AFTER 9-11 – A PARADIGM CHANGE IN INTERNATIONAL LAW?∗

The terrorist attacks of September 11, 2001 upon the World Trade Center in New York and the Pentagon in Washington have sent shock waves through international politics and law whose consequences some compare to those of the fall of the Berlin Wall.1 Within a few hours the whole world had been swamped by the spectacular and shocking images of the Twin Towers – emblems of economic and political liberalism - collapsing into themselves like a house of cards. Within a few days the international community had demonstrated unprecedented unanimity in its response, which translated with equal alacrity into decisions. Before long juridical facts had been constituted which doubtless will make their mark on future international legislation. I would like to recall some of the key moments:

- On September 12 President Bush deems the attack a crime, only later to speak of a “war” against the civilised world - a formulation immediately adopted by politicians in other countries and by a broad faction of the international press.2
- That same day, in less than a half an hour, the Security Council unanimously passes a resolution (resolution 1368) characterising the attack as a “threat to international peace and security” and conferring upon the victim state the right to act in self-defence.
- Still September 12: For the first time in the history of NATO article 5 of the Washington Treaty is provisionally invoked (and on October 2 definitively), calling for the solidarity of the allied nations.3
- On September 28 the Security Council votes - again unanimously - in favour of Resolution 1373, which affirms the decision made directly after the attack and endorses a package of concrete measures for the struggle against terrorism.
- On October 7, the first bombs fall on Afghanistan; after several weeks of intensively negotiating for the support of Arab leaders, the United States makes concrete its intention to wage war on the Al Quaida terrorist organisation. But beyond this, by setting their sights also on the Taliban regime, the Americans signal a paradigm shift: what could not be called a war as long as it is directed at a private organisation takes on the classical form of armed conflict between states.

As we can see, then, and as the media has often emphasised, the events of September 11 and the subsequent weeks, by shuffling and consolidating international alliances, have altered the geopolitical face of the world in record time and led to dramatic changes in international law. The unanimous acceptance of the resolutions, on the one hand, introduced a convention whereby measures aimed to prevent and combat terrorism are immune to the incalculable hazards of ad hoc acceptance by individual
On the other hand, decisions had to be made under pressure of urgency and shock for which international law was unprepared. Existing concepts had to be specified or adjusted to fit new realities: does a terrorist attack of such magnitude constitute an armed attack? Is the victim state in sole possession of the right to self-defence against such aggression, or must a legitimate response be made collectively? Who are the aggressors? Does the pursuit of an international terrorist organisation justify suspending the prohibition of the use of force against a third state? Politics may already have answered in practice; but the questions remain open, and I shall investigate them in this paper.

I make no claim to originality – neither for my method nor for my answers. Indeed, the gravity of the events immediately triggered considerable debate among legal scholars. But unfortunately this debate has remained the exclusive province of experts; despite the importance of the issues, it has not crossed the threshold to a broader public.

I would like to state clearly that I am not a legal scholar but a philosopher, and that I would like to address the matters at hand philosophically. I do not want to appraise the soundness of the decisions that were made, but to analyse the normative significance and political consequences of the specific conceptual formulation of the events. It is no mere rhetorical exercise to apply the term “war” to a conflict and thereby to locate it within the framework of self-defence or collective response to an affront against peace and security. This appellation has consequences of extreme import for an incalculable number of people. The question whether there has been a paradigm shift in international law implies the further question as to the consequences of such a paradigm shift and as to what principles are to guide international law and politics.

Before examining the legal categories that have been called into question since September 11 I would like to sketch some of the characteristics of international terrorism and show how it challenges the classical typology of organised violence. I realise that my discussion may be open to the charge of over-simplification: there is, in fact, no such thing as terrorism as such. Rather, there are diverse structures with diverse motives, strategies and goals. But the scheme I present should at least demonstrate how helpless international law is to respond to a phenomenon that does not respect the traditional division of the world into sovereign states: the privatisation of violence presents a serious challenge to an international law designed for conflicts delimited in space and time and involving state-actors. It was this void of appropriate legal concepts which enabled the US to justify its primarily unilateral military response; for a state that has never concerned itself much anyway with international documents, legal ambiguity is a welcome invitation to exercise its power with glib legitimacy.

