Waging War against Non-State Actors: The Contemporary Debate on the Prohibition of Force

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Abstract: Recent events have triggered scholarship arguing that international law should embrace the widespread state practice of using force against violent non-state actors such as terrorists. The evolution of state practice since 9/11 suggests an alternate interpretation of Article 2(4) and Article 51 of the UN charter, per treaty mechanisms. Specifically, academics and government officials have argued that the threat posed by terrorism necessitates lowering the state responsibility threshold. Doing so would make states hosting terrorists liable for violence undertaken from within their territory, giving aggrieved nations a license to intervene militarily. This essay argues that the traditional legal understanding of Article 2(4) and 51, which prohibit the use of force except in self-defence and then only against state actors, should be upheld, as war is not an effective means of eliminating non-state actor violence. Rather, nations need to address non-state actor violence by focusing on economic and social measures which foster development in failing States, as addressing civilian grievances is the most effective way to combat and deter terrorism.

Despite a robust system of international law, founded in tandem with the United Nations (UN), which encompasses nearly all sovereign states and is ostensibly dedicated to eradicating war, armed conflict continues to permeate modern society, albeit in new ways. Today, war is more likely to occur either within states, or between states and non-state actors such as violent transnational terrorist organizations, rather than between states themselves. In the past 20 years, violent non-state actors have increasingly been perceived not as criminal organizations, but as "enemy combatants,"[1] subject to an extraterritorial military response. This change has led to the modern phenomenon of waging war against non-state actors, as seen by the US's global war on terror and its numerous violent offshoots around the world. These military operations represent a 'changing dynamic' in international law, where the formation of a supposed 'instant custom'[2] has led to calls for a change in the institutional interpretation of Article 51 of the UN Charter regarding the definition of self-defence. However, the debate over the legal status of using military force against non-state actors distracts from the real conversation on its effectiveness, which numerous scholars have decried. The extremist ideologies that drive terrorists today are the result of domestic political and social grievances, stemming from poverty and discrimination, which are co-opted by upper-class elites who direct blame to foreign intervention and the 'west,' producing organizations like Al Qaeda and Daesh.[3] Terrorist organizations typically originate as a result of political instability, social divisions, and poverty. For this reason, military engagement

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[1] Mary Ellen O'Connell, "Enhancing the status of non-state actors through a global war on terror," *Columbia Journal of Transnational Law.* 43, (2004): 436.

[2] Benjamin Langille, "It's Instant Custom: How the Bush Doctrine became Law after the Terrorist Attacks of September 11, 2001," *BC Int'l & Comp. L. Rev.* 26, (2003): 145.

[3] Peter Byrne, "Anatomy of Terror: What Makes Normal People Become Extremists?," New Scientist, August 16, 2017, https://www.newscientist.com/article/mg23531390-700-anatomy-of-terror-what-makes-normal-people-become-extremists/.

is often ineffective as it does not address the underlying problems that created the organizations in the first place. This paper thus presents the debate, in particular between those who argue that international law should adopt the widespread state practice of using force against violent non-state actors, by lowering the state responsibility threshold to cover inability or unwillingness to act, versus those who do not see war as an effective means of eliminating non-state actor violence. This essay argues that the latter group is better conformed to the traditional legal understanding of the international laws, suggesting that nations need to address non-state actor violence with a focus on economic and social measures which foster development in failing States.

The Prohibition of Force as the Basis of International Law

Before this essay delves into the substance of the modern debate on how to engage with violent non-state actors, it is important to examine the traditional understanding of the laws and treaties governing war between states. For this essay's purpose, international law will refer to treaty or customary law regimes exemplified by the UN charter. Waging war is the use of military force to target combatants, and non-state actors are individuals or organizations that are almost wholly independent from a State and wield violence to achieve political aims. In terms of the specific norms that govern States and their ability to make war, Article 2(4) of the UN charter is broadly interpreted as completely prohibiting the threat or use of force by any member state,[4] with the only exceptions laid out in Article 51,[5] as self-defence "if an armed attack occurs" or as

[4] UN Charter, United Nations, Article 2(4): "*All Members shall refrain in their international relations 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*." https://www.un.org/en/sections/un-charter/chapter-i/index.html.

