International law and the fight against terrorism: problems and prospects[*]

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Introduction

International terrorism constitutes one of the most intense and persistent threats for international peace and security. As Habermas noted, terrorism presents a danger that has "united the world into an involuntary community of shared risks".[1] Contrary to popular belief, terrorism and terrorist activities do not constitute a recent phenomenon.[2] However, despite its long pedigree and its global impact, the fight against terrorism has shown to be controversial. This controversy is reflected in the absence of a commonly agreed definition,[3] as well as

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[*] All errors remain the sole responsibility of the authors. The views expressed in this article are the authors' alone and do not engage the responsibility of their colleagues or Three Crowns LLP.

[1] J. Habermas, *The Inclusion of the Other* (2002), p. 186.

[2] See G. Chaliand et A. Blin. (eds), *Histoire du Terrorisme: de l'antiquité à Daech* (2015) ; see also G. Chaliand et A. Blin (eds.), *The History of Terrorism From Antiquity To Al Qaeda* (2007).

[3] B. Saul, *Defining Terrorism in International Law* (2006), p. 130; see the definition suggested by Dame Rosalyn Higgins: "activities, whether of States or of individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both", R Higgins, 'The general international law of terrorism' in R Higgins and M Flory (eds), *Terrorism and International Law* (1997) 13, p. 28.

in the absence of a comprehensive international convention regarding terrorism. In his classic monograph on the definition of terrorism Professor Saul notes that "the essence of terrorism is the commission of serious, politically motivated, criminal violence, aimed at spreading terror, regardless of the status of the perpetrator."[4] This being said, Professor Saul continues by underlining the absence of a generic conception of terrorism in international law:

"Despite the many international attempts to define terrorism generically, there is still no such crime as terrorism in international treaty law. Although some regional treaties have adopted general definitions, the variation in these definitions militates against the emergence of any shared international conception of terrorism".[5]

For those interested in the legal and criminological dimensions of the phenomenon of terrorism and the complex legal questions involved, the contributions of Professor Kourakis in this field are already *loci classici*.[6]

This contribution does not purport to be a comprehensive presentation and assessment of the international legal framework regarding terrorism. Indeed such an ambitious endeavour would not be possible herein. Instead, the analysis below explores the contributions as well as the shortcomings of multilateral international law making, the role of the UN Security Council, as well as rules of customary international law regarding the fight against terrorism.

Multilateral International Law Making

Multilateral conventions constitute the "ideal type" of norm in in-

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[4] B. Saul, *Defining Terrorism in International Law*, (2006), p. 130 citing A Cassese, International Criminal Law (2003), p. 129.

[5] B. Saul, *Defining Terrorism in International Law*, (2006), p. 190.

[6] Seeeg N. Κουράκης, "Σκέψεις για το πρόβλημα της σύγχρονης τρομοκρατίας" (1988) 1 Ελληνική Επιθεώρηση Εγκληματολογίας 123 (1991) Α Εγκληματολογικοί Ορίζοντες 179, Ν Κουράκης, Τρομοκρατία και Πολιτικό Έγκλημα (2002) Ποινικός Λόγος 1647.

ternational law-making.[7] International law-making through multilateral conventions in the field of counterterrorism is characterised by two main features.

The first feature is the absence of a comprehensive convention aimed at the international fight against terrorism.[8] In 1996 the UN General Assembly, in resolution 51/210 of 17 December, established an Ad Hoc Committee to, amongst others,[9] "address means of further developing a comprehensive legal framework of conventions dealing with international terrorism" to supplement related existing international instruments.[10] This mandate has continued to be renewed on an annual basis by the General Assembly in its resolutions on the agenda item "Measures to eliminate international terrorism" and in its resolution 70/120 of 14 December 2015, the General Assembly recommended that the Sixth Committee establish a working group with a view to finalizing the process on the draft Comprehensive Convention on International Terrorism.[11] However, the negotiations in relation to the Comprehensive Convention on International Terrorism are currently deadlocked.[12]

The second feature is the existence of a plethora of international treaties, conventions and protocols. Since 1963, 19 international legal instruments have been elaborated to prevent terrorist acts.[13] These in-

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[7] M. Risvas, 'Multilateral and bilateral approaches in the protection of underwater cultural heritage' (2013) *Transnational Dispute Management* 1, p. 2.

