doi:10.1093/jcsl/krt012
Advance Access published on 7 June 2013

Editorial

Preventive Counter-terrorism and International Law[†]

Nigel D. White*

Counter-terrorism, to be effective, has to have a strong preventive element—the aim being to stop an attack long before it is launched, and thereby to reduce the fear, as well as effects, of terrorism. This has not only led to early arrest but also to redefinitions of terrorism to more comprehensively cover planning and preparation, as well as incitement. It has also led to argument that lethal force can be used preventively or pre-emptively against suspected terrorists/terrorist groups; as well as preventive detention and other means of control such as control orders and other targeted measures; and what may be called preventive interrogation, intelligence and law enforcement techniques.

But what is the meaning and scope of 'prevention' and 'preventive' responses permissible within international law? How do the applicable legal principles relate and intersect, and with what implications for state practices and policies? With the understandable need to prevent terrorist atrocities pulling governments in one direction, do the requirements of international law pull in the other? Or does the international legal framework provide for (some) preventive action in the fact of terrorist threats, and, if so, what are the limitations on the discretion of states?

This introductory article to a special issue on counter-terrorism will focus on two (legal) regimes central to counter-terrorism that are often seen in opposition—collective security and human rights. In the case of collective security the UN Charter has a strong preventive element; in Chapter VI the Security Council can address situations likely to endanger peace, while in Chapter VII threats to as well as breaches of the peace are tackled. Given the Security Council's powers under Chapter VII it can authorize preventive enforcement action, but does this have the potential to override human rights? Human rights jurisprudence itself is not necessarily antithetical to preventive counter-terrorism by accommodating derogation, but also through states fulfilling their due diligence obligations, to protect individuals from human rights abuse by third parties. Does this enable states to reconcile their security and human rights obligations?

Thus, in order to understand the limits of counter-terrorism it is not enough put human rights in opposition to security but to understand more profoundly

* Professor of Public International Law, University of Nottingham; and Co-Editor of the *Journal of Conflict and Security Law*. E-mail: nigel.white@nottingham.ac.uk

† This article is based on papers given at the International Law Association (British Branch) Conference held at Nottingham in April 2012; and at the Clingendael Institute in The Hague in May 2012.

how they intersect. For example, preventive action at the UN level has been confined thus far to non-forcible measures, and would arguably only extend to forcible measures in the face of an imminent threat. Furthermore, those non-forcible measures in the form of targeted sanctions have themselves been modified in the light of criticism from regional and national courts on the grounds of inconsistency with human rights. However, the exact legal parameters of targeted measures have not been agreed as the *Kadi* saga before the European Court shows.

1. Collective Security and Counter-terrorism

During the Cold War, the UN addressed the growing threat of terrorism that emerged in its modern form in the 1960s by supporting traditional, consensual forms of international law-making, which categorized the main forms of terrorist acts as criminal. Those multi-lateral treaties such as the Tokyo Convention of 1963 and the Montreal Convention of 1971 defined crimes and obligated state parties to prosecute or extradite suspected offenders. Such criminal justice/law enforcement treaties have punitive or retributive functions—to punish those guilty of criminal acts, but they also serve a deterrent function—by modifying the future behaviour of those considering terrorist acts. However, the effectiveness of these treaties can be questioned, as the Lockerbie tragedy illustrates—states can claim that they are fulfilling their prosecutorial duties while in reality they are only going through the motions. The trial of the two Libyan agents suspected of the Lockerbie bombing was achieved partly through the intercession of the Security Council, utilizing its collective security powers to deal with a past act of terrorism, but as an indication of future behaviour by Libya in supporting terrorism. Due to the weaknesses of criminal justice treaties aimed at tackling terrorism, the preventive effects of which are questionable, collective security mechanisms, with preventive competence to address threats to the peace, have stepped in.

The Security Council's primary function according to the UN Charter (Article 24) is the maintenance of international peace and security. Just as governments act to protect the security of states from threats, so the Security Council performs a similar role in relation to the international order. Its constitution means that the Council's security function is both erratic and inconsistent; but that should not detract from its competence in tackling situations which threaten the security of states, groups or individuals. In so doing it may use powers that are mandatory (Article 25), coercive and give rise to supreme duties (Article 103), but one question is whether this places the Council outside the international legal order, or whether it must, as a matter of legality as well as legitimacy, still respect principles of the UN Charter and international law. As a political organ that is central to the international legal order, the Security Council's legitimacy is dependent upon it respecting the law.

