might stall if the risk and cost of doing business abroad rises (perhaps as a consequence of heightened fears about security), or if governments once more turn their backs on open trade and capital flows."<sup>13</sup>

There is clearly evidence that the costs of doing business abroad are increasing. For example, commercial insurance premiums for American firms are estimated to rise from \$148 billion in 2000 to between \$210 billion and \$240 billion in 2002.<sup>14</sup> According to the World Bank, airfreight costs have risen about 15 percent since September 11. But, as *The Economist* points out, most of the goods involved in international trade are sent by sea, and have so far been little affected. Reportedly, a recent study has concluded that there has been no discernible increase in shipping costs for American imports since September 11.<sup>1</sup> Although this could change if new security measures, such as electronic seals on all containers, are adopted, to date the war on terrorism appears to have had a relatively small impact on the shipment of goods.

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<sup>12</sup> Is it at Risk? - Globalisation - Recent events have rattled the global economic order. Were they temporary setbacks, or something worse? *EcONOMIST*, Feb. 2, 2002, at 65.

<sup>13</sup> See David E. Sanger, *Using Battle of Terrorism for Victory on Trade*, *N.Y. TIMES*, Dec. 7, 2001, at A23.

<sup>14</sup> Hilsenrath, *supra* note 34 (according to a PricewaterhouseCoopers survey of 171 business executives at large U.S. multinationals in November 2001). Of those surveyed in November, 27% planned some form of geographic expansion during the year ahead, compared to 19% before the attacks. *Id.*

Moreover, so far, neither governments nor private companies have turned their back on open trade and capital flows. To the contrary, since September 11, policy makers have generally been moving toward freer trade. In Doha, Qatar, 142 nations agreed in November 2001, to begin a new round of trade talks to lower trade barriers-an agreement that came about at least in part because of concern over the impact of September 11 on trade flows and the U.S. House of Representatives voted on December 6, 2001, to grant President George W Bush "fast track" or "trade promotion authority" to negotiate trade deals that lawmakers can approve or disapprove but can't amend." One of the arguments that prevailed in the House was that trade promotion authority was necessary as a measure in the war against terrorism.

For their part, U.S. multinational companies have reportedly become more committed to international expansion after September 11 than they were before. Similarly, a recent survey by the United Nations reportedly found that 70 percent of businesses surveyed expected investment and employment in their foreign operations to rise over the next three years.<sup>15</sup>

As for capital flows-bank loans, bonds and cross-border investment in shares-it appears at first glance that September 11 may have had a more significant impact on them than on trade and foreign direct investment. In an analysis published at the end of January 2002, the Institute for International Finance, a group that represents financial institutions, reportedly found that the twenty-nine biggest emerging economies had a net outflow of more than \$30 billion in financial flows in 2001.<sup>31</sup> This comes, however, at the end of a period in which emerging markets have endured a number of crises, including the "Asian contagion" of 1997, the Russian debt default of 1998, and most recently the severe problems in Argentina and Turkey)0 Over the past four years, emerging markets have received a mere \$19 billion in capital flow, compared to the \$655 billion they received between 1994 and 1997.

*Globalization: a mixed blessing*

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<sup>15</sup> Seth Borenstein, Bush Wants Safer Borders While Not Impeding Trade, PHIIA. INQUIRER, Jan. 26, 2002, at A3; Peter Menyasz, Customs: Canada-U.S. 'Smart' Border Pac to Provide Freer Movement of Goods and More Security, 18 Int'l Trade Rep. (BNA) No. 50, at 2044 (Dec. 20, 2001).



The Economist's comment should remind us, as we have already noted, that globalization is a mixed blessing. September 11 has, at a minimum, concentrated our minds wonderfully on the spread of terrorist networks and has led to a variety of measures to deal with this problem. To the extent that these measures are successful, they greatly increase the chances that the good kinds of globalization will resume: trade, foreign direct investment, capital flows, etc.

We need to make greater efforts, however, to distinguish between the beneficial and the harmful dimensions of globalization. Some harmful dimensions are easy to identify: the spread of terrorist networks, disease, and environmental pollution; but what about free trade, capital movements and foreign direct investment? Here the debate currently rages, as the "*battle in Seattle*" and other protests demonstrate. Debates arise over issues such as the so-called "digital divide," inequality between and within nations, and the effect of trade on the environment and on workers' wages. A discussion of these and related issues is beyond the scope of this essay, but it is worth noting that they are now definitely on the world's agenda, as illustrated by the recently concluded World Economic Forum, held this year in New York City rather than in Davos, Switzerland.

