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STRATEGIC SECURITY ANALYSIS

Does International Law Apply to the Islamic State?

Towards a More Comprehensive Legal Response to International Terrorism

by Holli Edwards

1 Introduction

In recent years the international community has witnessed the emergence of armed non-state groups that demonstrate a hybridity of state and non-state characteristics. The transnational activities of the so-called Islamic State (IS) prompt an inquiry into international law's application to such non-state actors. This paper, based partly on interviews with leading international law practitioners in Switzerland,[1] provides a comprehensive analysis of the application of four key areas of international law to IS: international humanitarian law, international criminal law, international human rights law, and customary international law. An examination of these instruments reveals that current international law does not adequately address the activities of IS, because several legal and practical issues hinder its application. International law must therefore be developed further in order to provide an effective legal framework for the contemporary fight against armed non-state actors like IS. An evaluation of the joint Spanish-Romanian proposal for the creation of an international counter-terrorism court highlights the potential benefits of greater international cooperation on international legal instruments to fight terrorism.

2 Overview of IS

The terrorist organisation known as IS is recognised as one of the most significant threats to international peace and security in the contemporary era. The organisation emerged in Iraq during 2004 as a group loosely affiliated with al-Qaeda; however, it was not until the outbreak of civil war in Syria in 2011 that IS emerged as a terrorist group in its own right. The instability in Syria provided IS with the opportunity to capture territory, recruit fighters and spread fear through barbaric acts of violence. During February 2014 al-Qaeda "formally disowned" IS, following fighting between IS and the al-Nusra Front (another branch of al-Qaeda in Syria). Nevertheless, IS has continued to act independently of al-Qaeda, with significant success.

Since 2014 IS has established itself as a terrorist organisation with considerable financial, military and territorial resources. Due in part to the chaos of the civil war in Syria and the instability in Iraq, IS gained access to a range of military weapons

KEY POINTS

- Growing populations and International law does not adequately address transnational terrorist groups like the so-called Islamic State, because it fails to recognise contemporary forms of conflict and these groups' hybrid state-like and non-state-like nature.
- Legal and practical difficulties hinder international law's effectiveness, including definitional issues affecting the legal obligations of terrorist groups and states' armed forces, obstacles to prosecuting terrorists under international law, jurisdictional issues impeding the extradition of accused persons, and the uncertain application of customary international law.
- The recent joint Spanish-Romanian proposal for the creation of an international counter-terrorism court represents a promising step towards bolstering international cooperation and developing international law to deal better with the issue of terrorism.

1 Thanks to all those who participated in interviews, especially Dr Annyssa Bellal, Antonio Coco and Dr Marco Sassoli. Special thanks to Dr Carl Ungerer for his feedback during the drafting process.

that were either abandoned by government forces or looted from captured military stockpiles. In addition to weapons, the group has attracted tens of thousands of fighting personnel. Recent estimates suggest that as many as 30,000 IS fighters[2] are in Syria and Iraq, most of whom are thought to be foreign nationals originating from the Middle East, Europe and further abroad. IS has attracted new radicalised recruits by using social media sites and other methods of disseminating propaganda materials. The group's network of fighters and resources has also been expanded by other terrorist groups pledging their allegiance to it, such as Boko Haram in Nigeria and Abu Sayyaf in the Philippines.

Although little is known about the structure of IS, evidence suggests that it is well organised. Documents showing hierarchical structures and chains of command were recovered from the possessions of senior IS member Haji Bakr, who was killed in 2014.[3] The complexity of terrorist attacks carried out by the group has also been pointed to as evidence of its planning and coordination structures: from 2014 to early 2016 IS has claimed responsibility for over 90 terrorist attacks in more than 21 countries.

IS has seized strategic areas of territory in both Syria and Iraq: some estimate that in 2014 it controlled as much as 30 per cent of the territory of the two countries. Others argue, however, that the air strikes of the US-led coalition have significantly reduced IS's control over territory. Nonetheless, the group remains in control of areas near Mosul in Iraq and Raqqa in Syria. United Nations (UN) Secretary-General Ban Ki-moon reported in early 2016 that IS had seized territory in Afghanistan's Nangarhar Province, near the border with Pakistan, and has also attempted to gain territory in Libya.