However, the Security Council has both executive and law-making powers—the latter normally taking place in relation to specific threats to international peace and security (for example, imposing disarmament conditions on specific states), and, very controversially, generally against terrorism or the spread of weapons of mass destruction (SC Res 1373 (2001) and 1540 (2004)). Thus, the Security Council can impose 'security-based' obligations on states which then form part of the raft of international legal rights and duties each state has. So when it is argued that the Security Council must act within the international legal order, we must recognize that it has an active role in that legal order by adding to its content, but this does not mean that it is unconstrained by international law.

After all, the idea that key actors in international law are both lawmakers and subjects of the law is not new. While states accept obligations on a consensual basis in a bilateral or multilateral exchange with other states, at least in the pure Westphalian model of international law, the Security Council seems to be able to impose obligations without any reciprocal obligations being imposed on it. But this seems to disregard the fact that, according to Article 24 of the Charter, the Security Council acts on behalf of Member States, suggesting at least some form of reciprocal relationship, and that in so doing it is required to act in accordance with the Purposes and Principles of the Charter, agreed to by all Member States. The purposes in Article 1 include the maintenance of peace and security by means of collective measures, if necessary, but also include the promotion and encouragement of respect for human rights. Thus, even within the UN Charter, hard security concerns run alongside human rights, so that when fulfilling its primary purpose the Security Council must have regard to human rights. What does this mean? Although it does not have the same obligations to respect and protect human rights that a state has, as an international legal person with rights and duties under international law, the UN (and therefore the Security Council) has obligations to respect and protect. First, it must ensure that Member States respect their human rights obligations when carrying out their obligations under Security Council resolutions and, therefore the Security Council should not override states' human rights obligations unless it has no alternative in the face of an imminent threat; secondly, the Security Council must use its best endeavours to ensure that its enforcement powers are exercised in ways that protect to the maximum extent possible the human rights of individuals.

There is evidence that, despite assumptions to the contrary, the Security Council recognizes these obligations, for instance in its move away from blanket sanctions imposed on states which have (at least in part) caused widespread suffering and loss of social and economic human rights, towards more targeted sanctions against organizations and individuals, whether political leaders or suspected terrorists deemed responsible for threats to international peace and security. Criticism of targeted sanctions in terms of their civil and political human rights' compatibility, has led the Security Council to recognize that states fulfilling their security-based obligations derived from Security

Council resolutions should, in so doing, respect their human rights obligations.[1] The Security Council has also created a remedial, albeit non-judicial, ombudsman mechanism at the international level, where individuals can bring claims of wrongful delisting.[2]

Thus, while it might make for more effective collective measures, in the short term at least, to disregard human rights, their longer term legitimacy depends on bringing them into line with human rights. Although the UN Charter (in Article 103) endows obligations derived from the Charter with supremacy when in conflict with obligations that states have under other treaties, that supremacy should not be too readily asserted simply in order to increase the effectiveness of counter-terrorism measures. Of course it is much easier to indefinitely intern suspected terrorists than to recognize their rights to liberty and due process, but a resolution of the Security Council which appears to endorse detention should not be read as overriding those rights, unless the Security Council makes it clear that for imperative reasons of security this is the case.[3]

This still leaves open the possibility that the Security Council may explicitly and expressly override human rights on a temporary basis on the basis of the imperative needs of security. When faced with an imminent threat, based on sound evidence (not unsupported intelligence), with little room for deliberation and debate, the Security Council could, indeed should, use its range of coercive sanctions to prevent terrorist attacks. In so doing it may have to temporarily suspend the application of directly conflicting human rights obligations.

Such preventive (and in extremis prevailing/overriding) sanctions are, following Kelsen, an inherent component part in any legal order including one providing collective security—'a social order guaranteeing collective security is by its very nature a legal order, and a legal order is a system of norms providing for sanctions'.[4] Kelsen describes sanctions as 'coercive reactions against an actual violation of the law' or against suspected or expected violation.[5] Although this foresees anticipatory action against possible violations of the law, it does not cover threats that are not violative or potentially violative of international law. The collective security system allows the Security Council to respond to threats to the peace, as well as violations of international law such as acts of aggression. However, Kelsen accepts that legal systems recognize the legitimacy of coercive measures, which have no relation to actual or possible violations of the law, but are necessary to maintain peace, security and public order. He gives the example in domestic law of the forcible destruction of buildings to prevent the spread of fire, or the forcible internment of people suffering infectious diseases in order to prevent an epidemic.[6]

1 UNSC Res 1456 (2003).
2 UNSC Res 1904 (2009).
3 *Al Jedda v The United Kingdom* App no 27021/08 Judgment 7 July 2011 para 105.
4 H Kelsen, *Collective Security under International Law* (US Naval College 1957) 101.
5 ibid 102.
6 ibid.