[8] B. Saul, *Defining Terrorism in International Law* (2006), pp. 141 *et seq*.

[9] The Ad Hoc Committee was to elaborate an international convention for the suppression of terrorist bombings and an international convention for the suppression of acts of nuclear terrorism.

[10] Office of Legal Affairs, United Nations (2015) Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996.

[11] Office of Legal Affairs, United Nations (2015) Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996'.

[12] See Sushma Swaraj's speech at the 71st United Nations General Assembly.

[13] For a complete list see UN Action to Counter Terrorism, 'International Legal Instruments', available at http://www.un.org/en/counterterrorism/legal-instruments.html.

clude "sectoral" international treaties[14] and protocols to address specific types of violent conduct perceived by several States as being akin to terrorism.[15] These include the 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, the 1979 International Convention against the Taking of Hostages, the 1980 Convention on the Physical Protection of Nuclear Material, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, the supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection; the 1994 UN Personnel Convention,the 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism, the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, the 2005 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the 2005 Amendments to the Convention on the Physical Protection of Nuclear Material, the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, and the 2014 Protocol to Amend the Con-

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[14] J. Crawford, *Brownlie's Principles of Public International Law* (8th edition, 2012), p. 470.

[15] B. Saul, *Defining Terrorism in International Law* (2006), p. 130.

vention on Offences and Certain Acts Committed on Board Aircraft.

The role of these international conventions is crucial as they provide a much needed international legal framework (in the absence of elaborated customary rules) in relation to the fight against terrorism.

There are, however, three major shortcomings to this fragmented approach to multilateral international law-making regarding terrorism. First, most of these international law instruments are reactionary in nature and were adopted following particularly shocking attacks,[16] filling legislative gaps at the time.[17] For example, violence against civil aircrafts in the 1960s and a series of attacks in 1970-1971 led to the adoption of the 1970 Hague Convention[18] and the 1971 Montreal Convention.[19] The 1988 Montreal Protocol was a response to attacks on airports in Rome and Vienna in 1985.[20] Similarly, the 1988 Rome Convention was in response to the terrorist seizure of an Italian cruise, the *Achille Lauro*, in 1985, while the 1996 bombings against US interests in Saudi Arabia, bombings in Sri Lanka, Israel, Manchester, UK, and gas attacks in Tokyo resulted in the 1997 Terrorist Bombings Convention.[21] Second, as correctly observed by Professor Saul, "only about one-quarter of States have ratified all sectoral treaties and there consequently remain jurisdictional gaps in the coverage of the existing treaties."[22] Third, and perhaps most importantly, there exists a normative gap "in the network of treaties".[23] This gap is the failure to internationally criminalize terrorist killings of civilians "by any method".[24] As a result, violence against civilians in other contexts (for example outside the ae-

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[16] B. Saul, *Defining Terrorism in International Law* (2006), p. 130.

[17] B. Saul, *Defining Terrorism in International Law* (2006), p. 130.

[18] B. Saul, *Defining Terrorism in International Law* (2006), p.130.

[19] B. Saul, *Defining Terrorism in International Law* (2006), p. 130.

[20] B. Saul, *Defining Terrorism in International Law*, (2006), p 131; see generally G. Kyriakopoulos, *La Sécurité de l'Aviation Civile en Droit International Public* (1999).

[21] B. Saul, *Defining Terrorism in International Law* (2006), p. 131.

[22] B. Saul, *Defining Terrorism in International Law* (2006), p. 135 (emphasis omitted).

[23] B. Saul, *Defining Terrorism in International Law* (2006), p. 135.

[24] B. Saul, *Defining Terrorism in International Law* (2006), p. 135.

rial, maritime or nuclear acts contexts) is not criminalized as terrorism under the relevant conventions.[25]

The Role of the UN Security Council

The UN Security Council has "primary responsibility for the maintenance of international peace and security".[26] In the face of "any threat to the peace, breach of the peace or act of aggression",[27] the UN Security Council is responsible for enforcement action[28] and is the sole body within the UN system with the capacity to authorize the use of force.[29]

There is a wide consensus amongst States that the fight against terrorism requires a "prompt and effective response to present and future threats to international peace and security ...designed so as to maximize the chance of inducing the target to comply with Security Council resolutions, while minimizing the negative effects of the sanctions on the civilian population".[30] The lengthy and cumbersome multilateral treaty-making process and the time required for national ratification does not offer the requisite reactivity.[31] According to Bianchi "the SC's exercise of powers under Chapter VII is the only available means of promptly producing general law... at a time when a normative response of general application is required in order to effectively counter a threat perceived as being of a global character by the international community".[32] Thus, in the face of the rising and evolving threat of ter-

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[25] B. Saul, *Defining Terrorism in International Law* (2006), p. 135.

