THEMATIC:
TERRORISM AND INTERNATIONAL LAW

Illustration by Tilley Wood
EDITORIAL

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The tragic events of September 11 fundamentally transformed the global security landscape. In the aftermath of these attacks, governments around the world implemented draconian security legislation and restrictive immigration policies which significantly curtailed civil liberties and procedural rights.¹ For example, since 2004, the Australian government has enacted over 54 pieces of anti-terrorism legislation.² This response has been described by Kent Roach as ‘hyper-legislation’, which has resulted in minimal pre or post-enactment scrutiny.³

The international legal response to terrorism is contained in several conventions and protocols⁴ which relate to specific threats including attacks against aircrafts,⁵ attacks against ships,⁶ attacks against internationally protected persons,⁷ the taking of hostages,⁸ nuclear terrorism,⁹ terrorist bombings,¹⁰ and

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¹ Mariaelisa Epifanio, ‘Legislative Response to International Terrorism’ (2011) 48 Journal of Peace Research 399, 399–400. In her study of 20 liberal Western democracies, Epifanio found that the number of counter-terrorism statutes increased substantially from an average of 3.8 before September 11 to 16.6 in 2008: at 400.
⁴ For a detailed list of applicable international law, including regional and multilateral treaties, see Measures to Eliminate International Terrorism: Report of the Secretary-General, UN GAOR, 64th sess, Agenda Item 106, UN Doc A/64/161 (22 July 2009) 22–31 [142].
the financing of terrorist activities. There are also a number of regional conventions. As noted by Kimberley Trapp, one of this Issue’s contributing authors, the terrorism suppression regime is characterised by its piecemeal development, responding to particular ‘headline-grabbing’ events. Alongside disparate national counter-terrorism regimes, this has led to ‘a rather disorganized and uncoordinated proliferation of possible new legal practices, principles, rules and institutions’. Of course, the creation of a comprehensive convention against international terrorism could fill the gaps and improve coherence. However, negotiations have been deadlocked as a consequence of a lack of consensus on definitional issues.

Despite the proliferation of international legal instruments (including United Nations Security Council resolutions), there is no separate international ‘law of terrorism’. Rather, the problems are dealt with under the ‘applicable sectors of public international law’, namely international criminal justice, international humanitarian law, the law on the use of force and state responsibility.

Each article in this Issue examines the international response to terrorism through the lens of one of these sectors. Kimberley Trapp’s article considers the implications of reactive law making by examining international terrorism suppression instruments dating back to the League of Nations. The next article, by See Seng Tan and Hitoshi Nasu, explores the development of counter-terrorism law and policy through a regional lens. In doing so, it evaluates the role of the Association of Southeast Asian Nations and its focus on state sovereignty and non-intervention. The third article, written by Jon Moran, notes the increased role of special operations forces in counter-terrorism operations and emphasises the need for increased oversight. Finally, Fiona Lau’s article explores what some criminologists might label as ‘state terrorism’. More specifically, it examines

14 Larissa van den Herik and Nico Schrijver, ‘The Fragmented International Legal Response to Terrorism’ in Larissa van den Herik and Nico Schrijver (eds), Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges (Cambridge University Press, 2013) 1, 1.
16 Ibid.
17 State terrorism refers to ‘the intentional use or threat of violence by state agents or their proxies against individuals or groups who are victimized for the purpose of intimidating or frightening a broader audience’: Richard Jackson, Eamon Murphy and Scott Poynting, ‘Introduction: Terrorism, the State and
the legality of the United States’ extraordinary rendition program and whether the International Criminal Court could ensure accountability by holding individuals criminally responsible for their actions.

In late 2015, the United Nations Security Council reaffirmed that ‘terrorism in all forms and manifestations constitutes one of the most serious threats to peace and security and that any acts of terrorism are criminal and unjustifiable’.18

Given this continued threat, the articles in this Issue present a timely consideration of the diverse range of the legal, policy and political issues affecting the international community’s response to terrorism.

On that note, I would like to express my gratitude to the authors for their insightful contributions to the academic literature. As noted by Damian Morris, the Editor of Issue 39(1), ‘it is their hard work and research which sustains the Journal’.19 It has been a pleasure to work with each and every one of them. Of course, thanks must also go to the anonymous peer reviewers for their detailed comments on each article.

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