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Apocalyptic Terrorism: The Case for Preventive Action

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Key Points

The judicious use of decisive force against terrorists and their support structures is a vital component of the U.S. strategy to defeat global terrorism. Another component is the development of a consensus that terrorism is contrary to international norms of behavior. Achieving such a consensus will be possible only if the United States can convince the world community that the counterterrorist struggle is being conducted in accordance with these norms.

The United States, therefore, needs to articulate a strong case for the right of antiterrorist intervention based on three concepts adapted from international law:

- **the classification of terrorists as the common enemy of humankind**
- **a renewed emphasis on sovereign responsibility as the corollary of sovereign rights**
- **application of the logic of the inherent right of self-defense to the realities of 21st-century terrorism.**

Achieving global consensus on a doctrine based upon these points will not be easy. But by articulating these principles and building on such steps as the North Atlantic Treaty Organization and Organization of American States characterizations of the 9/11 strikes as "armed attacks," the United States and its allies can create a body of customary international law around which global consensus in support of a right of antiterrorist intervention can coalesce.

The nature and capabilities of 21st-century terrorists, especially those such as al Qaeda and its allies who pursue an apocalyptic agenda, make it essential that governments can take decisive preventive action, including the use of force, rather than waiting to respond to attacks after the fact. In certain circumstances, this means being able to conduct military operations on the territory of foreign countries without their consent.

Immediately after 9/11, there was little need to ponder the legitimacy of such action; global opinion expected—indeed, demanded—a robust response to the attacks that took place. Three years later, however, a worldwide consensus can no longer be taken for granted. Increasingly, voices are heard arguing that the United States lacks a sound legal basis for resorting to force in its global campaign against terrorism.

Maintaining international support for the war on terrorism demands that the United States confront head-on the complex issues raised by critics by articulating and generating support for an unassailable, legitimate basis for current and future action. In fact, the United States has a strong case that operations against terrorists on foreign soil are justified under international law and consistent with the United Nations (UN) Charter.

A Different Threat

Today's terrorist threat is decidedly different from that of the late 20th century. The radical Islamist terrorists who constitute the gravest danger operate from different motivations than their predecessors of 20 to 30 years ago, or even more territorially motivated jihadists of today such as Hamas and Hezbollah. As Bruce Hoffman observed several years before the attacks of September 11, terrorism motivated by extreme interpretations of religious doctrine "assumes a transcendental dimension, and its perpetrators are consequently unconstrained by the political, moral or practical constraints that may affect other terrorists."[1] No longer can we take for granted, as Brian Jenkins put it, that "terrorists want a lot of people watching and a lot of people listening and not a lot of people dead."[2] Some terrorists, at least, want thousands of people dead, and the fruits of globalization have afforded them such extraordinary reach and lethality that they can now make that wish come true.

A different threat implies a different strategy for combating it. It is not enough to plan defensive measures premised on raising the risks to would-be attackers if they are bent on killing themselves as an integral part of the terrorist act. In the best case, defenses may be able to hold losses at a level to which the public becomes inured, but they can never be so effective as to deter future attacks or provide a guarantee against terrorist successes. Efforts to undercut popular support for terrorist movements and stem the flow of recruits by addressing the underlying causes of terrorism are essential, but the agenda of Islamist terrorists is so transcendent and the grievances that their supporters harbor so sweeping that addressing root causes will take decades at least. Finally, the attacks of 9/11 drove home that the traditional approach of relying on the criminal justice

system to capture and prosecute terrorists after the fact was inadequate to prevent them from doing catastrophic harm.

Meeting the terrorist challenge therefore requires a combination of defensive and offensive measures. *Offensive* in this context does not mean only measures using force but rather the entire spectrum of military and nonmilitary capabilities that can actively be brought to bear for the purpose of disabling and destroying terrorists, their organizations, and their support structures without waiting for them to attack again.

Experience has shown that when a state relies on prolonged or excessive use of violence against terrorists or insurgents, its own legitimacy tends to be eroded while the terrorists' credibility is enhanced. This process can further alienate those already sympathetic to the cause espoused by the terrorists, generate more recruits, and reduce the will of the target population to resist. In many cases, tasks that could be carried out by use of force—even the physical destruction of terrorist capabilities—could also be accomplished through diplomatic, intelligence, and law enforcement means. Nonmilitary action is therefore preferable—when it can be effective—purely as a matter of policy, even without taking international legal issues into account.

