

**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.
- 2 George Williams, ‘A Decade of Australian Anti-Terror Laws’ (2011) 35 *Melbourne University Law Review* 1136, 1144.
- 3 Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011) 309.
- 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].
- 5 *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, opened for signature 14 September 1963, 704 UNTS 219 (entered into force 4 December 1969); *Convention for the Suppression of Unlawful Seizure of Aircraft*, opened for signature 16 December 1970, 860 UNTS 105 (entered into force 14 October 1971); *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft*, opened for signature 10 September 2010, DCAS Doc No 22 (not yet in force); *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, opened for signature 23 September 1971, 974 UNTS 177 (entered into force 26 January 1973); *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, opened for signature 24 February 1988, 1589 UNTS 474 (entered into force 6 August 1989).
- 6 *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, opened for signature 10 March 1998, 1678 UNTS 221 (entered into force 1 March 1992); *Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, opened for signature 14 October 2005, [2005] ATNIF 30 (entered into force 28 July 2010).
- 7 *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, opened for signature 14 September 1973, 1035 UNTS 167 (entered into force 20 February 1977).

the financing of terrorist activities.¹¹ There are also a number of regional conventions.¹² 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.¹³ 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'.¹⁴ 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'.¹⁵ 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.¹⁶

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'.¹⁷ More specifically, it examines

8 *International Convention against the Taking of Hostages*, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983).

9 *International Convention for the Suppression of Acts of Nuclear Terrorism*, opened for signature 13 April 2005, 2445 UNTS 89 (entered into force 7 July 2007).

10 *International Convention for the Suppression of Terrorist Bombings*, opened for signature 15 December 1997, 2149 UNTS 256 (entered into force 23 May 2001).

11 *International Convention for the Suppression of the Financing of Terrorism*, opened for signature 9 December 1999, 2178 UNTS 197 (entered into force 10 April 2002).

12 See, eg, *European Convention on the Suppression of Terrorism*, opened for signature 27 January 1977, 1137 UNTS 93 (entered into force 4 August 1978); *OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance*, opened for signature 2 February 1971, 1438 UNTS 194 (entered into force 16 October 1973); *ASEAN Convention on Counter Terrorism*, opened for signature 13 January 2007 (entered into force 27 May 2011).

13 Kimberley N Trapp, 'The Potentialities and Limitations of Reactive Law Making: A Case Study in International Terrorism Suppression' (2016) 39 *University of New South Wales Law Journal* 1191, 1191.

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.

15 Ian Brownlie, *Principles of Public International Law* (Oxford University Press, 7th ed, 2008) 745.

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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the Study of Political Terror' in Richard Jackson, Eamon Murphy and Scott Poynting (eds), *Contemporary State Terrorism: Theory and Practice* (Routledge, 2010) 1, 2. Viewed in this light, counter-terrorism initiatives can, in some circumstances, constitute forms of state terrorism.

18 SC Res 2253, UN SCOR, 7587th mtg, UN Doc S/RES/2253 (17 December 2015) Preamble para 2.

19 Damian Morris, 'Editorial' (2016) 39 *University of New South Wales Law Journal* 308, 310.

20 Jessie Blackburn, 'The Independent National Security Legislation Monitor's First Term: An Appraisal' (2016) 39 *University of New South Wales Law Journal* 975.

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