Moreover, even if one is convinced of the benefits of free trade and globalization, it is useful to keep a comment on a different subject by Mahatma Gandhi in mind. When asked what he thought of Western Civilization, Gandhi replied that he "thought it would be a good idea." Similarly, it would be a good idea if more countries, especially from the developing world, were able to enjoy the benefits of free trade and globalization. The Economist has aptly summarized the problem: Measured either in terms of trade or direct investment, integration has been highly uneven. A few developing countries have managed to increase their trade a lot. They are the same countries that have attracted the lion's share of foreign direct investment. And they have also seen the benefits of openness. A recent study by the World Bank showed that 24 countries, home to 3 billion people, and including China, Argentina, Brazil, India and the Philippines, have substantially increased their trade-to-GDP ratios over the past 20 years. These are the low income "globalisers." On average, their growth rates have improved as well. GDP per head in these economies grew by

an average of 5% a year during the 1990s (compared with 2% in rich countries) and their poverty rates declined.

## **THE ROLE GLOBALIZATION CAN PLAY IN COMBATING TERRORISM**

In response to September 11, instant coalitions or "worldwide networks of interdependence" sprang into being to combat the threat of terrorism. On September 12, 2001, the U.N. Security Council adopted a resolution that, inter alia, recognizes the inherent right of individual or collective self-defence in accordance with the Charter,

1. Unequivocally condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 ... and regards such acts ... as a threat to international peace and security;
2. Expresses its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States of America;
3. Calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable.

Perhaps the most noteworthy aspect of this resolution is its explicit recognition of the right of individual and collective self-defense, which lent a substantial measure of support to the armed campaign being waged by the United States and other members of the coalition forces. On the same day, for the first time in its history, NATO invoked article 5 of the NATO Treaty, which states, "an armed attack against one or more of the Allies in Europe or North America shall be considered an attack against them all." There was also unprecedented cooperation between intelligence agencies and law enforcement officials around the world, often through INTERPOL, the international police agency based in France.

On September 28, 2001, the Security Council, acting under Chapter VII of the Charter, adopted Resolution 1373, which, by any measure, constitutes a landmark step by the Council. In this extraordinary resolution, the Council sets forth a plethora of steps that Member States are required to take to combat terrorism. For example, the Council “*decides that all States shall ... prevent and suppress the financing of terrorist acts and then sets forth explicit steps that states are to take to this end. The Council also decides that all States shall take a large number of other steps to combat terrorism. Among the most noteworthy of these, States are to deny safe haven to terrorists, to afford one another the greatest measure of assistance in criminal investigations relating to the financing or support of terrorist acts (including assistance in obtaining evidence necessary for such proceedings) and to prevent the movement of terrorists by effective border controls and controls on the issuance of identity papers and travel documents.*”

Using terms of exhortation rather than command, in Resolution 1373, the Council called upon all States to take a number of actions in cooperation with other states to combat terrorism, including, among others, "intensifying and accelerating the exchange of operational information," becoming parties to the relevant antiterrorism conventions, including the International Convention for the Suppression of Financing of Terrorism, and ensuring, "in conformity with international law," that refugee status is not abused by terrorists, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

Perhaps the most significant step the Council has taken in Resolution 1373 is to establish a committee to monitor implementation of the resolution and to call upon all states to report to the committee, no later than ninety days after the date of adoption of the resolution, on the steps they have taken to implement the resolution. The Council further expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter. Failure to establish monitoring devices to ensure that antiterrorist measures adopted by the United Nations are effective in practice has been a major deficiency of past U.N. efforts.