[26] The UN Charter, Article 24(1).

[27] The UN Charter, Article 39.

[28] J. Crawford, *Brownlie's Principles of Public International Law* (8th edition, 2012), p. 757.

[29] The UN Charter, Article 39; J Crawford, *Brownlie's Principles of Public International Law* (8th edition, 2012), p. 759.

[30] Report of the Secretary-General on the Work of the Organization, A/55/1, at 13, para. 100.

[31] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 888.

[32] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-

rorism, the UN Security Council has become "the principal vehicle for enforcement of the global counterterrorism strategy".[33]

This being said, the effectiveness of the Security Council's anti-terrorism measures may be called into question due to (i) issues of legitimacy of the Security Council's actions, (ii) the potential encroachment on human rights, (iii) implementation and enforcement in individual Member States' domestic legislative mechanism, and (iv) the reactionary nature of such measures. Each of these issues will be addressed in turn below.

First, the quasi-judicial nature of some of the Security Council's anti-terrorism measures can raise questions of legitimacy.[34] Namely, whether such normative action by the Security Council, described by G Arangio-Ruiz as "questionable excursions from the area of peace-enforcement to that of law-making, law-determining or law - enforcing"[35] exceed the boundaries of its role under Chapter VII and the "insurmountable functional limit"[36] of peace enforcement, which the Security Council should not overstep.[37] This being said, the "ultimate test of the legitimacy of the SC's action remains the level of acceptance of

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terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 889.

[33] K. Graham, 'The Security Council and counterterrorism: global and regional approaches to an elusive public good' (2005) 17 *Terrorism and Political Violence* 37, p. 47.

[34] See A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, pp. 885 *et seq*.

[35] G. Arangio-Ruiz, 'On the Security Council's "law-making"', (2000) 3 Rivista di Diritto Internazionale 609, p. 610.

[36] G. Arangio-Ruiz, 'On the Security Council's "law-making"', (2000) 3 Rivista di Diritto Internazionale 609, p. 710; see also A. Bianchi 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 886.

[37] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 886.

its practice by the UN Member States".[38] While the legitimacy of the Security Council's action in the face of terrorism can be called into question, particularly in light of the "law-making" quality of some of its resolutions, the need for an "efficient and prompt response"[39] appears to have prevailed over such concerns.

Second, the potential incompatibility of the Security Council's anti-terrorism measures with other rules of international law also poses a potential problem. One particularly illustrative example is the possible violation of human rights law. For example, the inclusion of individuals on a black list, or the imposition of financial sanctions or travel restrictions, jeopardizes the right to a fair trial, the presumption of innocence, the right to a defence, the principle of *nullum crimen/nulla poena sine lege*, the right to a remedy, and the right to property.[40] This potential encroachment of anti-terrorism measures on human rights leaves an opening for legal proceeding challenging anti-terrorism measures.[41]

The third limitation of the Security Council's anti-terrorism measures is the need for implementation and enforcement of said measure by the Member States. In implementing and enforcing Security Council resolutions Member States need to assess their domestic legal system in its entirety and determine which measures will be needed in order to honour their international law obligations.[42] Consequently, the efficacy

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[38] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 887.

[39] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 917.

[40] For a more detailed discussion, see A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, pp. 903 *et seq*.

[41] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', 17(5) 2007 *EJIL*, 881, p. 904.

[42] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', (2007) 17 *EJIL* 881, p.

of anti-terrorism measures adopted by the Security Council is entirely in the hands of Member States.

Most of the measures adopted by the Security Council require domestic implementation. However, in some Member States the requisite mechanisms for implementing the relevant Security Council resolutions may not exist and may need to be created.[43] The effectiveness of the Security Council's measures is entirely dependent on the incorporation of said measures by the Member States into their domestic legal orders, which include constitutional or statutory rules for incorporation, and criminal and administrative laws and procedures.[44]

The efficacy of the Security Council's anti-terrorism measures also largely depends on enforcement by Member States of said measure by means of their internal law enforcement mechanism.[45] This includes monitoring the practical application of the measures by courts and law enforcement officials.[46]

Finally, as with multilateral conventions, limited by the lack of a generalised definition of terrorism, the Security Council's counterterrorism approach is largely reactive rather than proactive. For example, SC Resolutions 1368[47] and 1373[48] were passed as a reaction to 9/11 ter-

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[43] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', (2007) 17 *EJIL*, 881, p. 893.

