

The virtue in declaring an armed attack an 'act of war' in the present situation is that it transforms the domestic legal setting to one where the government can not only assume exceptional powers but also support/compensate commercial entities of huge national importance (e.g. airlines, insurance companies) where their operations have become commercially unviable through no fault of their own. That would seem fair and acceptable when the commercial climate has been adversely changed by non-commercial (military or quasi-military) events. Anti-competitive-type legislation may become irrelevant in these situations.

Another aspect of course, in declaring a state of war, is that military force may thereafter be used without the constraints that would apply in the case of normal civil enforcement.

The problem now is that the 'enemy' is faceless and hidden, but this is where customary IN law has to adapt. The issue is not who applies the force, the issue whether the scale of the force is such as to endanger a whole society. A society (nation) must be entitled (by adaption from customary law) to declare war against such a 'threat' (regardless of its unidentifiable elements), and assume all the powers necessary to overcome the threat and secure its national (state) survival.

Certainly if it is found that particular states have harboured terrorist groups that have attacked other states, then a state of war may be declared against such harbouring states (and possibly should be). In any event, regardless of state involvement/complicity with terrorism, individuals or groups of individuals committing offences of the kind we have witnessed recently are committing 'crimes against humanity' and can be and should be pursued and prosecuted by any state (most of which would be bound to do so) by virtue of the universal jurisdiction conferred on them by many and various multilateral treaties in that regard.

These (terrorist) people and their associates, when apprehended, should be tried by an international court so that they may be condemned for their international crimes and crimes against humanity, the principal victims of which were men, women and children within the protection of the United States.

The 'state' perpetrators would be subject to the sanctions of the UN Security Council which now has the means to enforce sanctions against them for these serious violations of the basic principles of the UN Charter.

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