

## THE AFTERMATH OF SEPTEMBER 11

### FROM A "NON-WAR"...

From his first appearance in public after the attacks against the Twin Towers and the Pentagon on 11 September, George W. Bush has prepared public opinion for a muscular response against the "faceless enemy" who so painfully struck at America, using the charged slogan: "We are at war". This was politically legitimate. But at the time it was legally false and loaded with dangers for the future<sup>1</sup>.

For the attacks of 11 September were not constitutive of an act of war, which presupposes an armed conflict between adversaries if not identified, at least identifiable, to which the "laws and customs of war" can be applied – the old and still precious "Hague rules"<sup>2</sup> and the "humanitarian law of

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\* This article is an English and updated version of two articles published by Alain Pellet, Professor, University of Paris X-Nanterre, Member and former Chairman, ILC (UN) in the French newspaper *Le Monde* on 17 September and 15 November 2001; an English and slightly expanded version of the first one had been published online on the website of the *European Journal of International Law*, <<http://www.ejil.oupjournals.org>; the second part has been translated into English and updated by Sarah Pellet, LL.M., NYU; Legal Advisor; French National Consultative Commission of Human Rights (the views expressed in this article do not necessarily reflect the views of the Commission).

<sup>1</sup> And of potentially extremely grave practical consequences especially with regard to insurance and indemnity of those entitled amongst the victims and airlines. See Bethune (E.), Housman (R.), and Foote (G.), *What's Expected Now: The "Reasonable Man" Standard for Liability is Much Higher Since Sept. 11*, *LEGAL TIMES*, 4 February 2002, Vol. 25, No. 5.

<sup>2</sup> See 1899 Hague Convention (I), 26 *Martens Nouveau Recueil* (ser. 2) 258; 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, 26 *Martens Nouveau Recueil* (ser. 2) 949, 187 *Consol. T.S.* 429; 1899 Hague Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, 26 *Martens Nouveau Recueil* (ser. 2) 979, 187 *Consol. T.S.* 443; 1907 Hague Convention (I), 3 *Martens Nouveau Recueil* (ser. 3) 323, 205 *Consol. T.S.* 216. 1907 Hague Convention (III) relative to the Opening of Hostilities, 3 *Martens Nouveau Recueil* (ser. 3) 437, 205 *Consol.*

armed conflict”, the “law of Geneva”, principally the Red Cross Conventions of 1949 and the 1977 Protocols<sup>3</sup>. This was not an act of war; it was something else, to which our present legal arsenal is poorly adapted.

This was not an act of war, and the “horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania”, to use the words of Resolution\ 1368 adopted the day after by the Security Council<sup>4</sup> were neither an “aggression” in the legal sense of the word, nor war crimes. One might possibly classify them as crimes against humanity under the terms of Article 7 of the Statute of the International Criminal Court<sup>5</sup> since we are surely talking about inhuman acts “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. But, on the one hand, the Statute had not yet entered into force; the United States, moreover, has categorically rejected the Statute, even if one would have clinged to the hope that the terrorist attacks to which it has been subjected might have persuaded the US to put an end to the splendid isolation in

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*T.S.264*; 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, 3 *Martens Nouveau Recueil* (ser. 3) 461, 187 *Consol. T.S.* 227; 1907 Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 3 *Marten Nouveau Recueil* (ser. 3) 504, 205 *Consol. T.S.* 299; 1907 Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War, 3 *Martens Nouveau Recueil* (ser. 3) 604, 205 *Consol. T.S.* 345 and 1907 Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War, 3 *Martens Nouveau Recueil* (ser. 3) 713, 205 *Consol. T.S.* 395.

