

Editorial

Our second issue focuses on a special theme, namely ‘sexual terrorism’: the nexus between terrorism, human trafficking and conflict-related sexual violence. A topic that has been receiving more and more attention over the past few years, by scholars and practitioners alike.¹ This is in particular due to the vast increase of the systemic use by terrorist organisations of human trafficking (or trafficking in human beings, THB) and conflict-related sexual violence (CRSV) as a tactic of terrorism, as documented by different NGOs and the UN, among others.

The UN Security Council first recognised the nexus between the three crimes in Resolution 2331 (2016). The preamble of this Resolution provides that ‘acts of sexual and gender-based violence, including when associated to human trafficking, are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism and an instrument to increase their finances and their power through recruitment and the destruction of communities’. The crimes are indeed interconnected as a vicious cycle: the commission of one crime results in the commission of others. Conflict-related sexual violence can motivate human trafficking, while human trafficking may facilitate conflict-related sexual violence. The crimes of THB, CRSV and terrorism have in fact become so interconnected that the boundaries between these different crimes have become blurred.

In this special issue on the nexus between terrorism, THB and CRSV, we aim to better understand this nexus and how to better address the crime(s), including by looking at specific terrorist organisations resorting to ‘sexual terrorism’, such as Islamic State (IS) and Boko Haram. Questions that relate to the different manifestations of and motives underlying ‘sexual terrorism’ committed by terrorist organisations; the impact of THB and CRSV committed in the context of terrorism; the advantages and risks in framing THB and CRSV

¹ See, for instance: ‘Report of the Secretary-General on Conflict-Related Sexual Violence’, UN Doc S/2017/249, 15 April 2017; ‘Report of the Secretary General on Conflict Related Sexual Violence’, UN Doc S/2018/250, 16 April 2018; ‘Report of the Secretary General on Conflict Related Sexual Violence’, UN Doc S/2019/280, 29 March 2019; ‘Report of the Secretary General on Conflict Related Sexual Violence’, UN Doc S/2020/487, 20 July 2020; Counter-Terrorism Committee Executive Directorate, ‘Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing’, 2018; UNODC, ‘Trafficking in Persons in the Context of Armed Conflict’ (*United Nations Publication* 2018); UNODC, ‘Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism’ (*United Nations Publications* 2019); N Malik, ‘Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism’ (*The Henry Jackson Society* 2017); C Kenny and N Malik, ‘Trafficking Terror and Sexual Violence: Accountability for Human Trafficking and Sexual and Gender-Based Violence by Terrorist Groups under the Rome Statute’ (2019) 52(43) *Vanderbilt Journal of Transnational Law* 43; A de Brouwer, E de Volder and C Paulussen, ‘Prosecuting the Nexus between Terrorism, Conflict-related Sexual Violence and Trafficking in Human Beings before National Legal Mechanisms: Case Studies of Boko Haram and Al-Shabaab’ (2020) 18(2) *Journal of International Criminal Justice* 499; C Attah, ‘Boko Haram and Sexual Terrorism: The Conspiracy of Silence of the Nigerian Anti-Terrorism Laws’ (2016) 16(2) *African Human Rights Law Journal* 385; A Imosemi and A Nzeribe, ‘Rape as a Tool of Terrorism: Exploring the Situation in Northeastern Nigeria and Scrutinizing the Legal Frameworks’ (2016) 2(4) *International Journal of Law* 10.

as a tactic of terrorism; the challenges and opportunities for criminal investigation and prosecution and access to justice for victims; and the meaning of justice in the eyes of its victims, are among those addressed in this special issue. While the high number of victims of sexual terrorism has led to regular calls for justice and accountability, the crime of sexual terrorism has yet to be prosecuted as a crime in itself before any national or international jurisdiction. Where prosecutions have resulted, the charges were largely focused on membership or affiliation of a terrorist group.

This special issue begins with Christiana Ejura Attah's opinion piece on the nexus between terrorism, human trafficking and conflict-related sexual violence. Attah opines that a strong nexus exists between these three crimes. According to her, the activities of terror groups provide the enabling environment for THB and CRSV to thrive. She argues that THB and CRSV are interconnected as the former supplies the persons who end up as victims of the latter. Attah argues that research providing evidence of a nexus between these three crimes is vital in the global effort to bring them to an end. The interconnection also needs to be established, she states, in order to properly define these crimes and for the purposes of prosecution of alleged offenders. This is more so because efforts aimed at ending one without paying attention to the other two may not be beneficial in the long term.