Nevertheless, in some situations decisionmakers in the United States or other countries will find it necessary to employ force against terrorist organizations, operatives, or infrastructures in foreign countries. Moreover, it will sometimes be necessary to do so without the consent of the government on whose territory force is used. Terrorists may be planning to stage an operation from a country whose government is unable to exercise full control over its own territory but is equally unable to agree to the presence of foreign forces on its soil. They could be operating with the witting acquiescence of a corrupt or incompetent government or even be in league with it. Even where the host government is prepared in principle to act against terrorists, there might be situations in which the threat is so pressing, the target is of such paramount value, the intelligence about it so perishable, and the risk that discussions with the host government will compromise the operation so high, that a strike must be conducted completely without warning.

International Justification

The question is how this reality—that states targeted by terrorists will find themselves compelled to use force on foreign soil without the consent of the foreign government—could be reconciled with the conventional understanding of the principles of international law, which emphasizes noninterference in the affairs of other sovereigns and renunciation of the use of force. Some might argue that the issue is purely academic—that in such cases, *raison d'état* will simply trump the niceties of international law. But the issue is actually far from academic. On the contrary, the United States and other countries that are in the forefront of the fight against global terrorism have two strong realpolitik interests in developing and articulating an international legal theory that can accommodate such use of force.

a core element in the defeat of terrorism must be a global grassroots consensus that all acts of terrorism are illegitimate

First, from a practical point of view, most actions against terrorist organizations have to be conducted by, or at least in cooperation with, the governments of the states in which the terrorists are to be found. No organization—not even the Department of Defense—has the resources, knowledge, or contacts necessary to locate, identify, and target terrorist leaders, operatives, and supporters everywhere in the world. Strictly from an American point of view, foreign governments will be more likely to cooperate with the United States if they are satisfied that the U.S. antiterrorist campaign is founded on a sound legal basis. Conversely, they will be less cooperative if they believe key aspects of the American strategy, such as unilateral military action, are beyond the legal pale.

Secondly, a core element in the ultimate defeat of terrorism worldwide must be to build a global grassroots consensus that "all acts of terrorism are illegitimate, so that terrorism will be viewed in the same light as slavery, piracy, or genocide: behavior that no respectable government can condone or support and all must oppose."[3] Articulating a legal and moral underpinning for the war on terrorism is essential to building such a consensus.

Among the most important aspects that must be addressed is the rationale by which the United States or any other country can claim the right to use force against terrorists on the territory of a foreign sovereign. Such a rationale can be built on three principles adapted from well-established concepts in international law:

- terrorists fall within the 2,000-year-old category of "common enemy of humankind"
- sovereign responsibility for suppressing terrorists and other threats to international peace and stability is the corollary of sovereign rights to participation in the family of nations
- the use of force against terrorists is justified by the inherent right of self-defense.

The Common Enemy

The Roman statesman Cicero was apparently the first to issue the now-famous legal maxim, *Pirata est hostis humani generis*, "a pirate is the common enemy of humankind." The implications of that characterization varied over the centuries as the nature of the international state system evolved,[4] but for more than four centuries the general understanding of its meaning has been that expressed by the Italian theorist Pierino Belli, who wrote that war could be commenced against pirates without a declaration of war because "they are both technically and in fact already at war; for people whose hand is against every man should expect a like return from all men, and it should be permissible for any one to attack them."[5] Two centuries later, the great English jurist, Sir William Blackstone, provided a formulation that has shaped how the expression *hostis humani generis* has been understood ever since. Given that a pirate, wrote Blackstone, "has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him."[6]

Over the course of the 19th century, a number of states (notably the United Kingdom and the United States) acted upon the right or even, as Blackstone phrased it, the *obligation* of all states to make war on pirates to an extent

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that can be said to have established this obligation in international law by virtue of customary state practice.[7] Since then, a number of governments, courts, and legal scholars have sought to expand the concept of "common enemy of humankind" to slave traders, war criminals, and torturers, with varying degrees of acceptance in the international legal community. To none of these categories, however, including pirates, does the term apply with greater precision than to international terrorists.