<sup>3</sup> See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 *U.N.T.S.* 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 *U.N.T.S.* 85; Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 *U.N.T.S.* 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 *U.N.T.S.* 287; Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 *Stat.* 2277, 1 *Bevans* 631. See also Protocol Additional I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 *U.N.T.S.* 3 and Protocol Additional II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 *U.N.T.S.* 609

<sup>4</sup> See S.C. Res. 1368, U.N. SCOR, 56th Sess., 4370th mtg., U.N. Doc. S/RES/1368 (2001) (Threats to International Peace and Security Caused by Terrorist Acts).

<sup>5</sup> See Rome Statute of the International Criminal Court, UN doc. A/CONF.183/9, available on <<http://www.un.org/law/icc/statute/rome.htm>>.

which it has been convinced to place itself as a result of an erroneous feeling of its own invincibility, and the good conscience of a self-proclaimed – and exasperating for the rest of the world – sense of leadership<sup>6</sup>. Moreover, on the other hand, it would undoubtedly be reckless to recognise this definition, which breaks with the very restricted approach taken in Article 6(c) of the Statute of the International Military Tribunal of Nuremberg<sup>7</sup>, which has acquired a customary character. Moreover, this would be, whatever the circumstances, an audaciously constructive interpretation for, clearly, Article 7 of the ICC Statute was not conceived in this spirit<sup>8</sup>.

On another level, one can, if need be, see in the attacks of 11 September a “threat to international peace and security”, in the words of the subsequent Security Council Resolution. This terminology is nothing new: the Council has long considered that an internal conflict can constitute such a threat, and, moreover, it has already qualified “acts of international terrorism” as “threats to the peace”, in particular with regard to the attacks against aircraft at Lockerbie and Flight UTA 772 attributed to Libya<sup>9</sup>. And it is, already, in response to terrorist acts directed against American interests that, in Resolutions 1267 (1999) and 1333 (2000), the Council demanded that “the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted” (in reality the US) and that they “cease the provision of sanctuary and training for international terrorists and their organizations and take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps ...”.

More troubling, by this same Resolution 1368, the Council went as far as to

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<sup>6</sup> See the letter to UN Secretary General Kofi Annan from Under Secretary of State for Arms Control and International Security John R. Bolton, available on <<http://www.state.gov/r/pa/prs/ps/2002/9968.htm>>. See also BRADLEY (C. A.), “U.S. Announces Intent Not to Ratify International Criminal Court Treaty”, *ASIL Insights*, No 87, May 2002, available on <<http://www.asil.org/insights/insigh87.htm>>.

<sup>7</sup> Charter of the International Military Tribunal, annexed to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 82 *U.N.T.S.* 279.

<sup>8</sup> See e.g. the strong opposition, including by the United States, to the Indian proposal aiming at including terrorism as a crime falling under the jurisdiction of the International Criminal Court.

<sup>9</sup> See Resolutions 731 and 748 (1992); see also Resolutions 1054 and 1070 (1996) directed against the Sudan.

consider that the acts of terrorism of 11 September justify the exercise of the "inherent right of individual or collective self-defence in accordance with the Charter". This is, to say the least, an extremely wide interpretation which hardly conforms to the letter of the Charter, Article 51 of which limits the exercise of the "the inherent right of individual or collective self-defence" to cases where "an armed attack occurs against a Member of the United Nations" and this only "until the Security Council has taken measures necessary to maintain international peace and security". Above and beyond this, the measures taken by the Members in the exercise of this right to self defence must, in any case, be "immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the ... Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

This is not the first time that the Security Council has recognised the right to individual or collective self-defence at the same time as not expressly recognising an armed attack. Thus, following the invasion of Kuwait by Iraq, it recognised the existence of a breach of the peace (and not an armed attack)<sup>10</sup>, but nevertheless recognised the right of Kuwait and "states co-operating" with its government to exercise their right to self-defence against Iraq. But that situation was surely closer to aggression, in the classical, "inter-states" sense of the word than in the case of the "attack" against the Twin Towers.