[5] UN Charter, United Nations, Article 51: "*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by*

authorized by the Security Council for the maintenance of peace and international security.[6] This was a truly groundbreaking achievement, and today the prohibition of force is accepted as customary within international law, and recognized as *jus cogens.*[7] The scope of Article 2(4)'s prohibition, which refers specifically to preserving "territorial integrity and political independence," was broadened by the Friendly Relations doctrine, adopted by consensus in the UN General Assembly in 1970, which referred unequivocally that armed intervention in a State is a violation of international law.[8]

The rationality behind the impetus to prohibit the use of force is a matter of historical record - the UN was founded in the wake of a social reckoning of the human capability towards violence after the World Wars. As seen by the Friendly Relations doctrine, the modern international legal framework has centered on safeguarding state sovereignty to maintain international stability, by preventing not just war, but any 'use of force' and the threat thereof that imperils these two cardinal objectives. Thus, as we examine the self-defence exception encompassed in Article 51 and the arguments to broaden it, we must keep in mind the overarching ideals of the international legal regime. This regime was a product of the post-1945

Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security," https://www.un.org/en/sections/un-charter/chapter-vii/index.html.

[6] Helen Duffy, *The "War on Terror" and the Framework of International Law* (Cambridge: Cambridge University Press, 2005), 149.

[7] Alexander Orakhelashvili and Michael Barton. Akehurst, *Akehurst's Modern Introduction to International Law* (London: Routledge, Taylor & Francis Group, 2019), 53. Jus cogens refers to peremptory norms of international law, or "a norm that is recognized and accepted by the international community as a whole as one from which no derogation is allowed and can be modified only by a subsequent norm of general international law of the same character."

[8] Gaetano Arangio-Ruiz, "The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations ," *Collected Courses of the Hague Academy of International Law* 137 (1974): 557, https://doi.org/10.1163/1875-8096_pplrdc_ej.9789028602441.419_742.

era, where combatting the precipitating nature of violence that had been displayed so thoroughly by two consecutive world wars was of the utmost importance.

The Evolution of State Practice: 9/11 and the Global War on Terror

The origins of the modern debate around Article 51 and non-state actor violence can be traced to the aftermath of 9/11, where it emerged with a focus on whether non-state actor violence can rise to the level of an 'armed attack' justifying self-defence, and the degree of state involvement that must be present. States like the US and Israel have claimed that the capability of today's well-financed transnational terrorist organizations necessitates military self-defence. The September 11th attacks on the World Trade Centre embody this capability, as it caused egregious economic, social, and physical harm, which, if perpetrated by a state, would have triggered the right to self-defence under international law.[9] How can the US not have the right to defend itself against terrorists when those terrorists can enact such high levels of violence? Here, the problem is not the level of violence, but that the actors who committed them are located within another nation's sovereign boundaries, and to pursue them with military force, which is rarely discriminating in its impact, is to violate that boundary. International law requires consent from a State in order to carry out military operations in said State's territory; otherwise, it could be seen as an armed attack in its own right. Despite this, countries like the US, Canada, the UK, Germany, and Australia pursued terrorists in Afghanistan without the explicit consent of the State of Afghanistan. The international community, in particular western countries, largely acquiesced, as seen by the lack of official protest to the US's large scale military operation in

[9] John Yoo and James C. Ho, "International law and the war on terrorism," *University of Calif., School of Law,* (2003): 4.

