International Law and the “New” Terrorism

Professorial Lecture

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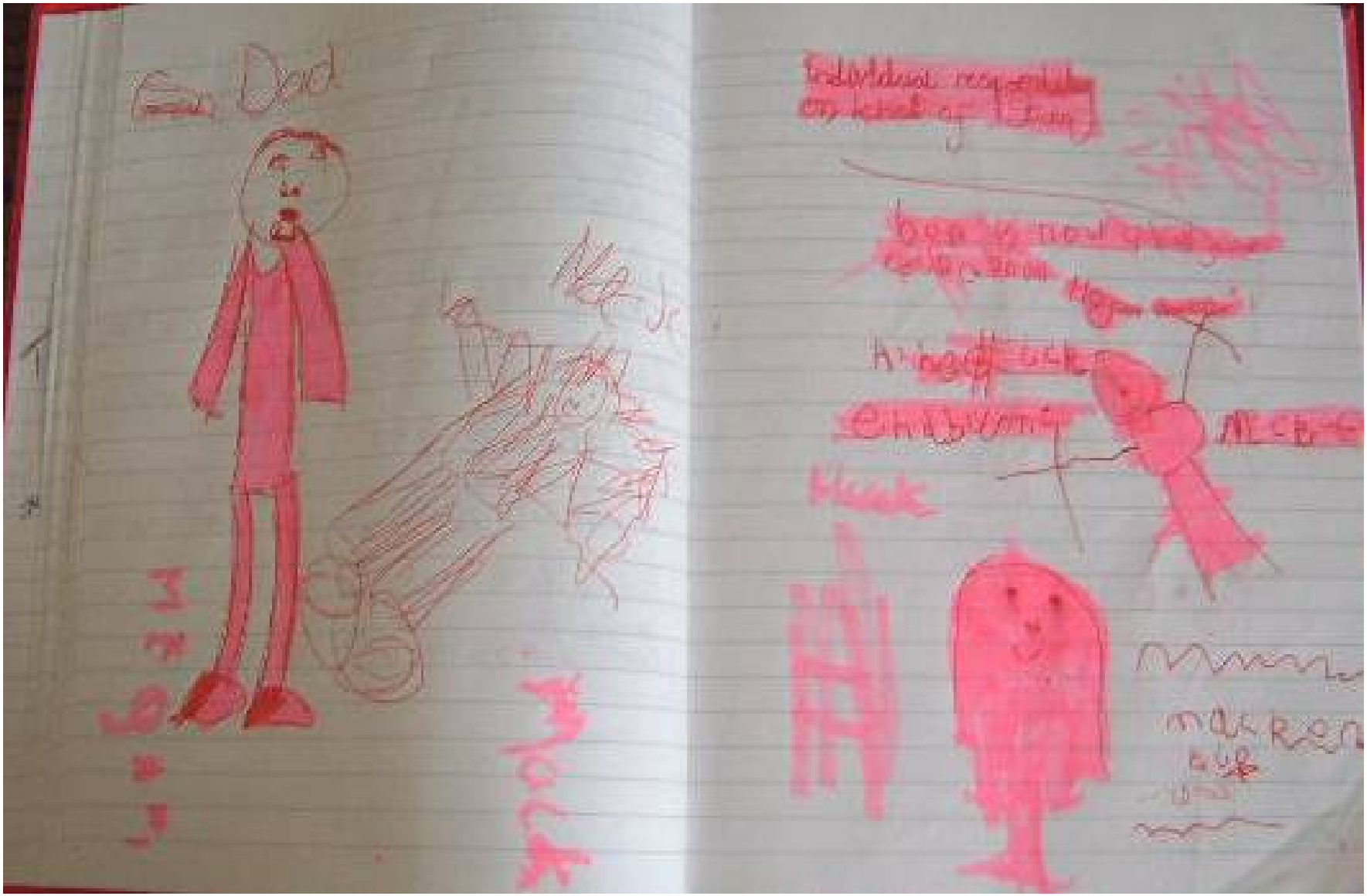
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Factors which differentiate the “new” terrorism from the “old”

- Apocalyptic or mass-casualty events
- Global in its scope
- Exists as an end in itself

- 9/11 constituted the apex of an ongoing phenomenon which had arguably started in December 1988 with the bombing of Pan-Am 103 over Lockerbie