[44] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', (2007) 17 *EJIL* 881, p. 882.

[45] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', (2007) 17 *EJIL* 881, p. 884.

[46] A. Bianchi, 'Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion', (2007) 17 *EJIL* 881, p. 895.

[47] SC Res 1368 (2001).

[48] SC Res 1374 (2001).

rorist attacks;[49] SC Resolution 1438 was a response to bomb attacks in Bali on 12 October 2002;[50] SC Resolution 1440 was adopted following the taking of hostages in Moscow on 23 October 2002;[51] SC Resolution 1530 was adopted further to the bomb attacks in Madrid on 11 March 2004;[52] SC Resolution 1611 was a reaction to the terrorist attacks in London on 7 July 2005;[53] and SC Resolution 2249 of 20 November 2015 was reaction to the Paris attacks of 13 November 2015 and the "global and unprecedented threat to international peace and security" posed by ISIS and its allies.[54]

Rules of Customary International Law

Public international law has been always characterised by normative indeterminacy,[55] fragmentation,[56] and a reliance on customary international law.[57] In particular, the problem of fragmentation exists in the context of international criminal law.[58] This being said, customary international rules regarding the use of force are highly relevant in the fight against terrorism.

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[49] P. Hilpold, 'The evolving right of counter-terrorism: an analysis of SC resolution 2249 (2015) in view of some basic contributions in international law literature' (2016) *QIL*, available at: http://www.qil-qdi.org/the-evolving-right-of-counter-terrorism-an-analysis-of-sc-resolution-2249-2015-in-view-of-some-basic-contributions-in-international-law-literature/.

[50] SC Res 1438 (2002).

[51] SC Res 1440 (2002).

[52] SC Res 1530 (2004).

[53] SC Res 1611 (2005).

[54] SC Res 2249 (2015), preamble.

[55] See M. Koskenniemi, 'The politics of international law – 20 years later' (2009) 20 *EJIL* 7, 13.

[56] Report of the Study Group of the International Law Commission, "Fragmentation of international law: difficulties arising from the diversification and expansion of international law', A/CN.4/L.682, 13 April 2006.

[57] See J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), pp. 23 *et seq*.

[58] See generally L. van den Herik & C. Stahn (eds.), *The Diversification and Fragmentation of International Criminal Law* (2012).

The starting point is Article 51 of the UN Charter. Article 51 of the Charter reflects customary law.[59] Indeed, it is uncontroversial that customary and conventional international law can exist in parallel.[60] Article 51 of the Charter, however, is silent on whether the activities of non-state actors can constitute an "armed attack" within the meaning of Article 51 of the Charter. As has been aptly observed, "the criteria developed for the exercise of the right to self-defence in inter-state relations are not easily transferable to the struggle between states and non-state actors like terrorists."[61] Indeed, according to Hilpold, international law is largely silent about the right to self-defence in the context of terrorism:

"What does international law say about self-defence against terrorism? Originally not very much. An international legal order whose subjects were mainly states for a long time paid little attention to non-state actors like terrorists. Things changed only when the threat emanating from terrorist groups became equivalent to that of a medium-sized aggressor state".[62]

A conservative view was adopted by the International Court of Jus-

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[59] See D. Sarooshi, "The recourse to the use of force by the United Nations' (2010) 104 *American Society of International Law Proceedings*, 400.

[60] As the International Court of Justice (ICJ) held in the *Nicaragua* case "customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have an identical content", *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits Judgment, [1986] *ICJ Rep* 14, para. 179.

[61] P. Hilpold, 'The evolving right of counter-terrorism: an analysis of SC resolution 2249 (2015) in view of some basic contributions in international law literature' (2016) *QIL*, available at: http://www.qil-qdi.org/the-evolving-right-of-counter-terrorism-an-analysis-of-sc-resolution-2249-2015-in-view-of-some-basic-contributions-in-international-law-literature/.