As the UN Security Council stated in Resolution 1368, passed the day after 9/11, any act of international terrorism is "a threat to international peace and security." Resolution 1377, passed 2 months later, went further, declaring that "acts of international terrorism constitute a challenge to all States and to all of humanity" and that "acts of terrorism endanger innocent lives and the dignity and security of human beings everywhere, threaten the social and economic development of all States and undermine global stability and prosperity."

Even if terrorism had none of these pernicious international effects, the very nature of terrorist methods would suffice to place their exponents in the ranks of enemies of all humankind. The hallmark that most clearly distinguishes the terrorist from the insurgent—the intentional targeting of noncombatants—flagrantly defies the law of nations as embodied in the Geneva Conventions and other treaties, the centuries-old laws of armed conflict, and the teachings of all major religions. Moreover, the peculiarly apocalyptic form of terrorism represented by al Qaeda and its ideological allies is a direct challenge to the legitimacy of the entire international state system just as much as 19th-century anarchism ever was.

Defining terrorists as the common enemies of humankind creates universal jurisdiction for states to take legal action against them. Until now, prosecution of international terrorists outside the jurisdictions where they committed their crimes has been based on the passive personality principle. That is, states have asserted the right to act against those who harm their own citizens. However, as Hugo Grotius wrote:

It must also be known that kings, and any who have rights equal to the rights of kings, may demand that punishment be imposed not only for wrongs committed against them or their subjects, but also for all such wrongs as do not specifically concern them, but violate in extreme form in relation to any persons, the law of nature or the law of nations.[8]

This universal principle has been applied to piracy, slavery, genocide, and hijacking, and many have contended that it should also apply to egregious violations of human rights. There can be little disagreement that terrorists meet Grotius' standard of "violat[ing] in extreme form . . . the law of nature or the law of nations." That being the case, all states must have the right to punish them regardless of where the terrorist act takes place or against whom.

Sovereign Responsibility

For our present purposes, however, the effect of declaring terrorists to be common enemies of humankind in regard to how they are prosecuted is less relevant legally than its implications for how they are prosecuted militarily. Those implications are set forth in Blackstone's commentary on piracy: since they have declared war "against all mankind, all mankind must declare war" against them. Note that Blackstone says "must," not "may"; states are under a positive duty to make war on the common enemies of humankind.

the idea that sovereignty carries responsibilities as well as rights is central to the entire concept of statehood

We are so accustomed to hearing about the rights of sovereign states that asserting the existence of sovereign duties and responsibilities may sound strange. Yet the idea that sovereignty carries responsibilities as well as rights is central to the entire concept of statehood that dates back to the classic period in the development of the nation-state system. For example, "wielding effective power in the territory under its control"[9] is one of the criteria for a government's recognition as part of the international community of states. It is also a well-established principle that "states are under a duty to prevent and suppress such subversive activity against foreign Governments as assumes the form of armed hostile expeditions or attempts to commit crimes against life or property."[10] It is difficult to imagine an activity that fits this description better than terrorism.

In responding to the September 11 attacks, the UN Security Council also spoke in terms of the duties and responsibilities of states. Resolution 1373 (2001), a chapter VII resolution that is binding on all members, *requires* states to suppress the financial and recruiting activities of terrorist organizations, block the supply of arms to them, provide warning to other governments of terrorist threats, deny terrorists safe haven, prevent their movements, and punish them through the criminal justice process. What is especially important is that states must "prevent those who finance, plan, facilitate, or commit terrorist acts from using their respective territories for those purposes against other countries and their citizens."[11]

The best answer to the scourge of terrorism would be for each sovereign state to live up to these responsibilities by suppressing any terrorists within its own territory, and especially by preventing them from using its territory as sanctuary or as a launching pad for attacks on others, as required by both customary international law and the Security Council resolutions. If they all did so, there would be no need for any state to conduct counterterrorist operations on foreign soil. Yet, as noted, some governments lack the ability or the will to prevent terrorist groups from operating from their territory. Some even collaborate with them.

This leads to the core of the argument. As the then-director of policy planning for the U.S. Department of State expressed:

Sovereign status is contingent on the fulfillment by each state of certain fundamental obligations, both to its own citizens and to the international community. When a regime fails to live up to these responsibilities or abuses its prerogatives, it risks forfeiting its sovereign privileges including, in extreme cases, its immunity from armed intervention.[12]

As we have just seen, the principle that the suppression of terrorism is one of these fundamental obligations has specific Security Council sanction.