In any case, the question remains as to which means and against whom this self-defence should be directed. The "enemy" operates in disguise. And, even supposing that the author – or authors – of this "armed attack" (to use the expression employed in Article 5 of the Atlantic Pact and the English version of Article 51 of the Charter)<sup>11</sup> are identified, the use of armed force must be subject to the authorisation of the Security Council, which has never been given except if one takes as a blank cheque for ever and against unspecified aggressors the mere mention of self-defence in a Security Council resolution.

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<sup>10</sup> By Resolutions 660, 661 and 674 (1990).

<sup>11</sup> Which speaks of armed attack whereas the French text uses the word "*agression*" ("aggression").

In this regard, Article 5 of the North Atlantic Treaty<sup>12</sup>, does not modify in any way the facts of the problem: regional bodies (which NATO most certainly is, notwithstanding the opinions to the contrary that are sometimes expressed), can only, by virtue of Article 53, Paragraph 1, of the Charter, undertake coercive action with the "authorisation of the Security Council".

Above and beyond this, according to the terms of Paragraph 5 of Resolution 1368<sup>13</sup>, the Council has clearly indicated that it was prepared to take the necessary measures to maintain international peace and security which it has declared to be threatened. It would be contrary to the letter as much as to the spirit of Article 51 that the United States, alone or with other states, were to by-pass the Council for ever and proceed, alone and without its endorsement, with an unilateral armed response against unspecified attackers. What was right in Kosovo would not be right in the current situation: it was clear, in 1999, that the Council was paralysed because of China and Russia; this was not the case in September 2001. Furthermore, it was a question then of intervening to put a stop to the criminal activities of a state, Milosevic's Yugoslavia<sup>14</sup>; this is not the case here, even if the demonisation of the hateful Taliban regime aims, it would appear, to give an inter-state profile to a "crusade" that cannot be contained.

But there is another thing. You do not respond to terrorism with terror. One can understand the United States' reflex for vengeance; but to understand is not to approve. And it would be disastrous to use, in the name of our values, the very same methods as the despicable adversary uses. The so-called crusade for "good" to which we were all called must not take the form of blind and murderous strikes in Afghanistan and then God knows where. It is to the honour of democratic countries that we do not practice the law of retaliation and replace justice with hatred.

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<sup>12</sup> Article 5 of the North Atlantic Treaty provides: "The Parties agree that an armed attack against one or more of them in ... North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area". See North Atlantic Treaty, 4 April 1949, 34 *U.N.T.S.* 243.

<sup>13</sup> The Council thereby "expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001..."

<sup>14</sup> In this sense see Henkin (L.), *Kosovo and the Law of 'Humanitarian Intervention'*, 93 *AM. J. INT'L L.* 824, at 827 (1999).

To bombard Afghanistan at the cost of hundreds or thousands of lives of those who were already victims of the Taliban, or even to kill, without due process, the precisely targeted presumed (and most probably) guilty, could result in the long run to create more "martyrs", setting in train a spiral of hate, and denigrating ourselves in the process.

It was not an act of war; and war was surely not the best response to this "non-war". But resort to force is to recognise that we do not have the proper means to react. For it is difficult to know against whom to respond, but also because the international law currently in force is not well-suited to the new situation and the new forms taken by international terrorism.

### ...TO AN INTERNATIONAL ARMED CONFLICT

However, the facts belie what was true before 7 October. Since the beginning of the American armed intervention in Afghanistan the ambiguity regarding George W. Bush's response has disappeared. Using its "natural right to individual or collective self-defence" as granted by Resolution 1368, the United States took the initiative to create an international armed conflict, in accordance this time with the judicial meaning usually given to this expression. Notwithstanding the fact that the goal remains the eradication of international terrorism, the armed operations were directed against a State, Afghanistan, whose regime had been demonized.

The internal conflict that has been raging between the Northern Alliance and the Taliban for years cannot minimise the existence of an international armed conflict according to the strict meaning of the expression, which has been defined by the ICRC as "[a]ny difference arising between two States and leading to the intervention of members of the armed forces."<sup>15</sup> The absence of a formal war declaration holds no importance since the international armed conflict is a fact, not an intention.