IS's seizure of territory in Syria and Iraq has allowed it to amass large financial resources. The group is estimated to have an annual revenue of $2 billion, arising from illicit trade in crude oil, light weapons and looted antiques; drug trafficking; ransoms from hostage taking; the taxation of local populations; the seizure of bank assets; and people smuggling.[4]

Importantly, it is not only the territory itself, but also the local populations of these areas who are affected by IS's control. Reports have emerged of IS creating "Islamic laws" and its own judicial system in areas under its control. Courts applying both sharia and IS-made laws, and two police forces – including the hisba, or "religious police" – have been established. Evidence suggests that IS does not follow basic rule-of-law principles, such as the independence of the judiciary and the prohibition of arbitrary detention; for example, judges have been removed from their positions or have "disappeared" after expressing opposition to the group's violent acts. Therefore, IS's activities represent a combination of state-like and non-state functions, which presents challenges for the application of international law.

2 UN (United Nations), Report of the Secretary-General on the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat, Report of the Secretary-General, New York, UN Counter-Terrorism Committee, 2016, <http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/501&referer=/english/&Lang=E>.

3 C. Reuter, "The Terror Strategist: Secret Files Reveal the Structure of Islamic State", Spiegel Online International, 8 April 2015, <http://www.spiegel.de/international/world/islamic-state-files-show-structure-of-islamist-terror-group-a-1029274.html>.

4 UN, Report of the Secretary-General on the Threat Posed by ISIL.

3 Application of Current International Law to IS

3.1 Prohibition of terrorism by international law

Acts of terror against civilians are prohibited by international humanitarian law (IHL); international criminal law (ICL); international human rights law (IHRL); and, arguably, customary international law (CIL). However, despite efforts since the 1920s, the international community has been unable to agree on a universal definition of "terrorism". Nevertheless, 19 sectoral conventions and several UN Security Council resolutions provide guidance by describing acts constituting terrorism. These international agreements all prohibit the use of violence against civilian populations with intent to cause terror. However, an examination of each area of law is required to understand the extent to which international law is applicable to the activities of IS.

3.2 Overview of international law's application to ISIS

IS has contravened numerous international law provisions by its conduct in Syria and Iraq, and in terrorist attacks further abroad. Firstly, the group has breached several of its IHL obligations as a non-state actor involved in the conflict occurring in Syria and Iraq. Common Article 3 of the Geneva Conventions provides minimum rules to be observed during conflict, such as the protection of civilians and medical personnel, the medical treatment of the wounded or ill, the humane treatment of captured enemies, fair trials, and the protection of cultural property. IS has rarely complied with such laws. The group's violent and inhumane treatment of civilians and those rendered hors de combat are well documented by IS's propaganda videos. The group has also breached rules against taking hostages and the recruitment of persons under 18 years of age into armed forces. Under IHL, while IS members who directly participate in hostilities in Syria and Iraq may be lawfully targeted by military operations, interestingly they may also be prosecuted for their involvement in the conflict, because they are considered to be "unlawful combatants".

Secondly, IS has committed crimes under ICL, namely genocide, war crimes and crimes against humanity. A report by the UN Independent International Commission of Inquiry on the Syrian Arab Republic, published in June 2016, concluded that IS "committed … genocide as well as multiple crimes against humanity and war crimes against the Yazidis".[5] IS's widespread attacks against civilians, sexual slavery, pillaging, involvement of children in armed conflict and destruction of historical monuments also likely amount to war crimes. These acts, and others committed outside the context of an armed conflict, may additionally constitute crimes against humanity.

Thirdly, IS may have contravened numerous provisions of IHRL. The applicability of IHRL to non-state actors remains contentious, because IHRL is traditionally viewed as referring to obligations between a state and its people. Clapham identifies two main concerns underlying this view: the unintended enhancement of non-state actors' legitimacy, and undermining the value of IHRL by imposing on groups obligations that they do not have the capacity to fulfil.[6] Bellal argues that IHRL nevertheless applies to armed groups that

5 Independent International Commission of Inquiry on the Syrian Arab Republic, "They Came to Destroy": ISIS Crimes against the Yazidis, UN Human Rights Council, 15 June 2016, p.1, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf>.

