

United States, The September 11 2001 Attacks

[**N.B.:** On 11 September 2001, members of the al Qaeda terrorist network orchestrated the most devastating terrorist attack in the history of the United States when they hijacked US domestic flights and plunged four commercial airliners into the World Trade Center in New York City, the Pentagon near Washington D.C., and an open field in rural Pennsylvania. Approximately 3,000 civilians were killed that day and the US and world economy was severely damaged.]

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. Similarly, in some of the texts used in the case studies, the facts may not always be proven; nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. The Day the Free World entered a New War

[Source: JACOT Martine, “Le jour où le monde libre est entré dans une nouvelle guerre”, in *Le Monde*, 12 September 2001. Original in French, unofficial translation.]

The day the Free World entered a new war

“What emerges from foreign editorials is that the political face of the world has changed since the attacks perpetrated against New York’s nerve centre on Tuesday, 11 September. The date is regarded as marking a new era, an era in which international terrorism has become a weapon of global warfare capable of striking anywhere. Fear too seems to have spread across the planet live on TV and the internet. The entire free world is now at war, many claim. Editorial writers are divided into several camps, however. The most bellicose among them feel that if responsibility for these attacks is claimed abroad they constitute acts of war which must be responded to with force; the more numerous ‘pacifists’ voices argue that they should be dealt with through the criminal justice system and not by means of the indiscriminate and unjust violence of retaliation. Which voice will be heeded?” [...]

IN THE EUROPEAN PRESS

Süddeutsche Zeitung: “America at war”

“America has been at war since the morning of Tuesday, 11 September. This series of attacks poses a threat to United States sovereignty not seen since Pearl Harbor [...] Not even in their blackest scenarios have terrorism experts and security specialists ever imagined such treachery or destructive power. Nor did they conceive of such precision, such determination, or such desire to kill. [...] Nowhere in the annals of terrorism can one find an event combining such brutality and such symbolism in one diabolical stroke. New York’s World Trade Center was America’s flagship, emblematic of its economic and cultural power – a national symbol. The Pentagon in Washington is the nerve centre of military power and the concrete symbol of an invincible nation [...] certain that it could

never be attacked from the outside.” [...]

Frankfurter Allgemeine Zeitung: “Right in the heart”

“[...] It is not yet known who is behind these attacks. However, one thing is certain: terrorism has become a weapon of war in the twenty-first century.” [...]

The Times (London): “The day that changed the modern world”

“The United States, its allies and the civilised world are at war today against an enemy which, while undeclared, is as well organised and as ruthless as any that a modern state has confronted. [...] The American dream itself was the target of yesterday’s co-ordinated and deadly terrorist attacks on the most potent symbols of Western political, commercial and military power. But it was more than that; it was an attack on civilised liberal society, designed to force all countries that could conceivably be targets to become, in self-defence, high security states. Very few events, however dramatic, change the political landscape. This will.” [...]

B. United States: ICRC condemns Attacks

[Source: ICRC, Press Release, 01/30, 11 September 2001, available on <http://www.icrc.org> ^[21]]

Geneva (ICRC) – The International Committee of the Red Cross (ICRC) is appalled by the devastating attacks that have been perpetrated in the United States today. It expresses its heartfelt sympathy to the victims and their families at this tragic time.

The ICRC condemns in the strongest terms these acts, which have targeted people in the course of their daily lives, spreading terror and inflicting grief among the population. Such attacks negate the most basic principles of humanity.

Discussion

1.
 - a. Were the terrorist acts carried out on 11 September 2001 on the territory of the United States acts of war? Was the United States involved in an armed conflict against those who carried out these acts? Were they acts that triggered an armed conflict? From this viewpoint, is IHL applicable to these acts? Are these acts not covered by other branches of international law? Which ones? Or by domestic criminal law? Can a terrorist act constitute an armed conflict only when it causes a very large number of civilian victims, as was the case for the acts committed on 11 September (over 3,000 deaths)? Did the act of terrorism carried out against the World Trade Center in New York on 26 February 1993, which resulted in six deaths and injuries to approximately 1,000 persons, constitute an armed conflict?
 - b. Can the questions in point 1.a. be answered without knowing who the perpetrators of the acts were? What would your answers be if the perpetrators were *de facto* or *de jure* agents of a State? Of a terrorist group? Of a terrorist group supported by a State? Of a terrorist group finding itself under the effective control of a State? Under the overall control of a State? Of a terrorist group supported by a government not recognized internationally? Does the fact that these acts were launched on US soil influence your answer? Does it matter whether the authorities harbouring this terrorist group were or were not aware that it was going to carry out such acts?
 - c. Is IHL applicable to any conflict between the United States and a terrorist group, if the latter is not acting on behalf of a State? What is the definition of armed conflict? Of international armed conflict? Of non-international armed conflict? Are the acts of terrorism of 11 September covered by the law of non-international armed conflicts? And the fight of the United States against the terrorist groups?
2.
 - a. Is terrorism a matter for IHL? If these acts are considered to have been committed “in time of war”, were they violations of IHL? War crimes? What does IHL have to say about terrorism? (GC IV, Art. 33(1) ^[3]; P I, Art. 51(2) ^[4]; P II, Arts 4(2)(d) ^[5] and 13(2) ^[6])

- b. If these acts are considered to have been committed “in time of peace”, were they crimes against humanity? What are the elements of a crime against humanity? (ICC Statute, Art. 7 ^[7]; **See The International Criminal Court** ^[8])
3.
 - a. To what extent can the United States react to these terrorist acts? Did these acts entail the applicability of Art. 51 of the UN Charter on self-defence? What happens when the perpetrators are not the agents of a State? If the State harbouring the perpetrators of these acts has been identified, can the United States pursue the perpetrators by intervening militarily in that State, on grounds of the right of self-defence? Even if the State did not have overall control over the perpetrators? What happens if the members of the organization that planned and implemented these acts are scattered throughout a large number of States all over the planet?
 - b. How would you characterize the conflict if the United States used armed force to destroy terrorist bases or camps or to kill members of a terrorist organization on the territory of a State that gave its consent to such a military intervention? If the State in question did not give its consent?
 - c. Can it be held that since 11 September 2001 the United States has been involved in a “fight against terrorism” constituting a single armed conflict within the meaning of IHL? Or rather has it been involved in a series of armed conflicts taking place wherever US forces intervene militarily? What are the consequences in terms of applicability of IHL to the various actions taken in connection with the “fight against terrorism”? Is it not rather the case that, when there are no armed hostilities, the “fight against terrorism” is a vast international police operation to which domestic and international criminal law – not IHL – are applicable?
 - d. Do all the persons arrested and detained in connection with the “fight against terrorism” belong to one of the categories of detainees provided for under IHL? Could they be prisoners of war? Protected civilians? Only if they were arrested in the context of an international armed conflict? (GC III, Art. 4 ^[9]; GC IV, Arts 2 ^[10] and 4 ^[11])
4. Could the act of terrorism committed against the Pentagon, near Washington, D.C., be lawful within the meaning of IHL, inasmuch as the building could be considered a

military objective? Would this act be unlawful under IHL inasmuch as it was committed by means of a civilian airliner? Inasmuch as the attackers were disguised as civilians? Inasmuch as a large number of civilians were victims of the attack? Would it be an act of perfidy under IHL? (P I, Art. 37(1)(c) ^[12])

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[8] <https://casebook.icrc.org/case-study/international-criminal-court>

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