There have also been substantial worldwide efforts to prompt States to ratify two antiterrorism conventions of wide-ranging significance adopted by the U.N. General Assembly in the late 1990s: the International Convention for the Suppression of Terrorist Bombing, and the International Convention on the Suppression of Terrorist Financing. At the regional level, the Council of Europe has recently adopted a European Convention on Cybercrime which, although not strictly speaking an antiterrorist convention, covers a variety of crimes that terrorists might commit and contains a number of innovative provisions dealing with issues of mutual assistance between parties—a subject greatly in need of attention.<sup>60</sup> Efforts continue in the United Nations to conclude a convention on nuclear terrorism and a comprehensive convention on international terrorism. Whether these efforts will or should succeed is a subject of considerable debate.

U.N. Secretary-General Kofi Annan has recently suggested that the over one billion people currently living in abject poverty, i.e., *"without enough food to eat, without safe water to drink, without primary schooling or health care for their children—in short, without the most basic requirements of human dignity"* give rise to *"forces of envy, despair and terror."* He does not believe, however, that these people are victims of globalization. On the contrary, in his view, *"Their problem is not that they are included in the global market, but, in most cases, that they are excluded from it."*

Annan calls for private companies to take the lead in bringing the benefits of globalization to the downtrodden masses and in convincing the governments of rich countries to open their markets to the products of the poor ones and to end farm export subsidies that make it impossible for farmers in poor countries to compete. He also requests these companies to support debt relief, increased official assistance to developing countries, and a greater voice for poor countries in economic decision-making. While acknowledging that poor countries *"need to get their own houses in order so that they can mobilize domestic resources and attract and benefit from private foreign investment,"* he suggests that *"many of them need financial and technical help—to build up their infrastructure and capacities before they can take advantage of market opportunities"* and concludes that, if political and business leaders demonstrate that they intend to make sure globalization offers the poor a real chance to escape from poverty. They can strike a truly decisive

blow against the forces of envy, despair and terror by sending out a clear message of solidarity, respect and-above all-hope.

As we have already seen, these demands will surely focus on the opening of developed countries' markets to the exports of agricultural products, textiles, and steel from the developing countries. Increased exports would trigger capital formation, especially in the poorest countries. But, as Alice Amsden has suggested, the developing countries may demand, "*A breather on issues linked to intellectual property rights and to foreign investors' rights.*" In her view, such a breather is necessary to give the developing countries an opportunity to work closely with business to strengthen domestic industry. To this end, it may be necessary to discourage foreign industries from entering certain industries, so that national companies can get a head start. Similarly, state-owned banks may need to lend money at subsidized rates to help local firms acquire the technologies and capital equipment they need. Amsden points out that the richest of the developing countries, such as Korea and Taiwan, employed such policies on their way toward economic development. She further suggests that the developing countries need time and protection from multinational corporations of the developed world to promote domestic businesses that can compete on a worldwide basis.

## **A FEW CONCLUDING THOUGHTS**

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*There is a saying that all politics is local, but increasingly, all local politics have global consequences. And those global consequences, in turn, affect the quality of local life everywhere. -Kofi Annan Secretary General, UN - 1998*

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The paper attempts to address how globalization emerged and whether or not terrorism is part of globalization. It also explores the different views about these issues. In summary,

globalization can be the catalyst for equitable growth, development, and increase in standard of living to further the participation of developing countries. The accountability toward the issues of developing nations, particularly trade with the developed world, is highly significant in global poverty alleviation and in an equitable globalization. Although globalization has spread dramatically, terrorism has also become a global phenomenon after the 9/11 incident. Whether terrorism spreads because of globalization or because of terrorist groups, which are composed of deprived and exploitative people who are excluded from globalization, is an issue subject to further thought. Terrorism can be a cause and consequence in itself.

At this writing the Taliban has been defeated and al Qaeda driven out of Afghanistan, but it is clear that the *"war on terrorism"* is far from over and has entered a more difficult phase. Al Qaeda is reportedly regrouping for renewed attacks, Arab resentment against the United States appears to be growing, and there are reports that Gulf Arabs may be more inclined than ever to give money to militant causes. It is also unclear to what extent the coalition countries would be willing to support U.S. action-military or otherwise-against the so-called *"axis of evil": Iraq, Iran, and North Korea*. In a real sense, then, the issue is whether the "worldwide networks of interdependence" will continue to support efforts to combat terrorism or instead prove to be to the advantage of al Qaeda or other terrorist groups. It would be ironic indeed if the terrorist threat slowed or reversed the positive aspects of globalization while leaving the negative dimensions intact.