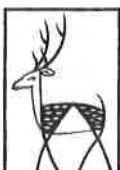


59106

Security and International Law

Edited by
Mary E Footer, Julia Schmidt,
Nigel D White
and
Lydia Davies-Bright



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON
2016

R. 202916

Contents

<i>Foreword</i>	v
<i>Preface</i>	vii
<i>Abbreviations</i>	xvii
<i>Contributors</i>	xxiii
<i>Introduction</i>	xxxii

Part I: Conceptions of Security and International Law

1. Security Agendas and International Law: The Case of New Technologies.....	3
<i>Nigel D White</i>	
I. Introduction	3
II. The Proliferation of Security Agendas	5
III. Security Communities and the Achievement of Agreements	8
IV. The UN as a Security Community on New Technologies	11
V. Drones, International Law and the UN	18
VI. Conclusion	23
2. Human Security and International Law: The Potential Scope for Legal Development within the Analytical Framework of Security	25
<i>Hitoshi Nasu</i>	
I. Introduction	25
II. Locating Human Security within the Analytical Framework of Security.....	27
III. Shifting the Focus.....	32
IV. Expanding Security Agendas	34
V. Extending the Means to Address Security Threats	37
A. Multidimensional Approach to Security	37
B. Pathology of Human Security	39
VI. Conclusion	41
3. Human Security versus Environmental Security: At Legal Loggerheads	43
<i>John Pearson</i>	
I. Introduction	43
II. Environmental Exemplars	46

x *Contents*

III.	Political Problems.....	49
IV.	Fundamental for Food Security	51
V.	Harming Health.....	53
VI.	Personal Perils and Condemned Communities.....	55
VII.	Embracing Economics	58
VIII.	Finding Common Ground	61
IX.	Conclusion.....	65
4.	Regional Security and International Law.....	69
	<i>Julia Schmidt</i>	
I.	Introduction	69
II.	The Development of Regional Organisations as Security Providers	71
III.	Regional Security Providers and their Place within the Legal Framework of the United Nations.....	75
IV.	Military Cooperation Between Regional Actors and the United Nations	82
V.	Multilateralism and its Challenges for the Relationship Between the United Nations and Regional Actors.....	84
	A. Multilateralism and the View from the UN	85
	i. NATO and Kosovo.....	85
	ii. ECOWAS and Liberia	87
	B. Multilateralism and the View from Regional Actors.....	88
VI.	Conclusion.....	91
5.	International Criminal Justice and Security	93
	<i>Olympia Bekou</i>	
I.	Introduction	93
II.	Peace v Justice? Or Peace Through Justice?.....	94
III.	The Security Council and the ICC: An Awkward Relationship?.....	99
	A. The Security Council, the ICC, and the Crime of Aggression	100
	B. Referrals by the Security Council—Article 13(b) of the Rome Statute	101
	C. Preconditions for Referring a Situation to the Court	103
	D. Deferrals by the Security Council—Article 16 of the Rome Statute	107
	E. Cooperation in the Field: The ICC and UN Peacekeeping Operations.....	111
IV.	Conclusion.....	114

6. Security and International Law:	
The 'Responsibility to Protect'	115
<i>Alexandra Bohm</i>	
I. Introduction	115
II. The Development of the 'Responsibility to Protect' Doctrine	117
A. The International Commission on Intervention and State Sovereignty 2001	117
B. The United Nations General Assembly World Summit 2005	118
C. Implementing the Responsibility to Protect, 2009.....	119
D. RtP Now	120
III. The Concept of '(In)Security' in the Responsibility to Protect	121
A. The Cause of Threats to Individual Security.....	121
B. The International Community's Role in Enabling Security	122
i. Prevention and Assistance	122
ii. Reaction and Response	122
IV. Security and Responsibility: An Alternative Conception.....	123
A. The Importance of Mass Atrocity Crimes.....	124
B. The Cause of Crises: Civil and Political vs Socio-Economic Rights	126
C. The Role of the International Community in Insecurity—to the Rescue?	129
D. RtP's Unanswered Questions: A Return to 'Humanitarian Intervention'	131
V. The Responsibility to Protect and International Law: The Problem with an 'Evolving Norm'	133
VI. Conclusion	136
Part II: Security Threats and International Law	
7. International Law and the Iranian Nuclear Crisis:	
Lessons for International Security and Arms Control	141
<i>Tom Coppen</i>	
I. Introduction	141
II. The Nuclear Non-Proliferation Regime	144
III. Iranian Arguments	149
IV. Article III of the NPT and the Additional Protocol	152
V. The IAEA Board of Governors	155
VI. The Inalienable Right to Peaceful Uses of Nuclear Energy	159
VII. Conclusion	162

8. Contemporary Maritime Piracy as a Threat to International Peace and Security.....	167
<i>Alexandros XM Ntovas</i>	
I. Introduction	167
II. The Current Geography	171
III. An Asymmetrical Threat.....	173
IV. Piracy's Expandable Reach.....	178
V. A Multifarious International Criminal Offence	184
VI. The International Response	190
VII. Conclusion	197
9. Terrorism: A Threat to Security?	207
<i>Lydia Davies-Bright</i>	
I. Introduction	207
II. The Foundational Principle	209
A. The (Modern) Origin of the Inviolability of Human Dignity	209
B. International Human Rights Law.....	210
C. The Inviolability of Human Dignity Revisited	212
III. The State and its Need for Security	213
A. Concept of the State	213
B. The Nation State	216
i. Defending the Nation	216
C. The Meaning of Security	218
D. The Security Narrative	220
IV. The Origins in Ethics of Human Rights	223
A. The Repositioning of Human Rights on the Moral Field	223
B. Consequentialism.....	224
C. Deontology	225
D. Consequentialism v Deontology.....	225
V. The Consequentialist War Against Terrorism	226
A. A Just War Against Terrorism.....	226
B. The Montreal Convention and Lockerbie Case	227
i. Lockerbie Bombing	228
ii. From Specific to General Threat.....	232
C. The Destruction of One	235
i. 'One' is no Longer Safe.....	237
ii. 'One' no Longer Counts	238
iii. Jean Charles de Menezes as One.....	242
iv. Osama bin Laden as One	245
VI. Conclusion	246

