

Articles

What is Terrorism?

By Arndt Sinn* and Christoph Safferling**

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The “war against terror” remains one of the most difficult challenges for criminal law, as it takes the rule of law to its constitutional limits. Eleven years after 9/11, we see that these events have led to modifications of the general structure of security laws worldwide and also in Germany.¹ National laws have not only been extended to address modern phenotypes of terrorism and the financing of terrorism but have also been expanded to catch foreign and international organizations. Fighting terrorism can only be successful with global cooperation. The papers in this special issue were presented at the International Forum on Crime and Criminal Law in the Global Era in Beijing, and should thus be seen as part of the German-Chinese dialogue on criminal matters. As the question of how German legislation and jurisprudence react to the challenges connected to the fight against international terrorism stretch far beyond this dialogue, a special issue of the German Law Journal seems to be the perfect forum to address a wider global audience.

In 2009, the International Forum on Crime and Criminal Law in the Global Era (IFCCLGE) was founded in Beijing. The Forum's objective is to further worldwide cooperation and the exchange of information and views of researchers in the field. It was also founded to develop the legal principles of human rights protection, security in the world, as well as social stability connected with the repression of transnational organized crime and terrorism.

The 3rd conference of the IFCCLGE was dedicated to the theme of “Basic Trends of Worldwide Terrorism and Countermeasures in the Post-Bin Laden Era.” The organizers’ integrative and interdisciplinary approach was demonstrated by the invitation of not only criminal law experts and criminologists, but also sociologists and political scientists.

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¹ See the overview regarding Germany presented by Mark Zöller, *Zehn Jahre 11. September – Zehn Jahre Gesetzgebung zum materiellen Terrorisusstrafrecht in Deutschland* (Ten years since 11 September - Ten years of terrorism legislation on substantive criminal law in Germany), 32 STRAFVERTEIDIGER (2012), 364.

Twenty-one nations were represented by over 280 delegates. These also included experts from the United Nations and the European Union. Germany was one of the best-represented nations, with a delegation consisting of 10 people,² not least thanks to generous funding from the ZEIT-foundation. The fruits of the conference are now published in this present issue.

The central questions of the presentations were: firstly, what is terrorism? And, secondly, how does one prosecute it in a juristic way? Even defining 'terrorism' presented major problems. In fact, the term 'terrorism' is understood differently by each of the various disciplines, and these definitions are often diametrically opposed. While some of the delegates were opposed to a strict definition of terrorism, others thought it a necessary prerequisite in preventing the abuse of power.

The IFCCLE was formed at the 3rd conference. This is one of the most important annual international meetings concerning criminal law in China. However, the reputation of the Forum now extends far beyond that country's borders. The Forum is characterized by the core principles of consistency, directness and academic quality.

The five articles presented in this special issue address five of the most pressing legal issues regarding the latest developments in German law concerning terrorism. The first article, written by Bernhard Kretschmer, raises the issue of membership in a terrorist organization. Punishment for membership is a specific dogmatic tool in German criminal law to deal with the difficulties of proving perpetratorship or participation in a terrorist attack. In the second article, Liane Wörner discusses inchoate offences (planning and organizing terror attacks) and their efficiency in the fight against terrorism. Recent legislation in Germany blurs the line of demarcation between the repressive criminal law and the preventive security law. However, German law cannot be dealt with in an isolated manner, but only with a view to a European context. Anneke Petzsche develops this theme in the third article, where she explains the European influence on German anti-terrorism law. Following, Martin Heger takes issue with terror attacks on the natural environment, how dangerous they really are and how criminal law can react to these dangers. In the final article, Georg Gesk elaborates on the further development of anti-terror measures on a global approach and raises the question of legitimate resistance against state power. He argues in favor of a de-politicized definition of terrorism and places violence at centre stage in order to differentiate between legitimate protests and criminal activity.

² Making up the delegation were Professor Arndt Sinn (University Osnabrück) as Head of Delegation as well as Professor Georg Gesk (University Hsuan Chuang), Professor Martin Heger (Humboldt-University Berlin), Professor Bernhard Kretschmer (University Bochum), Professor Dr. Jiuan-Yih Wu (University Kaohsiung), Professor Mark A. Zöllner (University Trier), Academic Councilor Liane Wörner (University Gießen), Legal Researcher Anneke Petzsche (Humboldt-University Berlin), Legal Researcher Patrick Pintaske (University Osnabrück), Legal Researcher Saleh Ihwas (University Trier).

These papers certainly do not cover the entire range of issues connected to the legal measures implemented against terrorism. They pertain mainly to legislative activity and do not address, for example, the issue of financing terrorism, which has recently been dealt with by the German High Court of Justice (*Bundesgerichtshof*)³ and the Federal Constitutional Court (*Bundesverfassungsgericht*).⁴ By publishing these papers in a special issue of the German Law Journal, we would hope to support the international dialogue concerning the legal fight against terrorism and the boundaries of the rule of law.

³ See e.g., BGH, Judgment of 14 August 2009 – 3 StR 552/08 – reprinted in 54 BGHST 69, 62 NEUE JURISTISCHE WOCHENSCHRIFT 3448 (2009); see also Christoph Safferling & Timo Ide, Prosecuting Terrorism Financing in Germany: *Bundesgerichtshof* (German Federal Court of Justice), Judgment of 14 August 2009 – 3 StR 552/08', 11 GLJ (2010), 1292, available at: <http://www.germanlawjournal.com/index.php?pageID=11&artID=1298> (last accessed: 31 August 2012).

⁴ See BVerfG, 65 NEUE JURISTISCHE WOCHENSCHRIFT (2012), 907.