In a similar way the Security Council responds to threats to peace and security many of which constitute actual or potential violations of international law such as aggression, the spread of weapons of mass destruction or terrorism, but some of which are not violative such as the flow of refugees across borders or a civil war that destabilizes surrounding countries, as long as the measures are necessary to preserve or restore the peace and are proportionate to that threat. Indeed, what triggers Security Council action is the threat or breach of the peace rather than any violations of international law that may accompany the threat. Writers such as Delbruck and Gowlland-Debbas accept that the Security Council's sanctioning power is not confined to responding to actual or potential breaches of international law, but that its practice has moved towards it becoming a central mechanism in the international community for the enforcement of core 'public interest' norms of that community.[7]

While preventing terrorism is normally preventing the commission of criminal acts, the point is that the Security Council is not so restricted—it can take action to prevent terrorism on the basis that it is a threat to international peace though normally acts preparatory to terrorism will be violative of national laws and probably one of the many anti-terrorist conventions. Although recognizing that the Security Council can override other treaty obligations in extreme cases of threats to international peace, this exceptional power to preserve the social order should still conform to human rights wherever possible; any temporary suspension in order to prevent major ruptures of the peace must be made fully human rights compliant as soon as possible.

The General Assembly's Global Counter-Terrorism Strategy of 2006 reflects the consensus among states that collective security approaches to counter-terrorism must be human rights compliant.[8] The Strategy not only develops many of the measures of its earlier declarations but also takes account of Security Council resolutions and mechanisms, including the Counter Terrorism Committee established by Security Council Resolution 1373 to ensure that states comply with their obligations under that resolution (though the Assembly calls on the Committee to work with states at their request), and the 1267 Committee which oversees the listing and implementation of sanctions against Al Qaeda and the Taliban (though the Assembly calls on the Committee to ensure fair and transparent procedures). This not only amounts to a general recognition of the Security Council's actions in this area but also represents an attempt to balance the Council's actions with human rights protection, and to emphasize traditional principles such as state consent.

The movement in the UN's Membership towards the Security Council anti-terrorist regime is made clearer in a later Assembly resolution, again adopted by

[7] J Delbruck, 'The Impact of the Allocation of International Law Enforcement Authority on the International Legal Order' in J Delbruck (ed), *The Allocation of Law Enforcement Authority in the International System* (Duncker and Humblot 1995) 135 at 158; V Gowlland-Debbas, 'Introduction' in V Gowlland-Debbas (ed), *United Nations Sanctions and International Law* (Kluwer 2001) 7–9.

[8] UNGA Res 60/288 (2006).

consensus, which reminds states of their obligations, not only under relevant treaties, but also under Security Council resolutions including Resolution 1373, 'to ensure that perpetrators of terrorist acts are brought to justice'.[9] Furthermore, in its annual resolutions on the 'protection of human rights and fundamental freedoms while countering terrorism', the General Assembly has made it clear that states must ensure that any measure taken to combat terrorism complies with their obligations under international law, particularly human rights law and international humanitarian law.[10]

Thus, the General Assembly has not accepted the argument that anti-terrorist measures adopted at national or international levels can override human rights. Indeed, it reminds states, in the aforementioned resolutions that derogations from certain human rights obligations allowed under Article 4 International Covenant on Civil and Political Rights are only exceptional and temporary. Arguably it should have taken this opportunity to apply the same logic to the Security Council. Although not formally bound by the International Covenant on Civil and Political Rights, the Security Council should, in applying its own emergency powers to threats to international peace and security, follow those principles that allow states to temporarily derogate from human rights in emergency situations.[11]

2. Human Rights and Counter-terrorism

How do states reconcile their obligations imposed under counter-terrorist, 'security-based' resolutions of the Security Council, and their human rights obligations deriving from treaties, custom and *jus cogens*? There are a number of possible modes of reconciling security-based obligations with human rights obligations. Some are more convincing than others.

