

## FOREWORD

Few issues in international law are at once more pressing and momentous than the ones addressed in this study. These questions go to the heart of how responsibility is to be allocated in the international struggle to control terrorism. What must a reasonably diligent State do to ensure that its territory is not used as a base to inflict harm upon another State? How far must a State go in diverting resources from housing, health care, or education to meet such obligations? To what extent is a State required to share counterterrorism information and resources with other States – States that may lack the capacity to combat terrorism without such resources? At what point does absence of *capacity* shade into absence of *will* – and when does an absence of will affect the cooperation obligations of other States? Should unique cultural and historical proclivities be taken into account, or are the relevant due diligence standards uniform, international and universal? What, indeed, *is* international “terrorism”?

Traditional international law scholarship too often seeks to resolve such questions primarily or even exclusively through the application of doctrine. Widely ignored are not only actual State practice, but also the economic, geopolitical and cultural variables that shape that practice. This critical study, in contrast, admirably recognizes the interplay between practice and doctrine, properly construed. It finds, sensibly, that international law imposes a “best efforts” obligation on States – which nonetheless will be carried out, or not carried out, as a function of political will. In doing so the study rejects the mechanical jurisprudence of alternative approaches. For those in search of a framework of bright lines, precise tests and easily-applied rules of *per se* invalidity, this conclusion will not be a happy one. But analytic tidiness is not to be had in this corner of our world. Differing balances must be struck case-to-case in light of changing interests of varying weight. Policy-makers as well as scholars will benefit from this thoughtful explanation of why political intrusion upon the law is inevitable, why due diligence rules must remain indeterminate – and how the struggle to curb terrorism through the rule of law can be waged in the face of continuing juridical uncertainty.

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