6 A. Clapham, "Human Rights Obligations of Non-state Actors in Conflict Situations", in G. de Burca, F. Francioni and B. de Witte (eds), Human Rights Obligations of Non-state Actors, New York, Oxford University Press, 2016.

have achieved a "de facto authority" with state-like functions.[7] By establishing its own courts, police forces and taxation system in the territory it controls, IS has presented itself as such a de facto authority. It may therefore have committed numerous IHRL violations, such as the forced sexual slavery of women and young girls, attacks against religious and ethnic minorities, reported arbitrary detention, and torture.

Finally, IS has breached CIL, or the unwritten rules established by state practice. CIL is examined separately here[8] because, although it is a source of law underlying all branches of international law, it may also "fill gaps" in the written laws' approach to international terrorism. Although somewhat contentious, CIL – or jus cogens at the very least – binds non-state actors like IS: the perverse alternative would be to allow these actors to commit atrocities without liability. The International Criminal Tribunal for the Former Yugoslavia held in its judgment in the case against Stanislav Galić "that terrorization of the civilian population, committed during an armed conflict, has crystallized into a war crime under customary international law".[9] More controversially, the Special Tribunal for Lebanon (STL) held that a definition of "terrorism" exists in CIL consisting of three core elements: (1) criminal conduct; (2) the intention to spread fear among the population or influence the decision-making of a national or international authority; and (3) the fact that "the act involves a transnational element".[10] IS has claimed responsibility for numerous violent attacks against civilians, not only in Syria and Iraq, but also further abroad in countries like Turkey and France; the group's conduct would therefore satisfy such a definition of terrorism. Although the STL's finding has been criticised, domestic counter-terrorism legislation enacted by numerous countries appears to support the tribunal's judgment. UN Security Council Resolution 1373 obliges states to enact such legislation and highlights the international community's unified condemnation of terrorism. IS's conduct, therefore, whether in the Middle East or elsewhere, clearly contravenes multiple rules of international law.

4 Issues with Current International Law

The emergence of terrorist groups like IS has highlighted several problems limiting the effectiveness of international law.

4.1 Definitional issues: status and legal obligations

The rights and obligations afforded under international law depend on appropriate application of legal definitions. IHL in particular requires the accurate classification of 'the status of the conflict and those involved'.[11] Sassoli emphasises that the distinction between IACs and NIACs remains intertwined with the nature of the actors involved (state or non-state), rather than the territory in which a conflict occurs.[12] In other words, the conflicts in Syria and Iraq should be viewed as NIACs, because IS is a non-state actor. If IS's attacks in France were recognised as constituting an armed conflict, this too would be considered a NIAC between a state and a non-state actor.

7 A. Bellal, "Beyond the Pale? Engaging the Islamic State on International Humanitarian Law", Yearbook of International Humanitarian Law, 26 April 2016.

8 See sec. 4.4, below.

9 International Criminal Tribunal for the Former Yugoslavia, "Stanislav Galić", Judgement List, 30 November 2006, <http://www.icty.org/en/cases/judgement-list>.

10 A. Cohen, "Prosecuting Terrorists at the International Criminal Court: Reevaluating an Unsused Legal Tool to Combat Terrorism", Michigan State International Law Review, Vol.20(2), 2012, pp.219-257.

11 M.P. Scharf, "How the War against ISIS Changed International Law", Case Western Reserve Journal of International Law, Vol.48, p.52, <http://scholarlycommons.law.case.edu/faculty_publications/1638>.

12 Author interview with Marco Sassoli.

As Coco notes, from the perspective of a human rights advocate, no benefits would accrue from extending IHL to France in this situation, because the use of lethal force would no longer be a last resort.[13]

Other negative legal implications would also follow. For example, if terrorists took French military personnel hostage, such personnel would be considered prisoners of war (PoWs) under Common Article 3 of the Geneva Conventions. Although PoW status obliges humane treatment (which terrorists are unlikely to adhere to), such a classification would allow the terrorists to legally hold the French military personnel "until the end of hostilities" (which would be difficult to identify in a terrorism context). Fundamental questions therefore arise as to the risks and rewards of expanding the legal principles that govern the battlefield to countries that have experienced multiple terrorist attacks.