A. Due Diligence

First of all, states have a duty under human rights law to prevent terrorist attacks as well as to investigate and prosecute them. Such a duty is derived from the general obligation to 'respect and to ensure to all individuals within its territory and subject to its jurisdiction' the human rights contained in the International Covenant on Civil and Political Rights.[12] 'Respect and ensure' captures the idea of both a negative obligation on the state not to violate the rights of individuals within its jurisdiction, and also a positive obligation to ensure that rights are

[9] UNGA Res 61/40 (2006) para 9.
[10] UNGA Res 64/168 (2010); UNGA Res 65/221 (2010).
[11] ND White, 'The United Nations and Counter-Terrorism: Multilateral and Executive Law-Making' in AM Salinas de Frias, K Samuel and ND White (eds), *Counter-Terrorism: International Law and Practice* (OUP 2012) 54 at 79.
[12] Art 2(1) International Covenant on Civil and Political Rights.

protected with that jurisdiction. The latter is sometimes called obligations of 'due diligence' famously elaborated on by the Inter-American Court of Human Rights in *Velasquez-Rodriguez v Honduras* 1988,[13] where the right to life was found to be violated by the state, not directly by its agents, but by its failure to do enough to try and stop the disappearance of individuals by shadowy death squads. It is relatively straightforward, at least in abstract, to see how this principle could apply to a lack of due diligence in trying to prevent terrorism.[14]

Due diligence obligations are ones of conduct, rather than result, and so a failure to prevent specific acts of terrorism is not necessarily an indication that the state has not fulfilled its duties under human rights law. The random nature of many terrorist acts means that it is very difficult to prevent each and every one. Indeed, when looking at how these obligations have been interpreted by the Human Rights Committee in the context of the right to life and the right to security under Articles 6 and 9 of the International Covenant on Civil and Political Rights, states must take reasonable and appropriate measures to protect individuals within their jurisdiction who are subject to known threats to their lives;[15] while, according to the European Court of Human Rights, a government that 'knew or ought to have known . . . of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party', must take 'measures within the scope of their powers which, judged reasonably, might . . . [be] expected to avoid that risk'.[16] As has been stated:

> Applying this jurisprudence by analogy to terrorist attacks creates some challenges: the bombing of civilians on aircraft or commuter trains and the hijacking of aircraft suggests a random choice of victims, rather than the selection of an 'identified individual or individuals' as victims.[17]

It might be argued that the non-absolute nature of due diligence obligations is overcome by security-based obligations imposed by the Security Council and international anti-terrorist conventions, which require states to prevent terrorist attacks,[18] but it would be 'practically unenforceable' to require an absolute obligation to prevent terrorist attacks.[19] Thus, the leeway provided to states in the implementation of their due diligence obligations does not require that other

[13] *Velasquez Rodriguez v Honduras* [1989] 28 ILM 291.
[14] See generally, SG Garcia, 'The Inter-American Court of Human Rights' Perspective' in Salinas de Frias, Samuel and White (n 11) 785.
[15] *Delgado Paez v Colombia* HRC Communication No 195/1985 12 July 1990 para 5.5.
[16] *Osman v UK* (1998) 29 EHRR 245.
[17] ES Bates, *Terrorism and International Law: Accountability, Remedies and Reform* (OUP 2011) 83–84.
[18] See for example para 2b of UNSC Res 1373 (2001) which obliges all states to 'take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information'.
[19] Bates (n 17) 84.

human rights obligations are swept aside in an attempt to prevent terrorist attacks at any cost.

B. Derogation

Although certain governments, such as in Egypt and Sri Lanka in the recent past, have promulgated long-standing states of emergency in order to prevent and repress terrorism, this is not supported by human rights law, which permits derogation only when it is proportionate to the threat to the nation, and further provides that any measures taken in pursuance of derogations must be limited to the exigencies of the situation.[20]

The Human Rights Committee has made it clear that 'not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation . . . even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation'.[21] In situations other than an armed conflict states parties 'should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances'. Furthermore, it stated that 'measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature'. Also in this General Comment the Committee made it clear that the prohibition on derogations that are inconsistent with other obligations under international law refers not only to the law of armed conflict, but also to peremptory norms of international law including 'the imposition of collective punishments, arbitrary deprivations of liberty, or deviating from the fundamental principles of fair trial, including the presumption of innocence'. Thus, according to this view, non-derogable rights are more extensive than those listed in the Covenant (which includes the right to life, prohibitions on torture, slavery, etc).