Afghanistan, where Al-Qaeda had been hiding out.[10] In doing so, the US violated the territorial sovereignty of a nation, which, according to all evidence, had not been involved in the execution of the 9/11 attacks.[11] The US justified their response in a 2002 strategy outline, which stated that they would no longer distinguish between terrorists and those who harbour or otherwise provide aid to terrorists.[12] This response suggests a change in the logic of attribution to include support, encouragement, planning, preparation and reluctance to impede terrorism, as making States liable for non-state actor violence.[13]

The US's 2001 invasion of Afghanistan and its seemingly worldwide acceptance as self-defence against non-state actors was thus a turning point that, according to western governments, should trigger a change in how this norm of international law has traditionally been enforced. Specifically, there have been numerous analyses that suggest the state responsibility threshold should be lowered to include those states unwilling or unable to act, justifying using force within the territory of and against the State where the terrorists attack originated[14]. The Chatham House principles on the use of force demonstrate this emerging concept, asserting that the threat terrorists pose to global stability is so significant that while a state may not be, "responsible for the acts of the terrorists, ... [they are] responsible for any failure to take reasonable steps to prevent the use of its territory as a base for attacks on other

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[10] Eric A. Heinze, "Nonstate Actors in the International Legal Order: The Israeli-Hezbollah Conflict and the Law of Self-Defense," *Global Governance: A Review of Multilateralism and International Organizations* 15, no. 1 (2009): 88.

[11] Dire Tladi, "The Use of Force in Self-Defence against Non-State Actors, Decline of Collective Security and the Rise of Unilateralism: Whither International Law?," *Self-Defence against Non-State Actors*, 2019: 68, https://doi.org/10.1017/9781108120173.002.

[12] Tladi, 60-61.

[13] Michal Onderco, "Self-Defense Against Non-State Actors in the Post-9/11 Era Afghanistan 2001, Lebanon 2006 and Lebanon 2010 revisited," *Association of International Affairs,* 14 (2010): 7.

[14] Heinze, "Non-State Actors in the International Legal Order," 95.

states."[15] This argument has made it to the highest levels of judgment, where the International Court of Justice (ICJ) Separate Opinion by Judge Kooijmans in the Armed Activities case alluded to a reconfiguring of the traditional idea of self-defence, stating that although the, "mere failure to control the activities of armed bands cannot in itself be attributed to the territorial State as an unlawful act, that … does not necessarily mean that the victim State is under such circumstances not entitled to exercise the right of self-defence under Article 51."[16]

Despite these challenges to the logic of state attributability, international law has so far rejected the notion that non-state actor violence triggers self-defence unless it can be attributed to the direct or effective control of states. This has been the norm throughout the entirety of the UN charter era. In 1985, for example, the Security Council condemned Israeli raids against the Palestine Liberation Organization headquarters in Tunis, finding that Tunisia was not legally responsible for the PLO's violence against Israel.[17] This threshold for legal responsibility was explicitly established in the Nicaragua case, where the US was found not responsible for the actions of the Contras, despite having provided them with money, arms, and intelligence.[18] Furthermore, despite the widespread acceptance of the US's war on terror against non-state actors like Al-Qaeda, the ICJ has not signalled any change to the charter interpretation, specifying in a 2005 Advisory Opinion that "Article 51 of the Charter … recognizes the existence of an inherent right of self-defence in the case of armed attack by one state against

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[15] Elizabeth Wilmshurst, "The Chatham House Principles of International Law on the Use of Force in Self-Defence," *International and Comparative Law Quarterly* 55, no. 4 (2006): 970, https://doi.org/10.1093/iclq/lei137.

[16] Case Concerning the Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda), Judgement, 2005, I.C.J Rep 168, (December 19) (Separate Opinion of Judge Kooijmans), 149.

[17] UN Security Council, Security Council resolution 573 (1985) [Israel-Tunisia], 4 October 1985, S/RES/573 (1985), https://www.refworld.org/docid/3b00f175c.html.