Self-Defense

Among the less publicized provisions of Resolution 1373 was a reaffirmation of every state's inherent right of individual and collective self-defense in the specific context of responding to terrorism. This right, of course,

lies at the foundation of the entire international state system and was already enshrined in Article 51 of the UN Charter, so what is the practical effect of this reaffirmation? It is not easy to say with certainty what the Security Council itself had in mind; there may well have been as many views of that as there were countries voting for the resolution. An examination of the body of customary international law on the right of self-defense, however, will lead to some useful insights into the effects of applying this principle to the problem of terrorism.

An accepted principle of customary international law is that "all acts of [administrative officials and military and naval forces] in the exercise of their official functions are prima facie acts of the State."[13] This principle is also set forth in the UN International Law Commission's 2001 Draft Articles on State Responsibility: "The conduct of any State organ shall be considered an act of that State . . . even if it exceeds its authority or contravenes instructions."[14] Moreover, a state's intentional or culpably negligent failure to prevent private groups—such as terrorists—from harming other states is also an act for which the host state bears responsibility.[15]

Under normal circumstances, a state is not entitled to use force to exact redress for another state's violations of its responsibilities. As the Draft Articles on State Responsibility put it, "Countermeasures are limited to the nonperformance for the time being of international obligations of the State taking the measures towards the responsible State."[16] The need to defend oneself against anticipated terrorist attacks, however, cannot be categorized as normal circumstances. Indeed, that the compilers of the 2001 Draft Articles did not have terrorism in mind when they prepared them is evident from the fact that the words *terrorism* or *terrorist* appear nowhere in the document, even though it was released only 2 months after the September 11 attacks struck the city where the UN headquarters resides.

It is therefore reasonable to conclude, especially in light of Resolution 1373, that the victim of a state-sponsored or state-tolerated terrorist attack does indeed have the right, under Article 51, to exercise force not only against the terrorist group conducting the attack, but also against the state that sponsors or hosts the terrorist group, just as if that state's military forces had launched an armed attack.[17]

The more difficult case is one of a government that, despite its best efforts, is unable to prevent terrorists from conducting operations on or from its territory. In this case, the injured party may have no legal basis to hold the host state itself responsible,[18] but that does not negate its right, based on the principle of self-defense, to take military action on the territory of the host state against the actual armed groups of terrorists.[19]

There is ample precedent in the classic principles of customary international law for such action. For example, on numerous occasions in the 19th century, naval forces engaged in suppressing piracy entered foreign territorial waters and even put troops ashore to attack pirate ships in their havens. The United States asserted and exercised the right in the early 20th century to send troops into Mexico to pursue and punish bandits who had conducted cross-border raids against American towns. Lastly,

the UN Charter is not a suicide pact

and most germane to the issue here, was the so-called *Caroline* episode of 1837, in which British forces entered U.S. territory from Canada to destroy a steamboat being used by insurgents to stage armed attacks across the Niagara River. The British government defended its action on the basis of self-defense. In response, Secretary of State Daniel Webster formally acknowledged the principle that under certain conditions a foreign state would have the right to conduct such operations on U.S. soil, although he denied that those conditions had been met in the specific case at hand.

Some would argue that whatever such rights that may have existed in the 19th century have been curtailed by the UN Charter, especially the provisions in Article 2(4) on renunciation of the use of force. Given that all UN members have committed to these principles, it is asked, how can any state be justified in unilaterally attacking another for failing to live up to its antiterrorist obligations, rather than taking the matter before the Security Council?

Two points can be made in response to this argument. First, documents such as the charter always embody balances between competing rights and obligations. When these come into conflict, the document must be interpreted in a way that furthers the underlying principles and purposes for which the document was developed. U.S. Supreme Court Justice Robert Jackson once observed that the Constitution's Bill of Rights is not a suicide pact.[20] Neither is the UN Charter. The no-use-of-force clause in Article 2(4), therefore, must not be interpreted so restrictively that it has the effect of protecting and facilitating practices such as terrorism, which (as Security Council Resolutions 1368, 1373, and 1377 declared) are totally contrary to the purposes of the United Nations.