This semantic discussion is not pure judicial quibble. The consequences are essential. Since we are now facing an international armed conflict, the law of the war fully applies. Consequently, the precious, though antiquated "Hague rules," which set forth the standards relating to the conduct of armed operations, and the Red Cross Conventions of 1949 and its 1977

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<sup>15</sup> Pictet (J. S.) (ed.), *The Geneva Conventions of 12 August 1949: Commentary, IV – Geneva Convention relative to the Protection of Civilians Persons in Time of War*, Geneva, ICRC, at 20.

Protocols which general principles must be respected by all parties to the conflict, regardless of the fact that neither the United States (still the splendid isolation...) nor Afghanistan are counted among the 158 ratifying States<sup>16</sup>.

However, it seems that the Bush's Administration is still not willing to recognise the application of the Geneva Convention Relative to the Treatment of Prisoners of War, in particular to the persons currently detained on the Guantánamo US Base<sup>17</sup>. Indeed, pursuant to Article 5 of this Convention, "[s]hould any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal". But this does not prevent the American Executive to considering that neither the Taliban nor Al Qaeda detainees are entitled to the POW status<sup>18</sup>. It is interesting noting that this position has not always been the position of the American Administration. Indeed, in 1987, the then-Deputy Legal Advisor to the U.S. State Department, Michael Matheson, stated that "... we [the United States] do support the principle that, should any doubt arise as to whether a person is entitled to combatant status, he be so treated until his status has been determined by a competent tribunal, as well as the principle that if a person who has fallen into the power of an adversary is not held as a prisoner of war and is to be tried for an offense arising out of the hostilities, he should have the right to assert his entitlement before a judicial tribunal and to have that question adjudicated"<sup>19</sup>.

However, the ambiguity concerning the existence of a state of war does not exist anymore but the feeling of general discomfort remains.

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<sup>16</sup> See *supra*, notes 2 and 3.

<sup>17</sup> See Pellet (S.), *De la morale du plus fort ou comment les Etats-Unis ont (ré)inventé le droit international et leur droit constitutionnel*, ACTUALITÉ ET DROIT INTERNATIONAL, Juin 2002, available on <<http://www.ridi.org/adi/articles/2002/200206pel.htm>>.

<sup>18</sup> See Fact Sheet, Status of Detainees at Guatanamo, Press Release, 7 February 2002, available on <<http://www.whitehouse.gov/news/releases/2002/02/print/20020207-13.html>>.

<sup>19</sup> Matheson (M. J.), *The United States Position on the Relation of Customary International Law to the 1977 protocols additional to the 1949 Geneva Conventions: Remarks*, 2 AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 419, at 425-426 (1987).

The United Nations has adopted three resolutions on terrorism following the events of 11 September. Although the first one, adopted by the General Assembly<sup>20</sup>, can be regarded as insignificant, the two resolutions adopted by the Security Council that followed – Resolutions 1368 and 1373<sup>21</sup> – are very important. However, what is at stake is a radical change of the U.N. stance: in 1990, in the months following the invasion of Kuwait by Iraq, the U.N. adopted five resolutions on the issue, and yet nine more in the following two-month period.

This is a sign. After the collapse of the Twins Towers, the United States has clearly tried to be granted free reign in its war against terrorism by the UN<sup>22</sup>. And, as a matter of fact, Resolution 1368 led immediately to this result since it recognised the United States' "right of self-defence", a right it has since extensively used and seems ready to continue to use, and not only against Afghanistan.

Indeed, self-defence as established in Article 51 of the U.N. Charter is an "inherent right," and not a right whose exercise depends upon a decision of the Security Council. Accordingly, the United States has fulfilled its obligations to a minimum. Pursuant to Article 51 of the U.N. Charter, the United States immediately reported, together with Great Britain, the broad lines of the measures taken to the Security Council<sup>23</sup>. But the spirit of this

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<sup>20</sup> See Resolution 56/1 of 12 September 2001.