I. CLASSICAL WAR VERSUS INTERNATIONAL TERRORISM

The theory of just war is rooted in a classical scheme of warfare that does not accommodate the forms of domestic or international conflict typical of the post-war era. In the following I shall sketch the main points of contrast between international terrorism and this classical scheme.
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- **The Actors:** Whereas conventional wars manifest the power of a state or alliance of states, terrorist actions are the work of individuals organised by leaders of private groups.

- **Organisation:** When conflict arises, states officially call on armed forces, which are organised vertically and hierarchically. Terrorist organisations, in contrast, operate underground. Although they often have a central leadership, they consist of scattered units which, for the sake of efficacy and flexibility, require a certain degree of autonomy. In structures modelled according to the Waben Principle, for example, a suicide commando learns the identity of his immediate superior and the nature of his task only shortly before going into action.8

- **Strategy:** The application of violence differs between the two forms of conflict. In a classical war, states aim for superiority in numbers and military technology. Civilian casualty is not a goal, but constitutes regrettable “collateral damage”. Terrorist attacks, on the other hand, aim for psychological effect and media sensation. They invert the principle of proportionality by seeking to wreak as much havoc as possible with limited means.

- **Funding:** Classical warfare is financed centrally; taxation pays for weapons and soldiers. International terrorist organisations, in contrast, are financed de-centrally; they are supported by private donations, organised crime, drug and weapons trafficking, even charities.9

- **Space:** Whereas the location of a conventional war is more or less unambiguous, terrorism depends upon the unpredictability of its targets.

- **Time:** Financial and human costs impose strict limits on the duration of classical warfare. If an offensive campaign does not lead to quick victory, then it must also compete with time. But since terrorist groups do not seek to conquer, they need not reckon with time in the same way. They have at their disposal extended or even unlimited periods of time. This temporal indeterminacy serves as an effective psychological weapon.

Let us return to the conceptual formulation of the events of September 11 and its legal and political consequences. What was it, that occurred on that day? A terrorist attack or a declaration of war? Was there an armed attack? A threat to international peace? Who were the aggressors?

**II. WAS THERE A WAR?**

In classical international law the terms “war” and “armed conflict” apply only to conflicts between states. A state is at war when it fights against another internationally recognised state or against a revolting party. War can also be waged against a population, even when this population possesses no officially recognised territory (against the Palestinians or the Kurds, for example). But there can be no war against Osama bin Laden or Al Quaida, since they represent neither a state nor a revolting party.10 For many legal scholars “a murderous attack on the citizens of a country do not represent an act of war, but simply a crime, for which the criminals and their co-conspirators can be brought to court”.11
Granted, the attacks of September 11 were no isolated incidents: in 1993 bin Laden and his associates were implicated in an earlier attack on the World Trade Center; in 1998 they were involved in attacks on the American embassies in Tanzania and Kenya. Insofar as the attacks were part of an ongoing campaign designed to create an atmosphere of constant threat, one may say that they resemble a declaration of war. Indeed, it is precisely this repetitiveness to which the US refers in asserting its right to self-defence. But the fact remains that President Bush’s slogan “we are at war” is legally false. Moreover, it is dangerous in that it opens the door to a unilateral administration of justice.12

It was not the passion of the moment that led Bush to this particular formulation. Nor was he taken in by the rhetoric of holy war employed by his enemies. On the contrary, he chose his words carefully, with an eye to their psychological, strategic and legal consequences. A declaration of war, as we know, does not call for the same sort of response as a criminal act.