Attah's opinion piece is followed by Ana Martin's article on intersectionality, explaining the interlinkages of sexual and gender-based violence (SGBV) with terrorism and other international crimes. Martin argues that international criminal law should integrate an intersectional approach based on identity and discrimination to address the nexus between SGBV and broader international crimes. According to her, intersectionality enables a better understanding of the causes, harms, and gravity of SGBV, and it provides consistency with an international human rights law interpretation. She applies intersectionality to two case studies that demonstrate the interlink of SGBV with broader violations of international criminal law. The first case concerns the *Revolutionary United Front Case (RUF)* trial judgment of the Special Court for Sierra Leone concerning SGBV and the war crime committing acts of terrorism. The second case is that of *Al Hassan*, prosecuted at the International Criminal Court (ICC), concerning SGBV and the crime against humanity of persecution. Martin concludes that international criminal law would benefit from integrating an intersectional approach to the gender analysis of SGBV where any conceptualisation of intersectionality must consider the interplay of the categories 'identity (including gender), discrimination, and crime' because these underpin SGBV in 'peacetime' and reinforce one another during 'conflict'.

The third contribution of this special issue on 'sexual terrorism' comes from Lauren Aarons. In her article, she delves into the dangers of framing THB and CRSV as a tactic of terrorism. Aarons argues that this association with terrorism has tactical advantages, but also poses wider risks for the realisation of human rights. On the one hand, it has the potential to engage counter-terrorism powers

and resources to prosecute perpetrators and prompt reparations. However, it also risks legitimising harmful counter-terror measures and obscuring a more comprehensive understanding of the gendered harms associated with conflict and terrorism. Aarons makes particular reference to the conflicts involving Boko Haram and IS and weighs the advantages and costs of framing THB and CRSV as a ‘tactic of terrorism’. She concludes that it may just be that the costs of framing THB and CRSV as a tactic of terrorism are far too high.

In her case note, Gina Vale subsequently delves into one specific case. On 2 March 2020, in Baghdad’s Kharkh Criminal Court, 20-year-old Ashwaq Haji Hamid Talo – a Yazidi woman liberated from IS – confronted and secured the conviction of her attacker. The trial saw 36-year-old Mohammed Rashid Sahab (‘Abu Humam’) sentenced to death for his membership of the terrorist organisation and ‘the rape and abduction of Yazidi women’ – charges that fell short of the international crimes of slave trade and sexual enslavement. According to Vale, Ashwaq Haji Hamid Talo’s case is a unique example of a Yazidi genocide survivor playing a meaningful and driving role in securing a conviction for her rape and abduction. Though Ashwaq Haji Hamid Talo herself expressed satisfaction with the criminal proceedings and sentence of her attacker, the author notes that her case highlights important challenges in the prosecution of IS members. Vale therefore examines this case in the context of wider political and procedural concerns for trying IS members and highlights both the opportunities and challenges for individual victims and the wider Yazidi community to secure meaningful ‘justice’.

The fifth contribution in this journal is from Adejoké Babington-Ashaye. In her article she focuses on Boko Haram and the practicalities of national investigations and prosecutions in Nigeria of CRSV and THB as acts of terrorism using national terrorism laws such as Nigeria’s 2011 Terrorism Prevention Act (TPA) and its 2013 amendment. Although these pieces of legislation make no express provision for accountability for ‘sexual terrorism’, Babington-Ashaye proposes interpretations of provisions in the TPA that could be utilised to investigate and prosecute sexual terrorism by Boko Haram. The author also addresses some practical challenges faced by federal prosecutors in bringing such charges to court, such as evidentiary practices requiring medical corroboration, and she explores possible solutions to ensure accountability. In the second part of the article, Babington-Ashaye juxtaposes Security Council resolutions on terrorist financing and membership with resolutions on the nexus between terrorism, THB and CRSV. She observes that, by adopting resolutions pursuant to Chapter VII of the United Nations, the Security Council gave terrorist financing and membership a platform on which accountability was mandated. A similar platform has not been afforded to ‘sexual terrorism’ and she explores possible reasons. In Babington-Ashaye’s view, until ‘sexual terrorism’ is given the same platform as terrorist financing, the push for domestic accountability for ‘sexual terrorism’ remains a battle on an uphill road paved with good intentions.

In the final article in this issue, Michala Chadimova discusses the possible role of the ICC in prosecuting Boko Haram for ‘sexual terrorism.’ Chadimova analyses the legal terminology used to describe the crimes connected to Boko Haram – enslavement, sexual slavery, human trafficking and terrorism – and their interaction. While providing an overview of the ICC’s current preliminary examination into the situation in Nigeria, she discusses how the principle of complementarity is potentially holding the ICC’s Office of the Prosecutor back from the formal investigation. Furthermore, Chadimova provides an overview of cases at the ICC that have involved charges of sexual slavery or enslavement. By analysing the Court’s findings in relation to elements of sexual slavery, she provides a view into the Court’s rhetoric on this crime. Similarly, the author discusses modes of liability that have been employed in the *Katanga/Chui* and *Ntaganda* cases and presents a learning opportunity for future cases of sexual slavery as both a crime against humanity and a war crime.

Although the final word on this complex phenomenon and crime of ‘sexual terrorism’ has not – by a long shot – been said, the aim of this special issue is to get the discussion on this topic moving so that the right approaches to address this heinous crime may be implemented.