Determining the legal status of an individual under IHL also presents difficulties. In NIACs, it is essential to determine the distinction between civilians and direct participants in hostilities, because it affects the legality of a state's conduct in targeting these persons, and the potential to criminally prosecute direct participants for their actions. Despite such significant legal implications for both sides of hostilities, disagreement continues as to what constitutes DPH and for how long participating civilians lose their immunity from attack. According to the International Committee of the Red Cross (ICRC), an act must satisfy three criteria to constitute DPH: (1) it must be likely to cause harm to a party's military or protected persons; (2) there must be a direct causal link between the act and the resulting harm; and (3) the act must be intended to support one party to the conflict by causing harm to another.[14] State practice, however, presents no common interpretation of the concept of DPH. Indeed, what is considered to be a "hostile" act remains a highly contentious political issue. The Israeli Supreme Court, for example, in the Public Committee against Torture in Israel case stated that DPH:

> *should not be narrowed merely to the person committing the physical act of attack. Those who have sent him, as well, take "a direct part". The same goes for the person who decided upon the act, and the person who planned it.*[15]

However, the ICRC contends that only active fighters, not those engaged in disseminating propaganda or collecting funds, may be considered to be involved in DPH.

Although international law is clear that civilians lose their protected status only for as long as they engage in DPH, determining the temporal extent of their participation remains difficult. Are foreign fighters returning from Syria, for example, still targetable under IHL? Can these individuals even be considered to be part of IS? As Sassoli points out, whether IHL applies to fighters carrying out attacks in countries not experiencing armed conflict also remains contentious.[16] Should teenagers who view radicalised videos online be considered to be the equivalent of active fighters in Syria and Iraq? What about criminals who engage in violent acts against civilians, but have no connection with IS other than their use of the group's flag? There are no easy answers to these and other questions.

13 Author interview with Antonio Coco.

14 N. Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, ICRC, 21 December 2010, <https://www.icrc.org/en/publication/0990-interpretive-guidance-notion-direct-participation-hostilities-under-international>.

15 ICRC (International Committee of the Red Cross), "Practice Relating to Rule 6. Civilians' Loss of Protection from Attack", Customary IHL, 2017, para. 247, <https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule6>.

16 Author interview with Marco Sassoli.

4.2 Obstacles to prosecution under international law

Prosecuting IS members under international law remains fraught with challenges. Whether prosecutors are seeking to try individuals in national courts or under the auspices of the International Criminal Court (ICC), both legal and practical difficulties arise. Firstly, successfully taking IS members into custody and subsequently prosecuting them remain problematic – particularly amid the conflicts in Syria and Iraq. The chaotic environment of these conflicts also presents challenges for the collection of the evidence needed for trial. Prosecutors then face further challenges in accessing sensitive intelligence information relevant to accused terrorists. Secondly, the extradition procedures needed to transfer an accused to another country or the ICC for trial are particularly troublesome. While international treaties or conventions may prescribe extradition, they often remain vague as to the legal procedures to be followed. Thus it is often left to individual states to determine mutually acceptable arrangements. While cooperative states are likely to overcome such issues, instances of non-cooperation – as demonstrated by the events following the Lockerbie attack – highlight the difficulties of prosecuting terrorists under international law. The apparent lack of identity papers preventing the deportation of the suspected assailant prior to the attack on the Christmas market in Berlin on 19 December 2016 demonstrates further difficulties that may occur. Indeed, the UN Counter-Terrorism Committee Executive Directorate (UNCTED) reported earlier in 2016: "In general, the use of mutual legal assistance in criminal matters by Member States is considered to be very low, especially in foreign terrorist fighter cases."[17]

The main issue facing states is the incongruences of their national laws. The "double-criminality" principle requires an offence to be principally the same in both states before extradition may occur. UNCTED has noted, however, that "The lack of domestic criminal laws to prosecute foreign terrorist fighters … remains a major shortfall, globally".[18] A further obstacle to prosecution is the classification by a state's national law of an offence as "non-extraditable". The American Service-Members' Protection Act of 2002, which prohibits the extradition of US nationals for war crimes, provides a pertinent example. State compliance with the principle of non-refoulement and human rights law poses further challenges to the successful prosecution of IS members under international law.