[18] Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States), Judgement, 1986, I.C.J Rep 14, (June 27).

another state."[19] Other international forums have followed the ICJ's lead, and in 2008 the Organization of American States (OAS) condemned Columbian Raids against the FARC terrorist base in Ecuador, stating that it was an illegal violation of Ecuador's sovereignty.[20] International law has thus, when prompted by States directly, largely upheld the original rigorous State responsibility requirements of Article 51, in line with its founding ideal of preserving territorial sovereignty to ensure international stability. However, rather than restraining States from using force, this has had the unfortunate impact wherein governments have simply ignored international rules to engage in war unilaterally when they see fit, asking for forgiveness rather than permission, without regard for the consequences.

Lowering the Attributability Standard as War Abounds

Despite the legal consensus, the instance of states engaging in military force against non-state actors has only increased, with the US's 2004 invasion seemingly setting a global precedent. This has led to the argument that the role of international law and institutions, like the ICJ, is to acquiesce to this new precedent to be able to maintain credibility in the international community. However, although numerous States have engaged in armed conflict against terrorists in Syria, Yemen, Pakistan, Lebanon and Somalia,[21] this has not happened with impunity. Along with the ICJ, the UN and other international bodies, commentators, and

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[19] Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *International Court of Justice*, 9 July (2004): 56, https://www.refworld.org/cases,ICJ,414ad9a719.html.

[20] Frank M. Walsh, "Rethinking the Legality of Colombia's Attack on the FARC in Ecuador: A New Paradigm for Balancing Territorial Integrity, Self-Defense and the Duties of Sovereignty," *Pace Int'l L. Rev.* 21 (2009): 137.

[21] Anthony. H. Cordesman, "Terrorism: U.S. Strategy and the Trends in Its "Wars" on Terrorism," *Center for Strategic and International Studies*, August 8, 2018. https://www.jstor.org/stable/resrep22466

academics have highlighted the illegality of such interventions under international law.[22] However, this condemnation has led to a degradation of respect for international law, as seen by the sheer volume of war states have engaged in with non-state actors. In their book, *the Limits of International Law,* Eric Posner and Jack Goldsmith conclude that customary international law no longer has any "exogenous influence on state behavior," to the extent that policy and decision makers have not internalized compliance with international law.[23] This crisis of legitimacy in international law[24] can best be addressed through a "radical overhaul" of its institutions like the UN, which needs to be more "responsive to changed circumstance."[25] It is on this basis that the argument for a reinterpretation of international law has emerged, conforming to the interpretation mechanisms of the Vienna Convention.

Those advocating for the reinterpretation of the prohibition on the use of force and its exceptions turn to the Vienna Convention on the Law of Treaties (VCLT). The self-defence law is a treaty-based right, and thus subject to the VCLT rules on interpretation. The VCLT allows flexibility of interpretation based on the subsequent practice of states, where "words are given meaning by deeds,"[26] and can thus inform change in the meaning of the 'armed attack' requirement in Article 51. This accommodation, based on state practice, could create a "true

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[22] Noah Feldman, "Noah Feldman: Liberals like Me Caused the Illegal Drone War," Akron Beacon Journal (Akron Beacon Journal, October 24, 2013), https://www.beaconjournal.com/akron/editorial/noah-feldman-liberals-like-me-caused-the-illegal-drone-war; see also Milena Sterio,"The United States' use of drones in the War on Terror: the (il) legality of targeted killings under international law*," Case Western Reserve Journal of International Law* 45, (2012): 197.

[23] Andrew T. Guzman, "Reputation and International Law," *Georgia Journal of International and Comparative Law* 34 (2005): 380.

[24] Mattias Kumm, "The Legitimacy of International Law: A Constitutionalist Framework of Analysis," *European Journal of International Law* 15, no. 5 (January 2004): 907, https://doi.org/10.1093/ejil/15.5.907.

[25] United Nations, Department of Public Information, "With United Nations Credibility, Leadership Role in Jeopardy, World Leaders Warn Only 'Radical Overhaul' Can Bring Organization Fully into Twenty-First Century," GA/10999, September 24, 2010. https://www.un.org/press/en/2010/ga10999.doc.html.