<sup>21</sup> See S.C. Res. 1368, U.N. SCOR, 56th Sess., 4370th mtg., U.N. Doc. S/RES/1368 (2001) (Threats to International Peace and Security Caused by Terrorist Acts) and S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001) (Threats to International Peace and Security Caused by Terrorist Acts).

<sup>22</sup> Shortly after September 11, Deputy Secretary of Defense Paul Wolfowitz said, "it's not just simply a matter of capturing people and holding them accountable, but removing the sanctuaries, removing the support systems, [and] ending states who sponsor terrorism," (emphasis added). Dan Ackman, U.S. On Guard, *FORBES.COM*, Sept. 14, 2001, available on <<http://www.forbes.com/2001/09/14/0914disasterday4.html>>. Asked about that comment, Secretary of State Colin L. Powell responded, "We are after ending terrorism. And if there are states and regimes, nations, that support terrorism, we hope to persuade them that it is in their interests to stop doing that ...." Press Briefing, Secretary of State Colin L. Powell (Sept. 17, 2001), available on <<http://www.state.gov/secretary/rm/2001/index.cfm?docid129>>.

<sup>23</sup> On October 7, the United States informed the U.N. Security Council that it was exercising its "inherent right of individual and collective self-defense" by actions "against Al Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan", see Letter from the Permanent U.N. Representative of the United States to the President of the U.N. Security Council (Oct. 7, 2001), U.N.

provision has not been respected. The said Article 51 indeed stipulates that such measures "shall not in any way affect the authority and responsibility of the Security Council ... to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

Although in the paragraph 5 of its Resolution 1368 the Security Council "expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter ...", it has failed to exercise its power to act on the first point. Regarding the first aspect concerning the adoption of measures to counter the attacks on the World Trade Centre and the Pentagon, nothing happened. And even if the threats to international peace and security are real, the United Nations left it to the United States to decide on the appropriate course of action to be undertaken. This is not in conformity with the spirit of the Charter, Resolution 1368, or even the general meaning of collective self-defence.

It would be unfair to blame the United States alone. Each member of the United Nations, and the Secretary General himself, could have put the matter before the Security Council. To the present, however, they have refrained from doing so and have thus contributed to a weakening of the Organisation through the creation of a dangerous precedent that excessively extends the effect of the right of self-defence as recognised in the U.N. Charter. Even more since its exercise ought to respect the principle of proportionality, which one could doubt it was respected by the United States and, in any case, the Security Council is the only one to be able to control its respect.

Resolution 1368 recognised to the benefit of the United States and its allies a right to self-defence, but did not stipulate against whom this right may be exercised. After the resolution's adoption, the Bush Administration designated Bin Laden as the principal target and his network, Al Qaeda, the object of its crusade against "evil".

The answer quickly extended into a fight against the Taliban regime and, after all, no decent person could seriously mourn the loss of this tyrannical fraction. But several questions remain: does one need to destruct a government because it exercises its power in a dictatorial manner or because it protects the leader of a terrorist organisation? Why Afghanistan

and not another country of choice? If the United States decides to execute their "evil axis" threats, who is going to control whether the armed response is allowed?<sup>24</sup>

In fact, by renouncing its powers of control and supervision, the Security Council has in essence given the United States free rein to act as it sees fit, which surely will not rest with the Afghan issue. But what has been given, one can take it back. However, the more time that passes by, the more difficult this will be.

Resolution 1373 of 28 September 2001 unexpectedly enlarged the prerogatives of the Security Council. Prior to the passing of this resolution, a vast majority of internationalists were of the opinion that the Security Council was only able to act in concrete cases requiring actions to be taken. Resolution 1373 goes far beyond this notion. It is a unique resolution in that it bases its arguments on a general and impersonal basis (i.e., "any act of international terrorism ... constitute[s] a threat to international peace and security") and interprets its own authority, under Chapter VII of the U.N. Charter, as capable of taking mandatory decisions that are binding on every State. This is the first time that the Security Council has applied these two principles in a single decision. In itself this mutation is a fundamental one.