Secondly, the text of Article 2 makes clear that the renunciation of the use of force is not all-encompassing. The text says that members must refrain from the "threat or use of force . . . *against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations* [emphasis added]." Most international lawyers interpret the Article 2(4) renunciation of force as admitting of exception only in the case of collective action by the Security Council or exercise of self-defense against armed attack under Article 51.[21] But the phrase "territorial integrity or political independence" would be superfluous if the framers of the UN Charter intended this renunciation to cover every situation except self-defense. Indeed, they could have left the paragraph in its original form as drafted at Bretton Woods: "threat or use of force in any manner inconsistent with the purposes of the Organization."[22] They did not, and we must therefore assume that the qualifying language added in the negotiation of the Charter was meant to have a substantive effect.

This more narrowly focused interpretation of Article 2(4) is borne out nowhere more clearly than in the conduct of operations within Iraq between 1991 and 2003. During that period, U.S., British, and French[23] forces conducted regular overflights to ensure compliance with restrictions on Iraqi activities laid down by the coalition in consonance with resolutions of the UN Security Council, particularly Resolution 688. In the early years of this period, the same three countries plus Turkey maintained forces on the ground in northern Iraq, and Turkey continued to conduct incursions into Iraqi territory to suppress suspected terrorists of the Kurdistan Workers Party even after the withdrawal of other coalition ground troops. Yet the governments involved repeatedly stated their support for the "territorial integrity of Iraq."[24]

For such operations to be consistent with a policy of support for Iraq's territorial integrity,

one of three conditions would have to exist. First, the operations could be held to fall within the framework of the inherent right of self-defense. None of the participants asserted that this was the case. Alternatively, the operations could have been authorized by the Security Council under chapter VII of the UN Charter. While the United States argued that the operations were justified indirectly by such authority, the other participants rejected this argument as the basis for their participation. The only other possibility was that the states involved did not consider Iraq's territorial integrity to be violated by the conduct of operations on and over Iraqi soil, provided that those operations were not intended to change the territorial status quo. In other words, they did not interpret Article 2(4) as barring any and all uses of force.

In summary, the plain language of the Charter, the history of its negotiation, and actual state practice since its adoption all demonstrate conclusively that there are some circumstances in which the use of force is still permissible, even short of self-defense against an actual armed attack. That being the case, the exercise of force to suppress terrorist groups that are not being suppressed by the state in which they are located would surely be one of those circumstances.

The doctrine spelled out here must not be used to justify everything any country may wish to do in the name of counterterrorism. Some potential uses of force—for example, the reconstruction of political authority in a state whose government has effectively collapsed—would require more explicit legal authority under the Charter. Moreover, unilateral use of force, as a matter of principle, is not a first resort, nor is it necessarily the most judicious course even when legally justifiable.

Nevertheless, there are circumstances involving what American constitutional lawyers would call a "clear and present danger," in which unilateral military action on foreign soil would be legally justifiable and strategically prudent. The best standards for identifying those circumstances, and the limitations on the operations carried out in response to them, may still be those set out by Secretary Webster in connection with the *Caroline* case:

It will be for that Government [using force] to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation . . . [and that its forces] did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.[25]

Properly understood, the *Caroline* standards are even more relevant now than they were in 1841. Other than the Cold War nuclear standoff between the United States and the Soviet Union, is there any threat that better meets the criteria of being instant and overwhelming than apocalyptic terrorists with the fruits of globalization at their disposal—unless it is those same terrorists in possession of a weapon of mass destruction?

The Way Ahead

It will not be easy to build a 21st-century international consensus around a doctrine that uses the concepts of sovereign responsibilities and self-defense to justify the unilateral use of force on foreign soil. The prohibition against sovereigns' interfering in each others' internal affairs has become so deeply ingrained in the common understanding of the international rules that arguing in favor of a theory that seems to contradict that understanding will

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strike many as reactionary and dangerous. Resistance could be especially strong not from the few countries who wish to harbor terrorists but from the many who will see such a doctrine as a formula for the reintroduction of Western imperialism. It is only reactionary, however, in the context of misconceptions about the nature of sovereignty. Rulers in the classical Westphalian period and well into the 20th century understood a state that could not or did not control what happened on its territory was placing itself at risk of military action by others that suffered injury from its negligence.