[26] Richard K. Gardiner, *Treaty Interpretation* (Oxford: Oxford University Press, 2017), 225.

exception to Article 2(4), where [States can] excuse their violation of the host states territorial integrity."[27] The argument is that the relevant and recurring state practice rejects the treaty interpretation as it currently stands and prescribes an evolution in the commonly held understanding of the right to self-defence. This logic has been met, according to Tams, with "constructive ambiguity" by the UN.[28] In the case of Afghanistan in 2001, States have used their military apparatus to pursue terrorists across national boundaries with impunity, which Tams interprets as a "general endorsement of a broader interpretation of Article 51."[29] Thus there is evidence that the custom behind the idea of self-defence is changing to confront the modern problem of ever powerful and indiscriminate militant non-state actors, and international law is simply lagging behind. In summary, international law has not prevented States from taking the decisive military action needed to defend themselves from growing terrorist threats. International institutions should thus adopt the newly established state practice, which the VCLT provides for, to address today's problems of non-state actor violence.

Slopes, Agenda's, and Root Causes: How to Combat Terrorism

Not all academics, however, are on board with this approach. The other side of this debate has presented several reasons why formally adopting this State practice into international law would not be a good idea. The first is that it would derogate from the original reason behind the prohibition of force, to prevent war and establish global peace, by combatting precipitating violence. In essence, the 'small wars' where States target non-state actors will become even more

[27] Kimberley N. Trapp, "The Use of Force Against Terrorists: A Reply to Christian J. Tams," *European Journal of International Law* 20, no. 4 (2009): 1050, https://doi.org/10.1093/ejil/chp101.

[28] Christian J. Tams, "Self-Defence against Non-State Actors: Making Sense of the 'Armed Attack' Requirement," *Self-Defence against Non-State Actors*, 2019, 150, https://doi.org/10.1017/9781108120173.003.

[29] Olivier Corten, "Has Practice Led to an "Agreement Between the Parties" Regarding the Interpretation of Article 51 of the UN Charter?" *Heidelberg Journal of International Law* 77 (2017): 15-17.

common-place. This is the slippery slope that emerges when we "chip away at the legal principles [until] the law is really in the eye of the beholder,"[30] especially in terms of policy consequences. Heinze reflects on the ongoing conflict between Chad and Sudan, where Chad has issued aggressive statements condemning Sudan's implicit support of the Janjaweed militia, who execute raids in border villages, killing civilians. Removing the normative and legal constraints on the use of force could spark an all-out war in the region, not just between Chad and the militia forces, but between Chad and Sudan. Furthermore, the fact that Chad has not yet engaged in armed conflict against Sudan, despite their belief of Sudan's culpability, suggests that the new state practice espoused by the US and their allies is not as entrenched as those advocating reinterpreting the law have claimed. Lastly, the conflict between Chad and Sudan is not unique, and accepting "that States are free to act in self-defence against the State from whose territory the [terrorist] attack was launched, even if that states involvement was mere acquiescence," means that similar hot spots all over the world could devolve into war.[31]

Derogation from the prohibition of the use of force could also lead to States using the threat of terrorist attack to take pre-emptive self-defence measures', fundamentally undermining the collective security system international law was established to protect. Tladi warns about a return to the 'law of the jungle,' and the 'might is right' status quo of the 18th and 19th centuries. [32] Given the US's history of national-interest based foreign policy and the plenty of examples of militarily powerful States using force unilaterally in the territory of other States based on claims of humanitarian intervention but in actuality to protect economic interests, the potential for abuse is high. The pretext of inability could further see powerful States imposing their will on weaker

[30] Tladi, "The Use of Force against Non-state Actors," 21.
[31] Heinze, "Non-State Actors in the International Legal Order," 99.
[32] Tladi, "The Use of Force against Non-state Actors," 83.

ones, a potent blow to the notion of equally sovereign nation-states. In doing so, "the state where dangerous non-state actors reside might view foreign intervention within its borders (rightly or wrongly) as 'armed attack' justifying [it's] own military response."[33] The threat of terrorist attacks could be wielded by states to justify infinite alleged self-defence actions, "turning a special exception into a permanent authorization."[34] In an era of decentralized and technologically advanced terrorists who can operate from anywhere in the world, this is a very grave concern that needs to be taken into account when considering arguments to make the legal frame of the right to self-defence more permissive.