[62] P. Hilpold, 'The evolving right of counter-terrorism: an analysis of SC resolution 2249 (2015) in view of some basic contributions in international law literature' (2016) *QIL*, available at: http://www.qil-qdi.org/the-evolving-right-of-counter-terrorism-an-analysis-of-sc-resolution-2249-2015-in-view-of-some-basic-contributions-in-international-law-literature/.

tice in the *Wall Advisory Opinion* wherein the Court held that "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State".[63] Professor Crawford aptly summarised the position as follows: it "appears to be that a state under assault by non-state actors cannot effectively defend itself against them by recourse to Article 51 unless, following the position of the Court in *Nicaragua*, they are under the effective control of a foreign state".[64]

State practice, however, has arguably become more accepting of self-defence with respect to independent non-state actors.[65] In the recent practice of the UN Security Council terrorist acts committed by non-state entities were characterised as threats to international peace and security, and UN Member States were authorised to use force. Security Council Resolution 1386 identified terrorism as a threat to peace under Article 39 of the Charter[66] and recognized the right of individual and collective self-defence in its preamble.[67] Security Council Resolution 1373 of 2001 directed states to "take the necessary steps to prevent the commission of terrorist acts"[68] which is the typical language which authorizes the use of force.[69] In general, post 9/11 all members of the Security Council, members of NATO (other than those sitting on the

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[63] ICJ Reports 2004, 'Legal consequences of the construction of a wall in the occupied Palestinian territory, Advisory Opinion of 9 July 2004', p 194; see also J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 771.

[64] J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 771.

[65] J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 772.

[66] SC Res 1386 (2001); J Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 772.

[67] See A. Cassese, *The Human Dimension of International Law: Selected papers of Antonio Cassese* (2008), p .451.

[68] SC Res 1373 (2001) op §2(b); J Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 772.

[69] J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 772.

Security Council) and States that have not objected to resort to Article 51 "have come to *assimilate* a terrorist attack by a terrorist organization to an armed aggression *by a state*, entitling the victim state to resort to individual self-defence and third states to act in collective self-defence (at the request of the former state)".[70] More recently in paragraph 5 of its Resolution 2249 (2015) of the UN Security Council called upon Member States to:

> take all necessary measures, in compliance with international law, in particular with the United Nations Charter, as well as international human rights, refugee and humanitarian law, on the territory under the control of ISIL also known as Da'esh, in Syria and Iraq, to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL also known as Da'esh as well as ANF, and all other individuals, groups, undertakings, and entities associated with Al Qaeda, and other terrorist groups, as designated by the United Nations Security Council, and as may further be agreed by the International Syria Support Group (ISSG) and endorsed by the UN Security Council, pursuant to the Statement of the International Syria Support Group (ISSG) of 14 November, and to eradicate the safe haven they have established over significant parts of Iraq and Syria.[71]

In addition to the potential change of the scope of the customary international rules of self-defence and use of force in light of the phenomenon of terrorism, another area of customary international law that might be tested is that of State responsibility. Professor Proulx called for the recalibration of the rules on State responsibility and advocated a model of strict liability in relation to terrorist acts:

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[70] See A. Cassese, *The Human Dimension of International Law: Selected papers of Antonio Casses*e (2008), p 451 (emphasis in original).

[71] SC Res 2249 (2015), para. 5.

"States still have an important – sometimes determinant – place in the chain of events leading up to the perpetration of transnational terrorist attacks, as their authors often rely on governmental inaction, toleration, acquiescence, willful blindness or ineffective counterterrorism infrastructures as propitious incubators for their agendas. Consequently, When terrorists attack, their victims may not know where to find them, but there is an address for their grievances and their fears. It is the State".[72]

It should however be noted that rules of customary international law do change. In international law States are both the creators and the subjects of the rules. It is therefore up to the international community to change the relevant rules of customary international law.

Epilogue

A comprehensive analysis of the challenges and inadequacies of the framework that public international law provides for fighting terrorism would fill volumes and is certainly not possible herein. However, the above short critical analysis of the international rules regarding terrorism highlights some of the significant shortcomings of the international legal framework. Nevertheless, the focus on the shortcomings should not in any way undermine the importance of the existence of an international law framework for combatting terrorism. Such a framework is indeed invaluable and can and should be improved through deeper international co-operation and co-ordination.

[72] V. J. Proulx, *Transnational Terrorism and State Accountability, A New Theory of Prevention* (2012), p. 4.