10.	Abusive Governments as a Threat	249
	<i>Jure Vidmar</i>	
I.	Introduction.....	249
II.	Collective Responses to Governmental Abusiveness	250
A.	Governments, Legitimacy and Effective Control	250
B.	International Response to Coup Governments	253
C.	Collective Denial of Legitimacy to an Incumbent Government.....	255
III.	International Peace and Security and Territorial Administration	260
A.	East Timor	261
B.	Kosovo.....	264
IV.	Governmental Abusiveness and the (Ir)Relevance of Democratic Legitimacy	267
A.	The Scope of the Right to Political Participation	268
B.	A Switch to Democracy?.....	269
V.	Conclusion.....	271
11.	Protecting Security Interests in International Investment Law	273
	<i>Prabhash Ranjan</i>	
I.	Introduction.....	273
II.	Protecting Security Interests in those BITs that Contain a 'Security Interest' Exception	275
A.	Type I BITs—BITs Containing 'Essential Security Interest' Exception Without Self-Judging Language	276
i.	Meaning of 'Essential Security Interests'	277
ii.	Scope of 'Essential Security Interests'	277
B.	The Question of Threshold	280
C.	Measures Should be 'Necessary' to Protect Security Interests	283
D.	Essential Security Interests in BITs Containing Self-Judging Language.....	292
III.	Protecting Security Interests in those BITs that do not Contain an 'Essential Security Interests' Exception	295
IV.	Conclusion	298

12. Securing the Polar Regions Through International Law.....	301
<i>Jill Barrett</i>	
I. Introduction.....	301
II. What does 'Security' Mean and How Can International Law Contribute to it?	303
III. Is International Law Capable of Defining the Polar Regions?	306
A. How does International Law Define 'the Polar Regions'?	307
B. How does International Law Define 'Antarctica'?	308
C. Key Differences Between the Antarctic Treaty and the CCAMLR Boundaries	311
D. How does International Law Define the 'Arctic'?	312
i. IMO Polar Shipping Guidelines 2009—Arctic Waters.....	313
ii. IMO Polar Code—Arctic Waters.....	313
iii. Arctic Council.....	314
iv. Treaties Adopted by the Arctic Council States	315
v. Arctic Ocean Conference	317
E. Implication of the Different Approaches to Boundaries in each Polar Region	317
IV. International Regimes Protecting the Polar Regions: Openness and Transparency	319
A. Antarctic Treaty System—How to Join.....	319
i. Accession to the Antarctic Treaty	319
ii. Recognition of Antarctic Treaty Consultative Party Status	320
iii. Criteria for Recognition of Consultative Party Status	321
iv. ATCM Observers and Experts	328
B. Accession to the Convention on the Conservation of Antarctic Marine Living Resources 1980 ('CCAMLR')	328
i. Observers, Acceding States and Non-Party States	329
ii. Becoming a Member of the CCAMLR Commission	330
iii. Remarks on the Overall Level of Openness of the ATS to Participation	330

C.	The Arctic Council—How to become a Member	332
D.	How Can a Non-Arctic State or Organisation Participate in the Arctic Council as an Observer?	334
V.	Conclusion	337
13.	Climate Change as a Threat to International Security	341
	<i>Mattia Fosci</i>	
I.	Introduction.....	341
II.	Security Implications of Climate Change.....	343
	A. Threat to Territorial Sovereignty	344
	B. Threat to Human Well-Being	345
	C. Threat to Economic Development.....	346
	D. Threat to Peace and Security	347
III.	The International Legal Response: Achievements and Shortcomings of the Climate Change Negotiations from a Security Perspective	348
IV.	The Three Pillars	350
	A. Climate Change Mitigation	350
	B. Climate Change Adaptation	351
	C. International Cooperation on Finance, Technology and Information.....	352
V.	The Failures of the International Legal Response to Climate Change and the Securitisation of the Problem.....	355
VI.	Politics, Multilateralism and Climate Security: What Role for International Law?	360
VII.	Conclusion	364
14.	Cyber-Threats and International Law.....	365
	<i>Nicholas Tsagourias and Russell Buchan</i>	
I.	Introduction.....	365
II.	Cyber-Threats	366
III.	The International Law Framework Applicable to Cyber-Threats	369
	A. The United Nations Charter.....	369
	B. The Law of State Responsibility	369
	C. The International Law on the Use of Force	370
	D. Customary International Law.....	370
	E. International Humanitarian Law	370
	F. International Criminal Law.....	371
	G. International Law Applicable to Terrorism.....	372
	H. Human Rights	373
	I. International Law on Espionage.....	374

xvi *Contents*

IV.	Cyber-Attacks and the <i>jus ad bellum</i>	375
A.	Cyber-Attacks as Unlawful Uses of Force.....	377
B.	Cyber-Attacks and Self-Defence.....	381
C.	Cyber-Attacks by Non-State Actors	385
D.	Collective Security	387
V.	Conclusion	387
	<i>Index</i>	391