4.3 Jurisdictional issues

The dichotomy between national and international law creates issues of competing jurisdictions that, without a coherent approach, risks fragmenting the law relevant to the prosecution of IS members. Firstly, the ICC's jurisdiction is limited by its membership. ICC prosecutor Bensouda has explained that despite IS committing "crimes of unspeakable cruelty", because Syria and Iraq are not parties to the Rome Statute, "the Court has no territorial jurisdiction over crimes committed on their soil".[19] Secondly, the Rome Statute confines the ICC's jurisdiction to those cases in which a state is either unable or unwilling to genuinely investigate and prosecute an accused. The protection of states' sovereignty and the capacity of their domestic judicial systems are

17 UNCTED (UN Counter-Terrorism Committee Executive Directorate), Global Survey of the Implementation by Member States of Security Council Resolution 1373 (2001), New York, UN Security Council, 2016, p.122; emphasis added, <http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/49&referer=/english/&Lang=E>.

18 UNODC (UN Office on Drugs and Crime), Frequently Asked Questions on International Law Aspects of Countering Terrorism, Vienna, UNODC, 2009, p.7, <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>.

19 F. Bensouda, "ICC: Statement of the Prosecutor Fatou Bensouda, on the Alleged Crimes Committed by ISIS", The Hague Justice Portal, 8 April 2015, <http://www.haguejusticeportal.net/index.php?id=13249>.

viewed as vital, thus the ICC is a court of last resort. However, controversy surrounding which national and international laws to apply continues to arise, particularly because the international law relevant to terrorism is scattered across multiple international conventions. This fragmentation creates uncertainty regarding the law and undermines the principle of "nullum crimen sine lege, [where] clarity and certainty about prohibited conduct is [sic] essential".[20]

4.4 Uncertainty of CIL

The greatest strength of CIL may also be its greatest weakness. As an unwritten form of international law, CIL can more easily evolve together with common state practice. However, the establishment of CIL is often difficult to identify and thus the law may lack certainty. According to the special rapporteur for the UN International Jurists Commission (UNIJC), "The practical challenges of access[ing] … evidence … to ascertain the practice of States and their opinio juris have long been recognized".[21] Identifying the moment when a CIL rule crystallises remains difficult. The United States, for example, claims that CIL extends the "self-defense exception to non-use of force" to military operations conducted against non-state actors "where a government is unable or unwilling to suppress the threat", and has used this legal argument to justify its air strikes in Syria and Iraq.[22] However, this argument remains controversial, because some states disagree that CIL has established such a principle. The risks for states remain high, however, because the misinterpretation of current CIL rules could result in a breach of international law.

A further issue of CIL is the ability of states to "opt out" of emerging rules. The International Court of Justice has explained that states that persistently reject an emerging principle are not bound to comply with it. States, of course, can similarly "opt out" of international treaties or simply never ratify these agreements. However, the ability of states to reject CIL rules that by their nature were intended to bind all parties – regardless of their assenting to a formalised document – presents a significant gap in the regulatory framework of international law.

Finally, the extent to which non-state actors participate in the development of CIL remains contentious. While Bellal[23] and Sassoli[24] argue that non-state actors contribute to CIL, others reject this view. The special rapporteur for UNIJC has emphasised that only sovereign states can participate in the creation of CIL. He did, however, recognise that the practice of international governmental organisations, such as the European Union, may also contribute to the development of CIL. If non-state actors were recognised as contributors to CIL, this would enhance the complexity of identifying the crystallisation of CIL. On the other hand, if non-state actors are not recognised as contributing to CIL, this may only strengthen arguments that such actors cannot be bound by it. Thus, rather than CIL acting as a "gap filler" for some of the issues with international law in addressing IS, CIL merely adds to the challenges.

5 How International Law Can Be Developed to Address IS

International law must be developed to improve its effectiveness in addressing groups like IS. Several ideas have been put forward to this effect, most

20 H.G. van der Wilt and I.L. Braber, "The Case for Inclusion of Terrorism in the Jurisdiction of the International Criminal Court", Amsterdam Centre for International Law No. 2014-13, p.8, <http://ssrn.com/abstract=2410232>.

21 M. Wood, Fourth Report on Identification of Customary International Law, UN General Assembly, ILC 68th Session, Geneva, UN International Law Commission, 2016, p.13, <http://legal.un.org/ilc/guide/1_13.shtml>.

