

The Attack of September 11, 2001, the Wars Against the Taliban and Iraq: Is There a Need to Reconsider International Law on the Recourse to Force and the Rules in Armed Conflict?

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I. Introduction

The attack of September 11, 2001 against the United States, the war against the *Taliban* in reaction thereto, and, in particular, the war against Iraq in 2003 have prompted dissonant views concerning the international law regime governing the recourse to military force. Some commentators have deplored the military actions taken by the United States and its allies against the *Taliban*, and particularly against Iraq as being in violation of the international law prohibition against the unilateral use of force. They take the position that such practice is likely to erode the principle that prohibits resort to force in international relations. Others have argued that these incidents make it necessary to reconsider the scope and content of the principle of the prohibition of the use of force.¹ The issue is a complex one.

It is not only necessary to consider the ambit of the international law prohibition of the illegitimate recourse to force or — to phrase the question in a different way — under what circumstances or in pursuing what objectives is recourse to force legitimate under international law, but also to determine which law governs the respective military conflict and the period thereafter. To put it more generally, the attack of September 11, 2001, the war against the *Taliban* and the war of 2003 against Iraq have put the *ius ad bellum* and the *ius in bello* on the test bench. None of these incidents should be considered in isolation; they should also be seen in connection with the war against Iraq in 1990/1991 and the military intervention in the former Yugoslavia in 1999. What is of interest for the development of international law is whether the actions taken by the United States and its allies and the reaction thereto from the international community reveal a pattern or a tendency indicating that there have been changes in the international law concerning the use of force and the law in armed conflict.

As will be shown later, international law and customary international law are quite responsive to new challenges.

Two different situations have to be taken into consideration. Where no international rule exists, it is much easier to agree in favour of the development of new rules. However, where the development of new rules

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¹ W.M. Reisman, "Assessing Claims to Revise the Laws of War", *AJIL* 97 (2003), 82 et seq.