In reality derogation presents a fairly narrow avenue within which states can fulfil their security-based obligations. If faced with a genuine threat to national life in the form of terrorism, states could, for instance, derogate from the right to liberty and security, by interning individuals suspected of plotting terrorist acts. The Human Rights Committee, in interpreting Article 9 ICCPR, has stated that

> if so-called preventive detention is used, for reasons of public security . . . it must not be arbitrary, and must be based on grounds and procedures established by law . . . , information of the reasons must be given . . . , and court control of the detention must be available . . . , as well as compensation in the case of breach . . . . And if, in addition,

[20] Art 4 International Covenant on Civil and Political Rights.
[21] Human Rights Committee, General Comment 29, 31 August 2001.

> criminal charges are brought in such cases, the full protection of article 9(2) and (3), as well as article 14, must also be granted.[22]

Thus, in these circumstances preventive detention is justifiable but it must remain human rights compliant.

C. Restrictions Necessary to Protect National Security or Public Order

Human rights law expressly provides that certain rights may be restricted in normal times by law when necessary in the interests of national security, public safety or public order, principally the rights to hold opinions and to freedom of expression, the right to peaceful assembly and the right to freedom of association.[23] Case law suggests that states relying on these restrictions have a high burden of proof in order to establish such necessity,[24] but again in the face of genuine terrorist threats states are justified in temporarily restricting certain rights, for example, by restricting freedom of association of certain groups, in order to try and prevent terrorist acts.[25]

D. Understandings of Preventive Measures

There is also the possibility that states may try to present certain preventive measures in a way that avoids certain human rights obligations. This goes to the very nature of such measures. For example, it is unclear whether targeted sanctions are de facto punitive criminal sanctions to which due process and fair trial rights should attach, or preventive administrative measures thereby making the rights to a fair trial inapplicable. Fair trial rights only attain 'in the determination of any criminal charge . . . [and of] rights and obligations in a suit of law'. In such cases 'everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'.[26]

This issue has arisen in the area of targeted sanctions, imposed by the Security Council's 1267 Committee against suspected terrorists, and implemented by states in pursuance of their obligations under the UN Charter. The Human Rights Committee in *Sayadi v Belgium* in 2008 indicated that targeted measures were administrative in nature and so did not involve fair trial issues (though the Committee found other rights were violated and that Sayadi had no effective

[22] Human Rights Committee, General Comment 8, 30 June 1982 para 4.
[23] Arts 19, 21, 22 International Covenant on Civil and Political Rights.
[24] For example, *Sunday Times v The United Kingdom* (1979) 2 EHRR 245 para 59. See generally E Myjer, 'Human Rights and the Fight against Terrorism: Some Comments on the Case Law of the European Court of Human Rights' in Salinas de Frias, Samuel and White (n 11), 83.
[25] For example, *Refah Partisi (Welfare) Party v Turkey (No 2)* (2003) 37 EHRR 1.
[26] Art 14(1) International Covenant on Civil and Political Rights.

remedy in Belgium), while the European Court of Justice in *Kadi* in 2008 judged that targeted sanctions violated the fundamental rights to be heard and to judicial review.[27] In *Sayadi* the Committee stated:

> The Committee also takes note of the State party's arguments that the sanctions cannot be characterized as 'criminal', since the assets freeze was not a penalty imposed in connection with a criminal procedure or conviction .... Moreover, the State party maintains that placement on the list was a preventive rather than a punitive measure, as was apparent from the fact that the persons affected could obtain authorization for an exemption from the freeze on their assets and from the travel ban .... The Committee recalls that its interpretation of the Covenant is based on the principle that the terms and concepts in the Covenant are independent of any national system or legislation and that it must regard them as having an autonomous meaning in terms of the Covenant .... Although the sanctions regime has serious consequences for the individuals concerned, which could indicate that it is punitive in nature, the Committee considers that this regime does not concern a 'criminal charge' in the meaning of article 14, paragraph 1. The Committee therefore finds that the facts do not disclose a violation of article 14, paragraph 3, article 14, paragraph 2, or article 15 of the Covenant.[28]

