



# Legitimate Use of Military Force against State-Sponsored International Terrorism

*Richard J. Erickson, Lt Col. USAF*

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This study should help us as a nation deal with being uncertain as to how best to deal with the threat posed by terrorism. We do not understand international terrorism in an international law context. We tend to emphasize the inadequacies of international law in dealing with terrorism without fully comprehending the usefulness of international law. We need an anchor for our thinking and for our actions. We need to return to basics, to grasp the fundamentals. We need to clarify in our own minds what our legal approach to international terrorism should be and what assumptions we must make in taking such an approach. Both private and public studies, including one by the Vice President's Task Force on Combatting Terrorism, have called for an in-depth legal analysis of this social phenomenon. As members of a democratic society we are governed by the rule of law. Yet, we know so little about the role of law in combating international terrorism, which is both ironic and sad. We need to improve our intellect and sharpen our insight into such issues as: What is the legal responsibility of one state to another and to the international community concerning terrorism? How should terrorism be approached? Should it be considered a criminal activity in a law enforcement context or should it be viewed as a combatant activity in an armed conflict context? What legal reasoning exists to support the use of military force against international terrorists as well as their state sponsors and supporters? This study, written for both the lawyer and the lay person, explores these and other legal issues. For the benefit of the general reader, the text has been written with minimum reliance upon legal jargon. The legal scholar should refer to the endnotes for a more exhaustive legal treatment of concepts and issues. Chapter 1 looks at the nature of international terrorism and the seriousness of the threat. This chapter is important because it provides a foundation for judging what legal approach we should take to terrorism. It also examines some of the factors that we must consider in deciding on an appropriate legal basis for the employment of military force abroad in combating terrorism. Chapter 2 addresses choice of law, reviewing the pros and cons of various legal approaches to dealing with terrorism. Should the approach be essentially law enforcement or should it be combatant? Should the challenge of international terrorism be viewed as a peacetime crisis or as a situation of armed conflict? Does the degree of state sponsorship or support make a difference? Chapter 3 examines the much overlooked concept of state responsibility. State responsibility is the international law concept of the duty that one state owes to another in the international community. States that sponsor or support terrorist activities against other states do so in disregard of their state responsibility. When this occurs what rights does the injured state acquire? Chapters 4-6 form the core of the study. These chapters show how, throughout the twentieth century and culminating with the United Nations Charter, the international community has sought to restrain the use of force as a method for resolving international disputes. Today, only a limited number of circumstances justify the force option. These circumstances are contained in legal concepts or principles that, if satisfied, could serve as a rationale for legitimate use of military force abroad. Such principles include, for example, individual and collective selfdefense, anticipatory self defense, regional peacekeeping, protection of one's nationals, and invitation. Chapter 7 summarizes the lessons learned and offers some thought about future directions. Finally, a detailed bibliography provides the reader with a starting point for further independent research.

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