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Legitimate Use of Military Force Against State-Sponsored International Terrorism

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BOOK REVIEW

Legitimate Use of Military Force Against State-Sponsored International Terrorism

REVIEWED BY MARIANNE O. LARIVÉE*

ERICKSON, R., *LEGITIMATE USE OF MILITARY FORCE AGAINST STATE-SPONSORED INTERNATIONAL TERRORISM*, Air University Press, Maxwell Air Force Base, Alabama (1989); GPO-008-070-00631-6, 267 pp. \$10.00

As the title suggests, this book examines the legal ways in which armed force, in contrast to civil police action, can be used against international terrorism and its state sponsors. The book is useful to both the lawyer and the lay person, providing an extensive study of terrorism and the means to combat it on an international level. The study identifies principles of international law which decisionmakers must consider before using military force against terrorism. The basic text provides a clear, rational analysis of international terrorism and its treatment. The footnotes at the end of each chapter provide an exhaustive treatment of the legal issues and concepts.

Erickson provides a working definition of terrorism as a foundation for discussion of the problem. Incorporating ideas from a number of sources, he concludes the following:

Terrorism is the unlawful use or threatened use of force or violence against individuals to generate fear with the intent of coercing or intimidating governments, societies, or individuals for political, social, or ideological purposes.

The author argues that although state sponsorship is not a precondition of international terrorism, the level of state involvement (from greatest to least: sponsorship, support, toleration, and inaction) determines the legal remedies available to the harmed state.

The book continues with a historical review of terrorism, pointing out instances in which terrorism has changed the course of history. Although

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significantly fewer terrorist incidents occur than ordinary violent crimes, Erickson explains that the effects of terrorist acts are more far-reaching than numbers would indicate. For example, the 1983 and 1984 bombings of the U.S. Embassy in Lebanon, and subsequent withdrawal of U.S. forces, allowed more radical elements to take control of the country. Fear of terrorism has caused worldwide alarm. Other examples given include the rash of airline hijackings in the 1970's and the 1979 seizure of the U.S. embassy in Tehran, when the U.S. itself was held hostage for 444 days.

The effects of terrorism have shaken confidence in governments. This loss of confidence was illustrated in the U.S. in 1986 when the Reagan administration revealed that it had sold military arms to Iran in exchange for the release of American hostages in Iran. Diplomatic relations between countries have also been adversely affected; for example, in April 1984 the shooting of a London policewoman in front of the Libyan People's Bureau ruptured diplomatic relations between Great Britain and Libya.

These examples are used by Erickson to support his thesis that terrorism has become a serious challenge to international world order as it has become more widespread and acceptable as a form of political action. While modern conventional war is expensive and destructive, terrorist acts can provide an impact that could not be achieved in a conventional arena at a lower cost. Moreover, recent developments such as state sponsorship and networking between terrorist organizations provide the terrorists themselves with capital, arms, training, and protection, exacerbating the threat to international order. By stressing the increasing seriousness of terrorism, the author lays a basis for the use of military force in particular situations.

Erickson discusses two approaches to terrorism encapsuled in the question: Should we address terrorism in a law enforcement capacity, or should the approach be more combative, using the law of armed conflict? Erickson compares and contrasts these approaches, focusing on two major differences: law enforcement treats terrorism as a criminal act and therefore a civil responsibility, whereas the law of armed conflict (LOAC) considers international terrorism primarily a military responsibility.

Under the law enforcement approach, civilian authorities are responsible for the arrest, prosecution, and imprisonment of terrorists. There is little agreement, however, over the requirements of international cooperation, what terrorism is or what the consequences of a terrorist act should be. This disagreement limits authorities in all areas of police action. Ideally, terrorism would be internationally outlawed like piracy or slave trading. Efforts to define and outlaw terrorism have failed amid debate over terrorist causes, and have not focused on the terrorist acts themselves. Effective extradition agreements have been difficult to achieve since political offenses are usually excluded. Third world nations have typically been concerned about national liberation movements, and it has been difficult to obtain their support.

The LOAC approach absolutely and unconditionally bans terrorism, regardless of the justness of the cause. A fundamental tenet of this approach is the distinction between combatants and noncombatants; i.e., civilians and civilian property can not be direct objects of attack. Other LOAC prohibitions include the taking of civilian hostages, killing prisoners, and using weapons which cause unnecessary suffering. Under the LOAC approach, terrorists are unlawful combatants and are afforded prisoner of war status. The LOAC approach also includes a universal obligation for states to prosecute or extradite terrorists.

The author explains that the West has, for the most part, chosen the law enforcement approach to terrorism. In the U.S., domestic terrorism (that is, action that has nothing to do with foreign policy) is primarily the responsibility of the FBI, while the Department of State is the lead agency for combatting international terrorism (rather than the Department of Defense). Other Western democracies have organized their response along a similar, civil police vein. Erickson argues that the law of armed conflict approach offers greater potential in dealing with terrorism, and he urges the reader to reconsider the choice our decisionmakers have made.

The book goes on to examine the duties that states owe each other in the international community, and the rights of one state against another in the face of state-sponsored terrorist activity. Erickson proposes that before a state may be held accountable for its sponsorship or support of international terrorism, a link must be made between that state and the terrorist act. The suggested burden of proof for this link has been widely debated and has ranged from "beyond a reasonable doubt" to "substantial evidence." The author uses the standard suggested by the late William J. Casey: sufficient evidence to persuade the international community of the propriety of any proposed intervention. Such persuasion depends on the threat, the response, and the audience. Obviously, different audiences will have different views.

Compounding the problem is the fact that some evidence may be collected by intelligence sources we do not wish to reveal; thus the evidence cannot be presented in an international forum. Moreover, even if a sufficient link is shown between a state and the terrorist activity, intervention must be justified with legal support, such as self-defense or peacekeeping, to permit the use of force.

The heart of this study, then, is to analyze legal arguments supporting the use of force to combat terrorism. These arguments include individual self-defense, collective self-defense, regional enforcement action, regional peacekeeping, invitation, peacetime reprisal, protection of one's own nationals, humanitarian intervention, and hot pursuit. Erickson concludes that the various forms of self-defense offer the strongest legal bases for forcible action, and he outlines the conditions that must be satisfied before self-defense can be a valid option.

Lt. Col. Erickson summarizes his discussion by establishing overall

limits for the use of force. First, the use of force must be strictly limited to achieve a specific objective. Second, force used must be proportional to the injury suffered. Third, the use of force must be a last resort. Finally, the acting state must immediately report its actions to the appropriate world community agencies. Ultimately, the state exercising the use of force has a heavy burden of proof to show the world community and its public at home that its actions are legal. The harm caused by the intervention and use of force must be less serious than the harm caused by unchecked acts of international terrorism.

This book provides a scholarly and insightful perspective on satisfying that burden of proof, and it challenges our key decisionmakers to consider an alternate approach in dealing with international terrorism.