

Can International Law Deal with the Threat from Terrorism?

On the morning of September 11, 2001, the sense of security that Americans enjoyed was shattered perhaps forever, in a startlingly short time. As commuters were arriving for another average day at work, the unthinkable happened. Hijackers commandeered four domestic commercial airplanes and diverted them on suicide missions. Two of the planes crashed into the twin towers of the World Trade Center in New York City; a third slammed into the Pentagon building in Washington, D.C.; and the fourth plane crashed into a field in Pennsylvania after passengers and crew apparently struggled with the hijackers for control of the aircraft. The death toll from that morning of terror has been estimated at 3,500 civilians.

With the exception of the Oklahoma City bombing, Americans had perceived terrorism as something that happened in other countries, related to some local conflict in a strange land. But now terrorism had dealt a deadly blow to the heartland of America, striking symbols of American economic and military power. In the ensuing weeks, before the shock could fully wear off, reports of an anthrax exposure in government offices in Washington and in media offices in New York and Florida began to surface. A population already feeling vulnerable now seemed to be facing a new and largely unseen threat, bio-terrorism.

How should an open and democratic nation respond to such terrorist attacks? In a speech to Congress in the days following the attack, President Bush noted that the attacks on New York and Washington constituted an act of war and that the United States was now engaged in the first war of the new millennium. He warned that it was not the kind of war that Americans were used to. It would be a war with an invisible enemy and no obvious battle lines. It would be a protracted war, without the kind of large-scale battlefield victories that traditional warfare affords. President Bush also warned that his government would target not only terrorists, but any states that provided support and safe haven for them to operate. As he called on Americans and allies to rally to support this new war, he ensured them that they would prevail.

Subsequently, analysts debated the best way to respond to terrorism. Some counselled swift, strong military action as the only way to send the right message to the terrorists. A few even suggested that given the nature of the enemy, tactics such as selectively targeted assassinations of terrorist organizers should be used. The argument was that since terrorists operate outside the law and are highly skilled at covering their tracks, normal legal means of responding to terrorism are ineffective.

Others were reluctant to endorse a military response. A military rejoinder, they suggested, would only further legitimize the hatred and violence mobilized by the terrorists. Instead of seeing the terrorist actions as an act of war, they should be deemed criminal acts. As a democratic state, the United States could best fight terrorism by keeping to the rule of law and working within existing diplomatic and legal channels to bring the perpetrators to justice. This itself would be a testament to the fundamental values for which democracies stand. Furthermore, by showing that the rule of law can be applied through international institutions, a broader sense of cosmopolitan democracy would be demonstrated. And treating the terrorism as a criminal act means that military measures should take a back seat to more traditional investigative processes and court proceedings.

Would such an approach work?

Introduction to Readings

In the reading by David Held, he contends that although the attacks were appalling in their destruction, people who live in democracies should not lose sight of the fundamental values at stake. A commitment to fundamental principles of the rule of law and justice are critical in responding to the events of September 11, 2001.

In the reading by Ed Morgan, a professor of international law at the University of Toronto, he looks at the problems in relying on international law to respond to terrorism. He finds that existing international legal institutions are not up to the task of curtailing armed terrorists operating on a global basis.