22 See Scharf, "How the War against ISIS Changed International Law", pp.3-4.

23 Author interview with Annyssa Bellal.

24 Author interview with Marco Sassoli.

notably the joint Spanish-Romanian proposal for the creation of an international counter-terrorism court (ICTC). Foreign Affairs Ministers Bogdan Aurescu of Romania and José Garcia-Margallo of Spain presented the proposal at a peripheral conference to the UN General Assembly meeting in October 2015. According to these ministers, the ICTC would not infringe on the criminal jurisdiction of either states or the ICC, because the jurisdiction of the proposed new court would be confined to circumstances in which a state or the ICC was unable or unwilling to prosecute. Foreign Affairs Minister Aurescu also outlined that the proposed ICTC's prosecutors and judges would be representative of the world's major "legal systems and geographical regions", and would also reflect "gender equity".[25] Further details of the proposed structure of the ICTC are not yet available, because the initiative is still under development. Nevertheless, the proposal has received substantial support, including from UNCTED director Jean-Paul Laborde and the director of the UN Counter-Terrorism Implementation Task Force Office, Jehangir Khan. As the American NGO Coalition for the ICC argues: "In the future, there will undoubtedly be many occasions in which the surest and swiftest route for the prosecution of terrorists will be before an international tribunal with widespread international support and legitimacy."[26]

The establishment of an ICTC would have several benefits. Firstly, international cooperation and demonstrated unity against terrorism would be significantly enhanced. The creation of such a court would build on the efforts contained in UN Security Council Resolution 1373 and demonstrate the international community's unity in its determination to bring terrorists to justice. In addition, as Sassoli suggests, the prosecution of terrorists by an international court could "increase the legitimacy of trying these people" by removing the "one-person's-terrorist-is-another-person's-freedom-fighter" conundrum.[27] The cooperation of states would also be improved in other ways, such as greater sharing of relevant evidence among states under the auspices of an ICTC.

Secondly, the establishment of an ICTC would enhance the clarity of international law's counter-terrorism framework. The international convention required to establish such a court would likely provide greater consensus on the definition of terrorism and the paths to prosecution. International extradition procedures would also likely be streamlined by such a convention. Thirdly, the establishment of an ICTC may increase states' domestic judicial capacity, because the court's jurisdiction would place greater pressure on states to implement robust domestic laws and improve the capacity of their judicial systems to prosecute terrorist offences, or they would risk forfeiting cases to the international court.

On the other hand, the creation of an ICTC would also present noteworthy disadvantages. Firstly, international courts are notoriously expensive to establish and operate. These courts are also often considered inefficient in comparison to domestic judiciaries: the ICC has long suffered such criticism. Secondly, the prosecution of IS members at an international level could enhance perceptions of the group's legitimacy. The symbolic effects of international prosecution may also indicate that IS is a homogeneous international actor rather than a fragmented criminal group.

25 B. Aurescu, "Does the World Need an International Court against Terrorism?", World Economic Forum, 17 November 2015, <https://www.weforum.org/agenda/2015/11/does-the-world-need-an-international-court-against-terrorism/>.

26 American Non-Governmental Organization Coalition for the International Criminal Court, AMICC: Terrorism and the International Criminal Court, 29 August 2002, p.1, <http://www.amicc.org/docs/terrorism.pdf>.

27 Author interview with Marco Sassoli.

Perhaps the greatest disadvantage, however, would be the ongoing difficulty of states' attempts to capture members of groups like IS. Cohen's comments regarding the practical difficulties facing the ICC are equally true for a future ICTC: "At the end of the day, if the [court cannot] get terrorists to stand trial, then why go through all the trouble?"[28] Nevertheless, many of these practical difficulties may be overcome by strengthening cooperation among states.

6 Conclusions

Currently, international law is ill equipped to address transnational terrorist groups such as IS. Although international law encompasses many conventions that deal with acts of terrorism and violence during armed conflict, issues with the application of these laws hinders its effectiveness. Thus, international law must be developed further to provide a more effective legal framework to deal with contemporary conflicts, particularly the activities of IS. These activities demonstrate the nuanced and hybrid nature of this terrorist group, particularly its activities in Syria and Iraq and its attacks against civilians in other countries. An analysis of the application of international law to IS reveals several issues. Although international law contains important legal provisions relevant to IS's conduct, several difficulties exist that undermine its effectiveness. The joint Spanish-Romanian proposal for the establishment of a new international counter-terrorism court is a potential means of improving international law's ability to deal with terrorism. Ultimately, however, the onus will remain on states to work cooperatively to strengthen and implement the international legal framework.

28 Cohen, "Prosecuting Terrorists at the International Criminal Court", p.254.

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About the author

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