Lastly, even though waging war or using force against non-state actors is increasingly part of the norm, the threat that those actors generate has not diminished. The UN charter, created in a time when society was worried about a third world war, was also a product of the idea that war is not the only way to solve disputes, and terrorism has not proven to be the exception to this principle. Using force against these actors has not significantly deterred terrorist action, and in the Middle East, it has increased terrorists' propensity and willingness to enact harm.[35] Military intervention by the US in the Middle East armed and trained Al-Qaeda, who rather than being grateful, turned resentful of American influence and power, leading to the creation of Daesh, a new terrorist organization.[36] The lethal ability of terrorists such as Daesh has not diminished, but risen in the past few years, despite losing significant swathes of territory in

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[33] William C. Banks and Evan J. Criddle, "Customary Constraints on the Use of Force: Article 51 with an American Accent," *Leiden Journal of International Law* 29, no. 1 (January 2016): 71, https://doi.org/10.1017/s0922156515000655.

[34] Christian Marxsen and Anne Peters, "Self-Defence against Non-State Actors – The Way Ahead," *Self-Defence against Non-State Actors*, 2019, 279, https://doi.org/10.1017/9781108120173.005.

[35] Trevor A. Thrall, and Erik Goepner, "Step Back: Lessons for US Foreign Policy from the Failed War on Terror," *Cato Institute Policy Analysis,* no. 814 (June 2017): 9.

[36] "Al Qaeda," History.com (A&E Television Networks, August 21, 2018), https://www.history.com/topics/21st-century/al-qaeda.

Syria and Iraq.[37] Furthermore, despite the sustained and multi-state military effort against Daesh, the grievances that provided the impetus towards violence against soft targets remain. After 18 years of military intervention, leading scholars and academics have concluded that the US's "military intervention cause[d] more problems than they solve[d], including spawning more anti-American sentiment and creating, rather than diminishing, the conditions that lead to terrorism."[38]

Numerous scholars and even military officials have warned that institutionalizing war to address violence from non-state actors embeds an ineffective solution into the international law framework. Counter-terrorism experts have expressed doubts as to whether military force can ever 'end' a terrorist group,[39] which the US's ongoing armed presence in Afghanistan, Syria, Iraq and elsewhere in the world demonstrates. Officials were warning even before troops were deployed that "the force of arms alone cannot defeat terrorism," invoking the example of the long cold war that had just wrapped up.[40] When the US began its engagement in Afghanistan, by focusing on the militant angle, they effectively destroyed any chance of leaving behind 'stable, friendly post-war states.' The US ignored the true causes of terrorism, which Cordesman identifies as ranging from religious, ideological and sectarian divisions, to internal unrest caused by failed states plagued with "poor to terrible governance, failed rule of law, corruption, poor development and income, population pressure and unemployment."[41] These causes are worsened

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[37] Robin Wright, John Cassidy, and Anthony Lane, "How Different-and Dangerous-Is Terrorism Today?," The New Yorker, September 9, 2017, https://www.newyorker.com/news/news-desk/how-different-and-dangerous-is-terrorism-today.

[38] Thrall and Goepner, "Step Back," 2.

[39] Mary Ellen O'Connell, "Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009," *Notre Dame Legal Studies Paper* No. 09-43 (2009): 26. http://ssrn.com/abstract=1501144.