Because this concept is still so alien to many modern governments, the most obvious means of having it embodied in international law—the negotiation of a formal universal convention on the model of the Geneva Conventions—would probably be doomed to failure. Instead, those who accept the concept of sovereign responsibility must begin constructing de facto a body of customary international law and practice in its support. Just as pirates were universally recognized as international outlaws long before any formal treaty declared them such, so too should terrorists be recognized as international outlaws, and the right of states to strike against them without explicit UN Security Council action should be accepted without a formal treaty.

Several constructive steps have been taken in this direction. The findings of the Security Council resolutions passed after 9/11 have already been mentioned. The declarations by the North Atlantic Treaty Organization (NATO) and the Organization of American States that the terrorist strikes on New York and Washington constituted "armed attacks" on the United States within the meaning of NATO Article 5 and Article 3 of the Rio Treaty were perhaps even more important.[26] Logically, if terrorist strikes are armed attacks, military operations in response are not actions against another country's "territorial integrity and political independence" but a valid exercise of the right of self-defense. As other governments and international organizations articulate or acknowledge the validity of these principles, wider recognition of their legitimacy will be generated, just as the continued assertion by some European governments of a right of humanitarian intervention has led to its progressively wider acceptance as a valid principle of international law.

The inability of the international community to settle on an accepted definition of terrorism is well known, but building consensus on a right to act against terrorists on foreign soil will require at least some degree of agreement on the meaning of the term. The United States, therefore, has an important interest in promoting agreement on that front. Moreover, it has an interest in ensuring that this definition is framed in terms of means, not ends. As is the case with war crimes, whether or not something is *terrorism* must be understood as a question of the methods used to prosecute a struggle, not about the justice of the struggle itself. Otherwise, the subjective nature of judging the righteousness of a cause would invariably leave the international community with no common ground upon which to act.

Even if terrorism is defined by means and not ends, considerable argument remains over

where to draw the line between terrorist and nonterrorist behavior. For example, are attacks on military forces terrorist under some circumstances? What about attacks on other government entities? Is an overt attack on civilians by an organized belligerent force terrorist, or does terrorism necessarily imply clandestine means? From a practical point of view, however, a lack of resolution on these issues need not pose an insuperable obstacle to action. One would begin with a narrowly limited range of behavior on which almost all can agree—the intentional targeting of private noncombatants, for instance—and articulate the logic for a right of states to use force against individuals and groups who carry out violent acts within that range of behavior. Over time, the defined range of unacceptable behavior can be broadened as a consensus is developed.

Making this work will require not only overcoming the ends-based objections of the apologists for certain manifestations of terrorism, but also enforcing an unaccustomed degree of rhetorical self-discipline within the U.S. Government and among its allies. The United States must be prepared to accept that not all acts of violence carried out by groups with which it disagrees—such as resistance to military occupation or organized rebellions in friendly countries—necessarily fall into the category of terrorism. In particular, the United States must refrain from describing as terrorism those acts that do not meet any strict definition of the term—such as attacks on military forces in a combat zone—simply on the basis of who carries them out or to what end.

It bears repeating that the use of force is not the first choice for dealing with terrorist threats, particularly on foreign territory. Even in those cases where states are not able to live up to their responsibility to prevent armed bands on their soil from threatening others, the first choice is to work to strengthen those governments' capabilities and reinforce their disposition to take action. When the use of force is required, it is preferable to act in concert with the host country, or at least with its permission. Almost certainly, however, the time will come when these preferred options will not be available. In an era when terrorist groups such as al Qaeda have the intention and capabilities of inflicting mass civilian casualties, no government can remain idle if it has the means to prevent such an attack on its people. It is important for the international community to recognize that governments are on a solid foundation when they act to prevent such terrorist attacks.

Notes

[1] Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 1998), 94.

[2] Quoted in Hoffman, 198.

[3] *The National Security Strategy of the United States of America*, September 2002, 6.

[4] For a discussion of the evolution of the concept, see Alfred P. Rubin, *The Law of Piracy*, U.S. Naval War College International Law Studies, vol. 63 (Newport: Naval War College Press, 1988), 4–44.

