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### **Use courts, not combat, to get the bad guys: Pre-emptive justice**

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In his opening speech to the United Nations General Assembly, Secretary General Kofi Annan urged the Security Council to consider criteria for the “early authorization of coercive measures to address certain types of threats.” He warned that the alternative was likely to be unilateral pre-emptive action.

To date such proposals have focused on the collective or unilateral use of force against states. But a potentially powerful alternative at the UN’s disposal is to draw on the existing body of international criminal law to secure the indictment, through an independent judicial process, of particular individuals who threaten global peace and security and then issue a warrant for their arrest -- by force if necessary.

In short, the Security Council could directly target national leaders and the heads of terrorist groups -- not through combat, but through the courts. A decade ago, the idea that a national leader could stand before an international criminal tribunal to answer for war crimes and crimes against humanity was almost unimaginable. It had not happened since Nuremberg; its historical precedents required a decisive victory and an occupying power. Today, the possibility of individual personal responsibility for gross atrocities is becoming a given in international life.

But the wider use of international criminal justice faces two significant challenges. First, even after establishment of the International Criminal Court, many individuals lie outside the jurisdiction of any international court. For example, as Iraq is not a member of the ICC, Saddam Hussein falls outside its jurisdiction. Second, even where courts exist it is often extremely difficult to apprehend suspects, particularly when they are sitting government officials.

It is, however, well within the power of the Security Council to overcome both of these challenges.

If no court is available to consider the indictment of a particular individual, the Security Council can create one. It can authorize an international prosecutor and an independent panel of judges from around the world to investigate the crimes committed by a leader. In Iraq, for instance, instead of debating a decade of sanctions and ultimately the deployment of military force, the Security Council could have authorized an international prosecutor to investigate Saddam’s war crimes. Tribunals such as those for the former Yugoslavia or Rwanda have prepared a cadre of international criminal law specialists available for special assignment. Once an international prosecutor has issued an indictment, the Security Council could determine that in the interests of international peace and security, a national or international force should be authorized to arrest an indicted suspect. Where the individual resists, the arresting authorities could be

authorized to use force. Beyond national leaders, the Security Council could seek an indictment against so-called “stateless actors” such as Osama bin Laden for the perpetration of crimes against humanity. Terrorism itself is not a crime against international law, for the simple reason that it has proved politically impossible to formulate a satisfactory definition of terrorism. However, most terrorist acts would constitute crimes against humanity -- murder or torture “committed as part of a widespread or systematic attack directed against any civilian population.” Over the past five decades, two developments have made it possible to focus international attention specifically on leaders who perpetrate atrocious crimes against their own people and others.

First is the rise of human rights law in peacetime and the strengthening of international humanitarian law in wartime. We can hold individual government officials accountable for violations of human rights; we can hold individual officers accountable for violating the laws of war. Second is the extent to which civilians have become the primary casualties of conflict -- internal or external conflict. A dictator can negate the potential of even the smartest missiles by deliberately basing his own weapons and soldiers in schools, hospitals, and residential areas. He must bear the ultimate blame, but a government or a world that chooses to use force against such a dictator, including economic coercion or compulsion, must share part of the responsibility.

Killing innocents to save innocents is an unacceptable moral choice. In a world in which the pre-emptive use of force must be countenanced it is imperative to develop alternatives to that choice. One of those alternatives should be to identify the individuals responsible for endangering their people and the world and bring them to justice. Some may see this proposal as Wild West justice. In reality it is anything but. Indictments would be issued by experienced prosecutors, reviewed by international judges, and enforced by the Security Council. The aim would be to render the accused for trial.

Such efforts could indeed result in a shootout. But surely such a use of force, collectively sanctioned, is both morally and legally more acceptable than the killing of hundreds or thousands of civilians whose only crime is to be ruled by a tyrant.