[40] Ivo H. Daalder and James M. Lindsay, "Nasty, Brutish and Long: America's War on Terrorism," Brookings (Brookings, May 10, 2017), https://www.brookings.edu/articles/nasty-brutish-and-long-americas-war-on-terrorism/.

[41] See note 21.

by foreign use of force, who by focusing on combating individual terrorist acts have deepened grievances and introduced dysfunction into civil society, leaving behind states filled with people who have nothing left to lose and everyone else to blame. The lessons of the failed wars of the last few decades are that military superiority does not guarantee victory, and are in fact, dysfunctional to essential goals that do guarantee victory, namely the reduction of poverty, disease, and crime.[42] The way to defeat violent non-state actors is not to defeat them in battle, but starve them of supporters by attacking their appeal. Non-military measures like economic sanctions could play a role, but the most effective way to beat terrorist groups such as Daesh, Hezbollah, or Janjaweed is to address the gaping inequalities in wealth and opportunity that make people in struggling states strife with corruption, poverty, and violence resort to terrorism.

The crux of the matter is that international law should not be how we address waging war against non-state actors, because we should not be waging war against non-state actors. The role that international law should play is to reinforce the prohibition of the use of force painstakingly set up by UN charter and hundreds of smaller treaties, and prevent states from derogating and engaging in armed conflict against non-state actors, including terrorists. This is made difficult by the fact that the established ideals and doctrines of collective security, international peace, equal sovereignty and the prohibition of force, which are the foundations of international law, have lost resonance in the modern era. The practice of states to use force to counter national security threats from non-state actors has been a blow to those fundamental principles and thus the credibility of international law, which now needs to be built back up. However, the job of doing so is not on our international institutions, but on the constituents that make up the member states

[42] Robert Falk, "Strengthening International Law," Strengthening International Law | Public Sphere Project - Liberating Voices Pattern Language, http://publicsphereproject.org/content/strengthening-international-law.

of these organizations. States need to reckon with the catastrophic results of their military choices, just as the original framers of the UN charter did after the First and Second World Wars, and choose to adhere to the original interpretation of Article 51. They need to recognize that terrorism is best combatted through economic and social measures, targeting international supply chains and financial flows that maintain organizations like Daesh, and build compelling competing offers for its supporters through education and opportunity.[43] Terrorism needs to be fundamentally de-legitimized through fostering healthy states by practicing the principle of non-intervention and respecting proportionality in the use of coercion.[44] The US would have been much better served in the aftermath of 9/11 if it had supported States who's economic and law enforcement weaknesses were being exploited by non-state actors, giving them the tools to combat terrorism.

Conclusion

The debate on how to address the increasing reality of states waging war against non-state actors is ongoing, with one side suggesting a transformation of traditional understandings of international law, and the other pointing out the danger of doing so. The latter group proposes addressing the issue of violent non-state actors by focusing on economic and social measures, and rebuilding the credibility and enforcement mechanisms of the international laws already in existence. Relying on law enforcement and development agencies instead of the military to address the root causes of terrorism is the most effective way forward. The ideals that led the UN to outlaw the use of force were the result of massive loss of life, and there is a palpable worry that another world war could occur before states realize the error of their ways.

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[43] Anja Kaspersen, "3 Ways to Defeat ISIS," World Economic Forum, November 20, 2015, https://www.weforum.org/agenda/2015/11/3-ways-to-defeat-isis/.

[44] O'Connell, "Enhancing the status of non-state actors," 457.

However, much is also different from the immediate post-World War era; society is more educated, connected, and active than ever before. The institutional apparatus to prevent war exist; they just need to be utilized. Technologies like the internet and social media allow us to be continuously bombarded with the consequences of military interventions and provide us with a public forum through which we can communicate and spread ideas of reform. The global challenges of the 21st century, from terrorism to war, poverty and disease, may seem daunting, but history has shown are solvable as soon as we are motivated enough. Where that motivation comes from depends on us, and how well we have learned from the failures of the past.

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