[5] Pierino Belli, *De Re Militari et Bello Tractatus* (1563), II.11, quoted in Rubin, 18.

[6] *Commentaries on the Laws of England*, IV.5.iii, 72.

[7] See Rubin, 202.

[8] *De Jure belli ac pacis*, XX.20.

[9] L. Oppenheim, *International Law: A Treatise*, 8th ed. (London: Longmans, Green, 1955), I:135.

[10] Ibid., I:292–293.

[11] Chapter VII resolutions are those concerned with breaches of the peace, threats to the peace, and international aggression; compliance with them is obligatory.

[12] Richard N. Haass, "Sovereignty: Existing Rights, Evolving Responsibilities," speech at Georgetown University School of Foreign Service, January 14, 2003; available online at <http://www.state.gov/s/p/rem/2003/16648.htm>.

[13] Ibid., I:362–363.

[14] "Draft articles on responsibility of states for Internationally Wrongful Acts adopted by the International Law Commission at its fifty-third session (2001)," articles 4(1) and 7; available online at <http://www.un.org/law/ilc/texts/State_responsibility/responsibilityfra.htm>.

[15] Oppenheim, I:363.

[16] "Draft articles," article 49(2).

[17] Jack M. Beard, "America's New War on Terror: The Case for Self-Defense under International Law," *Harvard Journal of Law and Public Policy* 25, no. 3 (Spring 2002), 559–590.

[18] Derek Jinks, "State Responsibility for the Acts of Private Armed Groups," *Chicago Journal of International Law* 4, no. 1 (2003). Jinks points out the pitfalls of treating all cases in which terrorist groups operate from a state's territory as situations of state sponsorship.

[19] Greg Travalio and John Altenburg, "Terrorism, State Responsibility, and the Use of Military Force," *Chicago Journal of International Law* 4, no. 1 (2003).

[20] *Terminiello v. Chicago*, 337 U.S. 1 (1949). Jackson first used the phrase in a dissenting opinion, but it has since been cited by majorities of the Court in such decisions as *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963), and *Haig v. Agee*, 453 U.S. 280 (1981).

[21] See, for example, Travalio and Altenburg, 101; and Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963), 167–168.

[22] The amendment specifying "against the territorial integrity or political independence of any state" was proposed by Australia as a way of satisfying concerns expressed by a number of countries, particularly in South America, that the original draft did not adequately protect the sanctity of existing borders. Proposals for more sweeping language banning all forms of intervention and rejecting any use of force except with the authorization of the Security Council were considered and rejected at San Francisco. *Documents of the United Nations Conference on International Organization, San Francisco 1945*, vol. III (New York: United Nations Information Corporation, 1945).

[23] French forces until December 1998 only.

[24] As expressed in the following statements:

■ "The United States firmly supports the territorial integrity of Iraq." U.S. President Bill Clinton, message to Congress, September 3, 1998, available online at <http://usembassy-australia.state.gov/hyper/WF980903/epf403.htm>.

■ "It has never been our intention to undermine Iraq's territorial integrity." British Prime Minister Tony Blair, House of Commons, February 24, 1998, available online at <http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmhansrd/vo980224/debtext/80224-05.htm>.

■ "We may have our differences in our tactical assessments but not on the strategic objectives, [including] respect for the territorial integrity of Iraq." French Minister of Defense Alain Richard, speech to Franco-American Foundation, April 18, 1998.

■ "The unity, sovereignty and territorial integrity of Iraq is [sic] of utmost importance for Turkey." Turkish President Suleiman Demirel, speech to Washington Institute for Near East Policy, April 27, 1999, available online at <http://www.washingtoninstitute.org/media/speakers/demirel.htm>.

[25] Department of State note to British Legation, Washington, DC, April 24, 1841 (accessed from the Yale University Avalon Project at <http://www.yale.edu/lawweb/avalon/diplomacy/britian/br-1842d.htm>).

[26] Statement of NATO Secretary General Lord Robertson, October 2, 2001, available online at <http://www.nato.int/docu/speech/2001/s011002a.htm>; Resolution of the 24th Meeting of Consultation of Ministers of Foreign Affairs: Terrorist Threat to the Americas, Organization of American States document (RC24/Res1/01), September 21, 2001, available online at <http://www.oas.org/OASpage/crisis/RC.24e.htm>.

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