As for the psychological aspect, calling a terrorist act a declaration of war emphasises the extent as well as the international significance of the catastrophe, and draws attention to the stated intention of the attackers to engage in a long-term conflict. In reality, a random or isolated act of violence is not the same thing as a declaration of war. In an interview on September 13, 2001, Colin Powell summed up this psychological effect: “(We are) speaking about war as a way of focusing the energy of America and the energy of the international community.”13 If the events of September 11 are understood as a declaration of war, then it becomes self-evident that the US must exercise its right to self-defence and respond with violence.

Then there is the strategic aspect. As the allies must have realised – not to mention the aggressors and those offering them refuge – the talk of war was not merely metaphorical. It would not have been very credible for the US to respond as one looks for a needle in a haystack. But, as we saw earlier, international terrorism operates from secret bases that are geographically and structurally scattered. Such an enemy would not do; he had to be given a face.14 By territorialising the conflict, the US compelled it to fit the mould of a classical armed conflict between states. The Bush administration knew that it could count on the concurrence of its shocked population and on the passivity of other nations. But it is important to understand that the territorialisation of the conflict leads to a twofold paradigm shift, with considerable consequences for international law.

The first blow to the reigning paradigm occurs on the level of principles, when responsibility for the actions is extended from the terrorists to the state harbouring them. This state is charged with violating international resolutions insofar as it tolerates terrorists within its borders and refuses to take the appropriate measures against them. I shall return to this point when I deal with the question of the right to self-defence.

The second blow to the paradigm is political in nature. It has to do with a change of goals: the campaign to root out terrorism and the armed bases which support it metamorphoses into a war against the reigning Taliban regime. With this operation the US authorities manage to kill three birds with one stone: playing the card of the military superpower, they demonstrate resoluteness; they remove a long-unfriendly regime (which they earlier supported for quite some time); and in the event of victory,
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they can station troops in an area whose proximity to the rich oil reserves lends it great strategic importance.

Finally, there is the legal aspect. According to the official reaction, the war began on September 11, not October 7, when the first bombs fell on Afghanistan. We are referred, therefore, to the terms of the Geneva Convention of 1949 and its subsequent regulations, which prescribe that a military counter-attack must respect the principle of proportionality of employed means and the principle of distinction between military and civilian targets.

In the case at hand it is questionable whether either of these principles was respected. As for the principle of distinction, the US forces used not only cluster bombs – thousands of which lie unexploded on the ground, presenting a long-term threat to the Afghani people – but also degraded uranium bombs to destroy the bunkers where Al Quaida members were hiding. Nor did they respect accepted principles regarding the treatment of captured soldiers. Before an audience of representatives in Strasbourg on July 12, Irish journalist Jamie Doran presented film of what he asserted were mass graves in Afghanistan. Witnesses report that approximately 3000 Taliban fighters were forced after capitulating into a container where as many as half of them suffocated to death. A US soldier claims that surviving prisoners were tortured, killed and transported to mass graves. And the principle of proportionality of employed means? Only terrorist bases or military installations that support them could come into consideration as appropriate military targets. In this case, however, the American attack targeted not only terrorist bases but also the reigning government of Afghanistan. This, as I have asserted, represents a significant paradigm shift.

III. THE RIGHT TO SELF-DEFENCE

Countless legal scholars have emphasised the ambiguity, indeed contradiction, of the two resolutions – 1368 and 1373 – passed immediately following September 11. The Security Council qualified the attacks, "like any act of international terrorism, as a threat to international peace and security". These words clearly suggest a course of action in accordance with chapter VII of the Charter, namely a collective response of military or non-military nature under UN leadership. But the Security Council went on to acknowledge “the inherent right of individual or collective self-defence in accordance with the Charter”, thereby leaving the initial reaction to the discretion of the victim state. The wavering of the Security Council is a good indication of the insufficiency of international law to handle a non-state foe whose destructive capabilities are recognised by all.