Despite this it must be that case that even 'administrative' measures in the form of targeted sanctions attract due process rights, including the right to a merits-based review before an impartial and independent court or tribunal.[29] To accept otherwise would be to create a loophole into which individuals could be forced indefinitely—being permanently listed without an effective remedy. Non-judicial mechanisms of redress such as the UN's ombudsperson are to be welcomed as they may well provide a satisfactory form of redress in most cases, but this cannot take away an individual's right to challenge such decisions before national or regional courts.[30]

Listing an individual leading to measures such as an assets freeze and movement restrictions being taken against him or her by states may be justified as a temporary administrative and preventive measure necessary in order to prevent acts of terrorism, more specifically acts of financing terrorism. For reasons of expediency in the face of a terrorist threat, such listing is most effectively done by executive action at international and national levels. However, such listing cannot be a permanent solution without a right to challenge that listing, ultimately in a court of law if necessary. Permanent listing, like permanent preventive

[27] Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council for the European Union* [2008] ECR I-6351 paras 324, 352.
[28] *Sayadi and Vinck v Belgium* (2009) 16 IHRR 16 at para 10.11.
[29] Bates (n 17) 145–146.
[30] See generally A Rosas, 'Counter-Terrorism and the Rule of Law: Issues of Judicial Control' in Salinas de Frias, Samuel and White (n 11), 83.

detention, passes beyond justifiable temporary preventive action in the face of imminent terrorist threat so as to constitute criminal sanctions and punishment.

E. Lex Specialis *Arguments*

Some states have relied on arguments that certain of their counter-terrorist actions are not covered by the *lex generalis* of human rights law, but by the *lex specialis* of the law of armed conflict, thereby justifying lethal killings of legitimate targets. Such arguments have numerous problems, not the least being the consensus that human rights law continues to apply in times of conflict though it might be qualified in certain instances by the *lex specialis*. Other problems include the fact that the concept of a transnational (non-international) armed conflict between the USA and Al-Qaeda, potentially covering the planet, is difficult to reconcile with law of armed conflict. Secondly, the *lex specialis/generalis* distinction might work within a coherent national legal order with a clear constitutional hierarchy, but its transposition to the international legal order seems to have been done with little thought to its consequences. Thirdly, even under law of armed conflict it might be questioned whether individuals (even suspected terrorists) can be shot when they are sleeping, shopping or driving a long way from any hostilities.

3. Conclusion

Despite the impression sometimes given by politicians and political commentators, in their responses to decisions of human rights bodes in terrorism-related cases, it is not necessarily the case that the security imperative pulls governments in one direction, while human rights obligations pull in the other. The Security Council, in imposing security-based obligations on states, recognizes that preventive action does not excuse states from their human rights obligations; while human rights law itself gives states some protection when taking temporary measures to protect national security. Getting the two legal regimes to work in a fully compatible way still requires further conceptualization by human rights bodies and jurists, but it would facilitate this process if human rights were not seen as antithetical to counter-terrorism. Indeed counter-terrorism, which is in essence undertaken to prevent human rights violation, can only be sustained if undertaken in compliance with human rights: that is one of the features that distinguishes counter-terrorism from terrorism itself.

4. This Issue of the Journal

In the four articles that follow the reader will see this uneasy and shifting interface between security obligations and obligations under human

rights law, refugee law and general international law being examined in more detail: in the development of secret courts and proceedings in the context of counter-terrorist cooperation between states (in the article by Colin Murray); in the debate about the extra-territorial application of human rights in counter-terrorist operations (in the article by Alex Conte); in the policy of targeted killings and the growing use of drone strikes as a means of combating the terrorist threat (in the article by Sascha-Dominik Bachmann); and in the depiction of flows of refugees from certain parts of the globe as threat to the peace and the impact of this on children in particular (in the article by Satvinder Juss). These four articles arise out of a conference 'After Bin Laden: Counter-Terrorism Co-operation and International Law' held at Newcastle Law School in May 2012. In these articles some of the issues raised in this editorial introduction are discussed in detail and it will be seen that there is disagreement and debate on a number of issues raised about when, for instance, security obligations might prevail.

The final article of this issue continues the discussion found in previous issues (especially 17(2)) concerning cyber-security, as Dieter Fleck critically evaluates the new *Tallinn Manual on International Law Applicable to Cyber Warfare* and reveals its shortcomings as well as its strengths.