INTRODUCTION

The international law of terrorism has undergone a significant, if largely unnoticed, change in recent years. Much of the current discussion is focused on the tensions, pressures and contradictions between the law, on the one hand, and the imperative need to combat terrorism, on the other: some observers claim that the present framework of international law does not allow for effective measures against terrorism in the post-September 2001 world, or, indeed, that no legal framework is available, while others assert that the existing rules are both adequate and sufficient. Less attention has been paid to the specific features of the actual developments in the international law of terrorism. New anti-terrorist instruments are often seen as sequels to a story already well known, a cumulative addition that only strengthens the original argument, be it against the ‘criminal law approach’ (because of its allegedly narrow and restricted scope) or in favour of it (because of its compatibility with strict standards of legality). What is not easily recognised, or not deemed important, is that the latest anti-terrorist legal instruments seem


to have taken a new direction and have some fairly extensive assumptions built into them. This study suggests that the reports of the death of the criminal law approach to international terrorism are greatly exaggerated and that the international law related to terrorist acts has not only adapted to a changed situation but has grown into a far more complicated body of law than before; some parts of it have intriguingly novel features which might deserve closer consideration. This is the case, for instance, with certain new interpretations of individual and state accountability for terrorist activities.

There is no denying that the terrorist attacks of 11 September 2001 were a watershed in the international community’s response to terrorism, one that occasioned a notable shift from an exclusive law enforcement approach to a broader spectrum of measures ranging from inter-cultural dialogue and technical assistance to coercive measures such as asset freezing, travel bans and, as the last resort, military operations. International obligations are nevertheless still at the core of state action against terrorism, as it is recognised that the threat is international and requires co-ordinated action. The last few years have also seen an intensive development of procedures and methods to monitor the national implementation of counter-terrorism obligations. It has become a commonplace to say that the events of September 2001 and their aftermath have shaped the legal landscape of combating international terrorism. New legal issues abound such as the qualification of terrorist acts as armed attacks, the attribution of terrorist acts to states, and the role of the UN Security Council in the development of international law. A considerable number of commentaries have been written with a special focus on the relationship of the anti-terrorist regulation to international humanitarian law and human rights law, reflecting the regrettable lack of due process safeguards in many anti-terrorist measures states have instituted. According to many early comments, fundamental changes seemed to be underway, as is apparent from such titles as “terrorism is also disrupting some crucial legal categories of international law”; “international law at the crossroads”; or questions like “où va le droit inter-