But this contradiction is not the only sign that the international community was at a complete loss to deal with the violence of the attacks and the obvious threat posed by a group so well-organised and so unscrupulous. This helplessness is also betrayed by the unfortunate wording of the resolution: can one really make the claim that any act of international terrorism is a threat to international peace and security? There is good reason to doubt the soundness of such a claim, which neglects to differentiate degrees of catastrophe and, on top of it all, does not bother with a definition of "international terrorism".
Under article 51 of the UN Charter, a state has the right to defend itself when it is the victim of an “armed attack”. But this right to self-defence is explicitly provisional, valid “until the Security Council has taken measures requisite to the preservation of international peace and security”. Its role is, according to expert opinion, subsidiary to the collective system of peace-keeping.

Since article 51 can be invoked only after an “armed attack”, it is clear that everything depends upon the precise conceptual formulation of what happened on September 11. We may concede that the term “armed attack” is not limited to invasion by a regular army, but also includes “the dispatch by a state of armed bands or groups, irregular or mercenary soldiers to carry out acts of armed aggression against another state.” Not just any criminal act, however, is an occasion to exercise the right to self-defence.

In the present case there could be no doubt from the moment the attacks were qualified as a declaration of war that they would fall under the category of an “armed attack”. This interpretation was confirmed when NATO invoked article 5, which asserts the right to collective self-defence in the event that one of the nineteen member states falls victim to an armed attack. With this, along with the Security Council resolutions, a new precedent has been created in the interpretation of international law. It was nothing new for the Security Council to adopt a resolution characterising terrorism as a threat to peace and security, but invoking the right to self-defence was indeed an innovation, and many legal scholars fear its potentially subversive consequences.

Such a reaction goes to show, once again, how much the traditional categories of international law were overwhelmed by the unprecedented magnitude of this misdeed committed by such a well-organised group. For the right to self-defence had previously been contingent upon a clearly defined set of conditions, closely tied to the criteria for state exercise of force I discussed in part one.

1. The reaction of the victim state must be immediate.
2. The state against which force is applied must have been responsible for the initial aggression. The goal is to respond to an armed attack with a military counter-attack.
3. The application of force must cease when the initial attack has ended or when the Security Council has taken requisite measures.
4. The nature of the operation must be appropriate to the pursued aim, namely to put an end to the initial attack.
5. The state defending itself must respect the internationally recognised principles of conduct in war.

As we can see, the concept of a right to self-defence fits perfectly into the classical, state-oriented mould of international law: the aggressor, the aim and (at least in theory) the duration, are clearly given. But in this case the aggressor, the attack and the appropriate reaction are all matters of interpretation, indeed controversies. I shall examine each in turn:

The Aggressors: As for the direct aggressors, they were destroyed along with their weapons the instant they attacked. If this constitutes an “armed attack”, it ends as soon as it has begun. The right to self-defence, then, does not come into the picture at
all. Of course the indirect aggressors remain, who served as middle-men or provided resources for the attack. But it takes time to identify who they are, so a response to them could not fulfill the condition of immediacy.

Then there is of course the extremely difficult question whether a regime knowingly harbouring terrorists and refusing to comply with UN resolutions concerning the struggle against terrorism can be held responsible for such an act of aggression and treated as an aggressor.24

No one denies that the Taliban government – or de facto government – harboured terrorists and allowed them to use Afghan territory for military training. And no one denies that it provided them with material for organizing and executing their plans. So there is no question that it shared responsibility for the attacks. This conclusion is confirmed by several earlier resolutions of the Security Council condemning the Taliban for refusing to co-operate. Resolution 1267 (1999) even refers in this context to a threat to international peace and security and draws a parallel between refusing to take measures against terrorism and encouraging terrorists to commit acts of violence.25 In fact, the resolution goes so far as to charge the Taliban regime with creating an internationally insecure situation in which chapter VII of the Charter could justifiably be invoked.

