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978-1-107-02538-7 - Counter-Terrorism Strategies in a Fragmented International
Legal Order: Meeting the challenges

Edited by Larissa Van Den Herik and Nico Schrijver

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COUNTER-TERRORISM STRATEGIES IN A FRAGMENTED INTERNATIONAL LEGAL ORDER

Few events have influenced our global order as intensely as the events of September 11, 2001. At various levels in the past twelve years, persistent attempts have been made to address the threat of terrorism, yet there is still urgent need for a joint and coherent application of a variety of regulations relating to international criminal justice cooperation, the use of force and international human rights law. In an important contribution to international discourse, Larissa van den Herik and Nico Schrijver examine the relationship between different branches of international law and their applicability to the problem of terrorism and counter-terrorism. Using a unique combination of academic perspectives, practitioners' insights and a comprehensive three-part approach, *Counter-Terrorism Strategies in a Fragmented International Legal Order* offers sound policy recommendations alongside thorough analysis of the state of international law regarding terrorism, and provides fresh insights against the backdrop of recent practice.

LARISSA VAN DEN HERIK is Professor of Public International Law at the Grotius Centre for International Legal Studies, Leiden University.

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FOREWORD

KAMAL HOSSAIN

Counter-terrorism strategies were not just introduced into the world as a result of the horrifying 9/11 attacks on the United States. Before 2001 many countries had to cope with acts of terrorism, often with international elements. The international community responded by adopting specific conventions, addressing terrorist acts committed on board aircraft or ships, the taking of hostages and the financing of terrorism. For long it was clear that these efforts were both insufficient and fragmented. This prompted India to launch in 1995 a proposal for drafting a comprehensive anti-terrorism convention, a project which however failed to gain widespread political support until 9/11. Although this changed markedly after 2001, negotiations floundered time and again on the definition of terrorism and some other matters.

As this volume amply demonstrates, path-breaking progress could be made in more specific fields of counter-terrorism strategies, both through enhanced traditional international criminal justice cooperation and through strengthened modern collective sanctions regimes imposed by the UN Security Council. The latter was rightly criticized for lack of conformity with fundamental human rights standards. One should never forget that the essence of the struggle against terrorism is to uphold respect for human rights; hence, only protection and not violation of human rights is the appropriate method of fighting terrorism. It is gratifying that in recent years some reparations could be made of these initial deficiencies in the UN's counter-terrorism strategies, including by the innovative establishment of the Office of the Ombudsperson and improved and more transparent listing and delisting procedures.

Reading the host of anti-terrorism conventions and UN resolutions of both the General Assembly and the Security Council examined in this

Vice-chairman of the International Law Association, former minister of foreign affairs of Bangladesh and former UN Special Rapporteur on the Human Rights Situation in Afghanistan.

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book, leaves one with the impression that considerable achievements in terms of standard setting have been made towards an appropriate global normative order for the suppression of international terrorism but that enforcement completely falls below what is necessary. Here further solutions have to be found through strengthening both international criminal justice cooperation and targeted sanctions regimes which address not merely country-specific situations but transboundary terrorism as well. Furthermore, as the chapters in Part II of the book on the use of force against terrorists review, the employment of the use of force in the context of collective security or the right of self-defence can only be an ultimate resort, forming necessarily only a partial and inadequate response to international terrorism. What is most of all strikingly missing is an agenda of prevention of international terrorism. I cannot agree more with former Secretary-General Annan's observation in his report *In Larger Freedom* (2005): 'While poverty and denial of human rights may not be said to "cause" civil war, terrorism or organized crime, they all greatly increase the risk of instability and violence.' In his equally impressive report of 2006, entitled *Uniting against Terrorism*, Annan guided the member states of the United Nations to adopt the United Nations Global Counter-Terrorism Strategy (A/RES/60/288 of 8 September 2008). This document, adopted on the eve of five years after 9/11, certainly outlines a comprehensive strategy, including measures to address the conditions conducive to the spread of international terrorism, measures to prevent and combat terrorism, measures to build states' capacity to prevent and combat terrorism and to strengthen the role of the UN in this regard, and measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. Subsequent resolutions of the two principal political organs of the UN have further refined elements of this global counter-terrorism strategy. This book, co-edited by professors Larissa van den Herik and Nico Schrijver of Leiden University, the Netherlands, is highly useful in mapping the state of the art in counter-terrorism strategies in three selected key fields of international law: international criminal justice cooperation in cases involving terrorism (Part I), use of force against terrorists (Part II) and the interplay between human rights law and international humanitarian law (Part III). The twenty-one chapters in this book provide an in-depth analysis of the achievements and the shortcomings of the role of international law in combating international terrorism. The collaborative efforts of this group of independent eminent international experts, facilitated by support from the Ministry of

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Foreign Affairs (Netherlands), resulted in the comprehensive *Leiden Policy Recommendations on Counter-Terrorism and International Law* (annexed to this book). These provide not only ample food for thought to anyone with an interest in the subject matter of this book, but also provide politicians and policy-makers with balanced expert perspectives on areas in which more has to be done and in which greater consensus is to be pursued.

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While many have thus contributed to the formulation of the *Leiden Policy Recommendations* and to this book project, the responsibility for errors and shortcomings rests entirely with us as the editors.

*Larissa van den Herik, Nico Schrijver
Leiden, April 2012*

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AP I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict
AP II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CETS	Council of Europe Treaty Series
CFI	European Court of First Instance
CoE	Council of Europe
CT	counter-terrorism
CTED	Counter-Terrorism Committee Executive Directorate
CTITF	UN Counter-Terrorism Implementation Task Force
EAW	European Arrest Warrant
EAW-FD	Framework Decision on the European Arrest Warrant
ECE	European Convention on Extradition
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ETA	Euskadi Ta Askatasuna [Basque Homeland and Freedom]
FATF	Financial Action Task Force
FD	Framework Decision
GC III	Geneva Convention III Relative to the Treatment of Prisoners of War
GC IV	Geneva Convention IV Relative to the Treatment of Civilian Persons in Time of War
GWOT	global war on terror
HRC	Human Rights Committee
HRW	Human Rights Watch

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ABBREVIATIONS

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IAC	international armed conflict
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	international humanitarian law
IHRL	international human rights law
ILC	International Law Commission
IRA	Irish Republican Army
LOAC	law of armed conflict
NIAC	non-international armed conflict
OAS	Organization of American States
OAU	Organization of African Unity
OIC	Organization of the Islamic Conference
PKK	Kurdistan Workers' Party
POW	prisoner of war
RO	regional organization
SARs	Suspicious Activity Reports
TEC	Treaty Establishing the European Community
TEU	Treaty on the European Union
UNHRC	UN Human Rights Council
UNSC	United Nations Security Council
WOT	war on terror

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