International Law and the Old Terrorism 1960-1990 – Sectoral Conventions

- Tokyo Convention on Offences and Certain other Acts Committed on Board Aircraft 1963 (704 *UNTS* 219)
- Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970 (860 *UNTS* 105)
- Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971 (974 *UNTS* 177)
- United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1973 (1035 U.N.T.S. 167)
- International Convention against the Taking of Hostages 1979 (1316 *UNTS* 205)

Sectoral Conventions (Continued)

- Convention on the Physical Protection of Nuclear Material 1980 (1456 UNTS 246)
- Protocol to the Montreal Convention for the Suppression of Unlawful Acts of Violence Serving International Civil Aviation 1988 (1589 *UNTS* 474)
- Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (1678 *UNTS* 221)
- Protocol to the Rome Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988 (1678 *UNTS* 304)
- Convention on the Marking of Plastic Explosives for the Purposes of Detection 1991 (30 *ILM* 721 (1991))

Problems with Sectoral Conventions

1. Political nature of offence of terrorism
2. Novel system of international criminal law
3. Too singular and one-dimensional

Two Case Studies

- Bombing of Pan-Am 103 over Lockerbie, Scotland in December 1988
- Near simultaneous attacks on the US Embassies in Kenya and Tanzania in East Africa in August 1998

Exposed ineffectiveness of one-dimensional rules-based approach

Search for Legal Responses

- Lockerbie – creation of Scottish Court in the Netherlands

- East Africa Bombings - reliance on dubious extension of protective principle of jurisdiction by United States District Court

Multi-faceted Responses to the “New” Terrorism

A new approach to international law which is complex, multifaceted, multi-layered and lateral

UN General Assembly Measures

- Declaration on Measures to Eliminate International Terrorism 1994
- Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism 1996
- Creation of *Ad Hoc* Committee in 1996 “to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement existing international instruments and, thereafter to address by means of further developing a comprehensive legal framework of conventions dealing with international terrorism”.

New Anti-Terrorism Conventions

- International Convention for the Suppression of Terrorist Bombings 1997 (37 *ILM* 249 (1998))
- International Convention for the Suppression of the Financing of Terrorism 1999 (39 *ILM* 268 (2000))
- International Convention for the Suppression of Nuclear Terrorism 2005
- UN General Assembly currently working towards the creation of a Comprehensive Terrorism Convention

UN Security Council Measures

- Response to Lockerbie and endorsement of Scottish Court in the Netherlands
- Resolutions declaring terrorism to be a threat to international peace and security (See for example resolution 1269 (1999) in aftermath of East African Bombings)
- Resolution 1373 (2001) in aftermath of 9/11 – most expansive resolution ever
- Creation of Counter Terrorism Committee (SC Resolution 1373)
- Numerous subsequent resolutions dealing with international terrorism

UN Security Council Resolutions relating to terrorism passed since 2001

- See Resolution 1377 (2001) (on the events of 11 September 2001); Resolution 1438 (2002) (in relation to the attacks in Bali, Indonesia on 12 October 2002); Resolution 1440 (2002) (in relation to the taking of hostages in Moscow, Russia on 23 October 2002); Resolution 1450 (2002) (in relation to attacks in Kenya in November 2002); Resolution 1465 (2003) (in relation to an attack in Bogotá, Columbia); Resolution 1530 (2004) (in relation to the attacks in Madrid, Spain on 11 March 2004); Resolution 1611 (2005) (in relation to the attacks in London, UK on 7 July 2005). See also more general resolutions on threats to international peace and security caused by terrorist acts including 1390 (2002); 1452 (2002); 1455 (2003); 1526 (2004); 1535 (2004); 1566 (2004); 1617 (2005).

Problematic aspects of the response to the "new" terrorism

- What limits, if any, does international law place on the responses to terrorism?
- Claims for pre-emptive self-defence leading to use of force
- Problem of Security Council "legislating"
- Ratcheting up of domestic responses to terrorism
- Problem of Guantanamo Bay

Conceptualizing the Legal Response

- Complexity
- Cosmopolitanism
- Constructivism

- I am seeking to develop a concept of holistic legal constructivism focusing on both domestic and international measures and the way in which they are capable of interacting and affecting one another. Central to this thesis is the realisation that international law is no longer merely a system of rules but exists, rather, as a sophisticated, multifaceted, mature and complex legal process sitting alongside domestic law.

Conclusions

- multifaceted approaches to the problem of international terrorism reflect not only the increased complexity of international law but also its developing maturity and sophistication