But it is important to make a distinction between two questions. First: If a state refuses to co-operate against terrorism and, indeed, supports terrorism: does this suffice to suspend article 2/4, which prohibits the use of force against a state? Second: Can a state that harbours terrorists be equated with an aggressor and become the target of unilateral or collective exercise of the right to self-defence?

The distinction is important because of the different types of response to which it leads. In the first case the refusal to co-operate justifies the UN to take collective action to compel the fractious state to abide by its terms. The coercive measures, however, need not be of military nature. Resolutions 1368 and 1373 express on the one hand determination to take “all necessary steps in order to ensure the full implementation of this resolution”. But, on the other hand, they make no mention of military action and limit themselves to a catalogue of legal and financial sanctions. In other words: as soon as one abandons the classical model of conflict, where the instances of power represent states, the ascription of responsibility becomes an extremely tricky affair with which no international document can help. As for the requirements imposed by the anti-terrorist resolutions of the Security Council, we can distinguish at least three levels:

a) Implication by omission: a state can be held accountable for failing to meet the requirements imposed by the Security Council. This may occur when a state neglects to take the requisite steps to control or cut off the financial resources on which terrorism subsists: when the state, for example, does not freeze the savings and capital of individuals accused of having connections with terrorism.

b) Implication by noncooperation: a state can be held accountable for refusing to fulfil obligations. It refuses, for example, to extradite terrorists or to share information that would help to identify leaders of international networks.

c) Implication by contribution: a state can be held accountable for assisting in planning or funding terrorist attacks.
The aforementioned plenary assembly declared that only this third set of conditions is sufficient to make a state guilty of an armed attack. In other words: it is not enough that a state has neglected to fulfil internationally agreed upon obligations, nor even that a state has violated essential regulations of an agreement. There must be evidence of a direct responsibility for the existence of a terrorist organisation or for the preparation of an attack. These three degrees of implication imply varying degrees of pressure that can legitimately be applied.

The Attack: it must be emphasised that the Security Council carefully avoided talk of an “armed attack” in both of its resolutions of September 11 and 28, preferring to speak of a “terrorist attack”. Of course one could say that the magnitude as well as the instruments (passenger jets were indeed employed as veritable bombs) qualify this terrorist attack as an armed attack, even if the expression has traditionally been reserved for acts of aggression performed by states against the sovereignty and territorial integrity of other states. But even if one takes this step, it does not follow that one can extend the term “armed attack” to include the role played by the government harbouring the terrorists. “This raises first of all the question whether it is admissible to equate planning and assistance with criminal action.”26 And so we meet up again with the difficulty of identifying the aggressor.

The Reaction: by now it should be abundantly clear what position I take. Since I do not think that harbouring terrorist organisations can be equated with committing a criminal act, I do not consider the American military action against Afghanistan an appropriate response to the events of September 11. Having said this, it is important to recognise that there is another perspective from which to scrutinise my answer. The point of the proviso that a state exercising the right to self-defence must react immediately is to limit this reaction to the time required for the UN to prepare a collective response and take over the defence.27 But the American reaction in this case has the peculiar characteristic of having begun almost a month after the initial attack. Furthermore, it is not limited to any particular time frame, nor to the purpose of stopping the initial attack. Its purpose, rather, is to prevent further attacks. Clearly, this represents a paradigm shift. The primary concern is no longer the terrorist attacks of September 11, but the threat presented to international peace and security by internationally organised terrorism.