By enacting such "international legislation," the Security Council bound all Member States (that is, in fact, all States) to international agreements, even those they did not ratify, in particular the 1999 Convention on the Suppression of the Financing of Terrorism<sup>25</sup>, a convention that was not supported by a large number of States, including the United States. As such, the principle that international agreements shall not bind States unless they have ratified them has been bypassed. The Security Council indeed

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<sup>24</sup> See President George W. Bush, Address to a Joint Session of Congress and the American People, Washington, D.C. (Sept. 20, 2001): "Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen .... We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest [sic]. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime", available on <<http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>>.

<sup>25</sup> International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly 9 December 1999, 39 ILM 270 (2000).

imposed the respect of specific provisions and, by creating a committee to monitor implementation of its resolution, made sure that it would have the means to exert pressures on refractory States.

One could be thrilled by this innovation, but, in truth, the feelings it engenders are mixed. An international government (or parliament) could only justify its actions in the event that they were accompanied by at least the pretence of a fair democratic touch. The Security Council's actions can hardly be construed as fitting this requirement. Of the fifteen representative States composing the Security Council, it is difficult to say that all of them are democratic models. China, Syria and Tunisia all seat in the Security Council. This remark is even more important since Resolution 1373 prevents, concretely, as a result, the parliaments of so called democratic States to pronouncing themselves on the issue.

The United Nations is not present enough regarding the use of armed force but perhaps inordinately present in the field of the fight against terrorism. What will happen tomorrow? It is expected that the United States will not take responsibility for the reconstruction of Afghanistan. The American vision of the United Nations is a utilitarian one, there are doubts about the fact that the international community has found a way to use the Organisation in a proper way: regarding either the conduct of the war against Afghanistan, the reconstruction of the country, or the fight against terrorism. In short, no satisfactory balance between the desiderata of the super power and the rule of law has ever been found.

Resolution 1368, which was adopted in a rush in order to demonstrate solidarity with the United States, leads to a dead-end. Yet, the attitude of the United States could also have been more open, modest, and constructive. Until present, its allies have not deemed it necessary to criticise its self-proclaimed leadership.

In sum, lawyers are like Offenbach's carabinieri – always late for a “war”. The U.N. Charter was conceived in response to the Second World War, and the Atlantic Pact followed the beginning of the Cold War. Even the treaties intended to lead the fight against terrorism in the air (the only branch of anti-terrorist law that is more or less complete) or most recently the Rome Statute creating the ICC are instruments of the last century, the 20th Century.

The horror of the attacks on New York and Washington could and should lead to the rapid adoption of new instruments designed to address the new

threats looming over the world, beginning with the indispensable framework-treaty against terrorism, that the United Nations, bogged down in unreal legal minutiae, has been vainly discussing for ages. It could and should give new impetus to building on the Statute of the ICC whose finicky legalism is already showing its limits. It could and should, above all, persuade us all to reflect on a reform of the system of collective security that was inherited from the two world wars and which only recognises conflicts between States. Problems today, increasingly, transcend frontiers; we need to look for responses adapted to the perverse effects of globalisation.

At least that way some good may come from this evil. The great advances in the law are always the fruit of major crises. And the poignant collapse of the Twins Towers could offer the opportunity, dramatically, to start to build the international law of the 21st Century<sup>26</sup>. As for now, more than six months later, it has not; and the prospects for radical needed changes are fading away.

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<sup>26</sup> In this sense see *e.g.* Slaughter (A.-M.) and Burke-White (W.), *An international Constitutional Moment*, 43 HARV. INT'L L.J. 1, at 1-2 (2002).

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