AMSTERDAM LAW FORUM
VU UNIVERSITY AMSTERDAM

Editorial

How safe are we?

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As we draw the curtain on yet another successful academic year, the same cannot be said of the widespread flames of turmoil and instability elsewhere in the world. The kidnapping of hundreds of Nigerian schoolgirls in April produced a flurry of condemnation and a pledge from the international community to provide assistance for their safe return, but alas, a significant number of these girls remain prisoners of Boko Haram. This dire situation has received widespread media attention, which has been amplified by the rapid growth of Hashtag Activism, rooted in the "BringBackOurGirls" social media campaign across the world. Whilst some may rejoice at the relative success of the campaign in drawing the eyes of the international community to this monstrosity, one cannot help but wonder how much action has actually been taken. To date, over 200 girls are still unaccounted for and the 'action' taken by a number of states has not really yielded much in terms of results.

This not an attempt to belittle the power of social media, its global dimension or the importance of creating societal awareness with regard to issues of grave importance. Instead, Nigerian-American novelist, Teju Cole, warns us of the inclination to get lost in the fervor of our hashtags and to lose sight of the complexity of the issues at stake. As we slowly usher in the summer, we can only hope that the international community takes more meaningful action in this situation in order to secure the safe return of these girls. Although one can appreciate the largely bureaucratic impediments to state intervention in terms of UN protocols, it is alarming to see how little has been done; especially when considering how long these girls have been missing. This is a flagrant act of terrorism that has been committed on the African continent, and constitutes a gross violation of international humanitarian law.

The vexing nature of this situation is one that has plagued one's mind lately, which begs the question: How safe are we today? Specifically, it got me thinking about how the EU guards the safety of its citizens against terrorism in general. It became apparent that the EU has developed a seemingly complicated system for fighting terrorism in Europe. Currently, there are numerous documents that form a legal and political basis for action in the fight against terrorism. There is the famous Hague programme, the vast Schengen *acquis* and many regulations regarding financial flows, migration, and asylum. Furthermore, there are around 60 regulations, directives and other documents, and about 20 still in preparation or already going through the procedure.

Despite the nuances in the degrees of anti-terrorist measures in the various countries, all member states are in complete unanimity about the main strategic goal, which is: "To combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice." What is

perhaps very striking is that the member states aim to achieve this goal in a democratic and accountable way. They purport to realise this objective through preventive protection, prosecution, investigations and solidarity after an eventual terrorist attack.

However, despite the existence of vast legal bases at the EU level, member states have primary competence in the fight against terrorism. In this regard, each of them has developed its own legal framework and internal organisation in this area. However, the terrorist attacks in Madrid and London heightened the willingness of member states to cooperate in this field as well and to form common legal bases and organisational structures.

Without delving into the nitty gritty of these structures, a few remarks can be made about terrorism in Europe, and on a global scale. Terrorism continues to pose a real threat to international peace and security. Whilst we also cannot exclude the danger of chemical, biological and cyber-terrorism, conventional weapons are still being kept in the terrorist arsenal and the ambition to proliferate weapons of mass destruction still persists. Life is less safe and less pleasant today than it was a couple of decades ago, but all is not lost.

In line with the notion of security and protection, this issue of ALF covers a fairly broad range of topics within this theme. In the first of our scientific articles, Kalidhass seeks to ascertain the role and status of Private Military Companies (PMCs) in the international realm. Due to the lack of a regulatory framework that adequately confers these private entities with set parameters within which to act during times of conflict (whether armed or not), he argues that it is equally important that the international community is able to hold them accountable for their actions in instances where they do violate international law. In order to achieve this objective, he begins by categorising civilian contractors into combatants, mercenaries or civilians. His argument draws on the classification of PMC personnel into these categories as a means to confer rights and corresponding responsibilities on them in terms of International humanitarian law. He draws parallels between these mechanisms and questions the inability to prosecute PMCs in a similar manner. His conclusion is that, whilst the status and hence, the accountability of PMCs as corporate entities is still unsettled in international law, this is not because of a lack of means to do so, but can rather be attributed to the unwillingness of states on the political front.

The next piece by Avram is an attempt to re-shape the rhetoric concerning software patent protection in the European Union. The author calls for an expansion of the current legislative scope of software protection in light of numerous developments in patent protection in Europe, Japan and the USA. He accepts the significant overlaps between copyright and patent protection vested in software, but maintains that they serve to protect different aspects of a piece of software. He posits that if the EU were to solidify its place in relation to the protection of global software patents, then the adoption of the EU software patent would be an opportune moment to make its mark.

Moreover, the piece by Konigs and Szaboova explores the basis on which the International Atomic Energy Agency (IAEA) can gain access to the Parchin facility in

Iran under the auspices of international law. This question is posed in light of a long-standing, controversial debate concerning Iran's nuclear facility, and the potential threat it poses to international peace and security. In order to contextualise the debate, the authors provide a brief overview of the international community's concerns regarding the proliferation of nuclear weapons as espoused in the Nuclear Proliferation Treaty (NPT), leading to the specific problems with Iran's possession of said weapons. The reader is then taken through the various legislative measures adopted by the United Nations and various other bodies in response to Iran's refusal to terminate its nuclear plant, coupled with the implications of such action. The authors argue that the IAEA documents would present significant challenges to the purported access to the Parchin facility. However, they suggest that a better route to take would be to seek to gain access to the nuclear facility by relying on the Security Council's resolutions, which effectively vest it with widespread powers to gain access to all Iranian facilities concerned with the development of nuclear weapons.

In our Opinion section, Professor Marguiles offers a critical analysis of the European Court of Justice's decision in *Kadi v European Commission* (Kadi II), and its implications for the sanctions regime of the UN. He canvasses the UN's anti-terrorism agenda by setting out the actions taken against the financing of modern terrorism. He then delves into the Kadi II decision by highlighting the flaws inherent in the court's rationale. His argument is that the ECJ did not sufficiently show deference to the Security Council's sanctions framework by failing to strike the requisite balance between fairness and efficacy when it comes to anti-terrorist measures. The author then takes the reader through a comparative analysis of the US courts' sanctions regime and its judicial review infrastructure. In order to solve the problems facing EU countries with regard to non-compliance with Council resolutions and in the alternative, the ECJ's decision, both of which are binding on signatory states, he proposes the establishment of a quasi-judicial entity tasked with dealing with appeals concerning sanctions.

The other opinion piece, by Kastoun, is in the form of a policy response to the Regional Resettlement Arrangement between Australia and Papua New Guinea (PNG policy). She seeks to re-shape the dialogue pertaining to refugees and asylum seekers in Australia by shifting the focus of the PNG policy in an effort to minimise its harmful effects. By showing the inefficacy of current international legal instruments concerning refugees, she argues that the lack of a comprehensive UN Treaty framework essentially allows Australia to escape its responsibilities to developing countries, and more specifically, its obligations under the Refugee Convention. She calls for a paradigmatic shift in the state's approach to the plight of asylum seekers by advocating for the determination of their status within the community instead of mandatory offshore processing, detention and resettlement.

This then concludes this edition of ALF. I would like to thank all our authors for their invaluable contributions. Thank you once again to my dedicated team of editors for all their hard work in making this edition possible. #Enjoy!