The task of appraising and meeting this danger should fall to the UN Security Council. There is every reason for concern when the extent of repressive and preventative measures is left to the discretion of a particular state – all the more so, when, to quote George Bush, “this group and its leader [...] are linked to many other organizations in different countries, including the Egyptian Islamic Jihad and the Islamic Movement of Uzbekistan. There are thousands of terrorists in more than 60 countries.”28 Moreover, Bush declared at the beginning of the bombing campaign that all governments tolerating or supporting terrorism would be regarded as “rogue states”. What the president forgot to mention on this occasion is that the US officially finances terrorist training camps and a school by the name of “Western Hemisphere Institute for Security Cooperation” where more than 60.000 Latin-American soldiers and police officers have been trained since 1946, many of whom have organised terrorist actions against prominent political figures and against the populations of Guatemala, El Salvador, Chile, Argentina and Columbia.29 In 1996 the US government had to remove books from the curriculum which provided tips for
terrorists, including recommendations for “blackmail, torture, execution and the arrest of witnesses’ relatives” (ibid.).

I want to express the difficulty of determining the aggressors, the nature of the aggression and the appropriate response with a quote from de Cassese:

“[...] We are confronted here with attacks emanating from non-state organizations, which may be hosted in various countries possibly not easy to identify and, what is more important, whose degree of ‘complicity’ may vary. It would be legally unwarranted to grant the state victim of terrorist attacks very sweeping discretionary powers that would include the power to decide what states are behind the terrorist organizations and to what degree they have tolerated, or approved or instigated and promoted terrorism. A sober consideration of the general legal principles governing the international community should lead us to a clear conclusion: it would only be for the Security Council to decide whether, and on what conditions, to authorize the use of force against specific states, on the basis of compelling evidence showing that those states, instead of stopping the action of terrorist organizations and detaining its members, harbour, protect, tolerate or promote such organizations, in breach of the general legal duty referred to above.” (Cassese, op. cit.).

IV. CONCLUSION

Have the attacks of September 11 provided the occasion for a paradigm shift in international law? I hope it has become clear that I think the level of facts has to be kept distinct from the normative level. Looking at the facts – created by the resolutions of the Security Council and NATO, as well as by the military actions of the United States and its allies – the answer has to be “yes”. This paradigm shift has four aspects, which I summarise as follows:

1) The terrorist attacks were equated with a declaration of war and conceptualised as an armed attack. This extends article 51 of the UN Charter – designed for attacks issuing from states – to criminal acts perpetrated by private individuals.

2) The terrorist attacks spurred the invocation of the right to individual or collective self-defence by the victim state.

3) Not only the direct aggressors were held accountable for the attacks, but an entire state, which violated multiple international agreements by harbouring Al Quaida and refusing to extradite its leader.

4) The delayed start and unlimited duration of the reaction of the victim state created a new precedent, whereby the right to self-defence can be exercised preventatively.

In view of the tragedy of the events and the proportions assumed by organised international crime, it is undeniable that we are experiencing de facto a shift in the application of international law. For this very reason it is important to consider the question whether such a factual rearrangement should be equated with a change in
our normative consciousness. In other words, we need to think about whether the newly manifested brutality of international terrorism call for an alteration of the fundamental principles of international law.

I am not in a position to offer an answer to this difficult question. But I would like to mention a few points that seem to me important in connection with the aspects I have emphasised:

- Official reactions to the events of September 11 have stressed the international dimension of the catastrophe (expressed by the diversity of the victims' nationalities). Although the United States was clearly the main target on this occasion, the whole world has been alerted to the vulnerability of its cities, its infrastructure and its population to such unscrupulous and well-orchestrated attacks. The alacrity and unanimity of international response reflect solidarity: it is paramount that this solidarity be expressed in collective action. Any unilateral initiative may threaten the precarious balance.

- In view of the perfection of the technical means and the extent of the destruction, it is surely unavoidable to broaden the concept of armed attack to terrorist attacks of a certain magnitude. It is probably also necessary to expand the accountability of a state that harbours terrorists and allows them to use its territory for training and weapons-storage. Finally, the magnitude of the catastrophe forces us to accept that the right to self-defence will have to include a preventative element in cases where there is clear danger of further attacks by the same organisation. Considering the unscrupulousness of groups that would not hesitate to use nuclear or biological weapons, it would be somewhat absurd to expect that a state refrain from acting to prevent an attack that were sure to come. Having said this, I do not believe that a broader concept of “armed attack”, nor an expanded accountability of a state for acts of aggression, nor even the necessity of prevention can serve as justification for a state to act unilaterally. It is the task of the Security Council to decide what measures are necessary and to identify guilty parties on the basis of incontestable evidence.

- The expansion of the right to intervene – corresponding to the expansion of the aforementioned concepts – is no carte blanche for the use of force. Measures taken against states or private criminals must be contained within appropriate bounds.

- Terrorist acts of a certain magnitude should be condemned as crimes against humanity. This implies the creation of an international criminal court, to which the US is currently in opposition. An international court would have the advantage of being able to speak on behalf of the entire international community. It would be protected from the charge of partiality.

- The expansion of the concept of accountability would entail that not only direct aggressors could be charged in an international criminal court, but also official members of a government guilty of assisting terrorists. But this would only be credible if all those responsible for state actions aimed to destabilise democratically elected governments or to spread terror in other countries, were tried and held accountable.
In summary, the tragic events of September 11 have undeniably brought about significant changes in international law. Nevertheless, it would be false to abandon the fundamental principles governing the international community, represented by the UN. On the contrary, the attacks have alerted us to the need to expand and improve our collective resources. They have reminded us how important an impartial justice system is. For as long as international law allows a few states to get away with (directly or indirectly) manipulating the interior affairs and the futures of other states, it will be opening the door to anarchy – to the greater benefit of terrorists.

NOTES

1 This text was written immediately after the terrorist attacks of September 11, 2001. Even if many of the issues treated here are closely tied to the historical events, the normative questions they address remain entirely pertinent today.
3 “We know that the individuals who carried out these attacks were part of the worldwide terrorist network of Al-Qaeda, headed by Osama bin Laden and his key lieutenants and protected by the Taliban. On the basis of this briefing, it has now been determined that the attack against the United States on 11 September was directed from abroad and shall therefore be regarded as an action covered by Article 5 of the Washington Treaty, which states that an armed attack on one or more of the Allies in Europe or North America shall be considered an attack against them all.” Cf. http://www.nato.int/doc/speech/2001/s011002a.htm. See also Carsten Stahn, “Security Council Resolutions 1368 (2001) and 1373 (2001): What They Say and What They Do Not Say”, European Journal of International Law, Discussion Forum, http://www.ejil.org/forum_WTC.
5 An important discussion took immediately place on the Web. See the excellent page of the European Journal of International Law: http://www.ejil.org/forum_WTC. For reactions from American legal scholars, see also ASIL (The American Society of International Law): http://www.asil.org/insights/insigh77.htm.
12 Compare with Alain Pellet (2001): “No, This is not War!”, Discussion Forum, op. cit.
15 Cf. Luigi Condorelli (2001), op. cit.
As Cassese emphasizes: “[F]orce may not be used to wipe out the Afghan leadership or destroy Afghan military installations and other military objectives that have nothing to do with the terrorist organizations, unless the Afghan central authorities show by words or deeds that they approve and endorse the action of terrorist organizations.” Op. cit.


As Carsten Stahn emphasises (op. cit.), it is nothing new for the Security Council to deem terrorism a threat to international peace and security. In 1999, Resolution 1267 declared that the Taliban presented just such a threat by refusing to comply with Resolution 1214 (1998), which forbade all states to harbour terrorists within their borders. What is new about Resolutions 1368 and 1373 is that they acknowledge the right of the victim state to self-defence.

In particular Cassese, op. cit.

I shall assume here the criteria introduced by Cassese, op. cit. See also Tomuschat, op. cit.


This qualification occurs also in the Resolution 1333 (2000).

Tomuschat, op. cit., p. 541.

Compare Condorelli, op. cit., p. 838. For an detailed analyse of the right to self-defence, see Nico Krisch (2001), op. cit.
