

INTRODUCTION TO THE SYMPOSIUM ON J. BENTON HEATH, “MAKING SENSE OF SECURITY”

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The term “security” has multiple resonances in international law and international relations. The first purpose of the UN Charter, as stated in Article 1, is to “maintain international peace and security.” “Peace and security” are invariably invoked by the UN Security Council when, exercising its powers under Chapter VII of the Charter, it decides to authorize measures that could extend to the use of force itself.¹ Appeals to “security” justify the resort to extraordinary measures; it is in the name of security that emergency rule has often been instantiated. Another and contrasting dimension of the jurisprudence of “security” is found in the first provision of the Treaty of Nanking, which stipulates that the subjects of China and the United Kingdom, “shall enjoy full security and protection for their persons and property in the Dominions of the other.”² A version of this, the “full protection and security” clause, is now standard in thousands of bilateral investment treaties, although the protected security is confined to the property of the foreign investor, rather than foreign persons.³ Exploring many uses and allures of security, J. Benton Heath’s wide-ranging article seeks to “make sense” of this protean and contested concept. Rather than attempting to define security or resolve the contestation, Heath seeks to understand the dynamics, as it were, of debates and controversies about security.

Heath does so by offering us a typology of four different approaches to security, “each of which has radically divergent implications for who is empowered by a security claim and how that power interacts with existing rules.”⁴ These four approaches are “realist,” “widened,” “discursive,” and “pluralist.” “Realist” approaches might be thought of as the classic, conventional approach to security—one that focuses on the state and the use of force and emergency measures; “widened” approaches consider the issues raised by expanding the concept of security to issues such as climate change; “discursive” approaches to security question classic force based security paradigms, and attempt to shift away from “threat response” and securitization; and “pluralist” approaches contest the classic paradigm by shifting focus away from the state, by exploring how communities, often those harmed by classic approaches to security, formulate alternative understandings of security, and ways of achieving them.

It is a distinctive and welcome feature of Heath’s typology that it takes into account how “security interests of the colonized, marginalized, racialized, and subaltern are to be taken seriously on their own terms.”⁵ Adopting this

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¹ See, e.g., [SC Res. 678](#) (1990).

² [Treaty of Nanking](#), Art. 1 (1842).

³ See, for an example of such a clause, the [U.S. Model Bilateral Investment Treaty](#), Article 5: “Each party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.”

⁴ J. Benton Heath, [Making Sense of Security](#), 116 *AJIL* 289, 289 (2022).

⁵ *Id.* at 324.

framework, Heath proceeds to inquire into a number of important topics, including the major issues of *who* defines security, *whose* knowledge counts, and *whose* security matters. His work then squarely raises the question of how certain actors are privileged in defining security, how this privilege is acquired, and how it might be challenged.

The essays in this symposium, which offer rich insights into different dimensions of security, also illustrate, refine, and contest Heath's framework. They do so by expanding the conversation to study the relationship between security and race, new developments in the ongoing War on Terror, how security is experienced and contested by those who are the targets of security strategy, feminist approaches to security, and the environmental crisis and security.

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Since the attacks of 9/11, the concept of security has been most extensively deployed, elaborated, and extended in relation to the "War on Terror" that commenced shortly thereafter. It is unsurprising, then, that several of the essays, by Alejandro Rodiles, Jaya Ramji-Nogales, and Maryam Jamshidi, deal with different dimensions of the War on Terror.

Alejandro Rodiles of the Instituto Tecnológico de México shows how the War on Terror has expanded and metamorphosed through a series of instruments and actors claiming special expertise, that identify new arenas and issues that need to be addressed in order to fight the War on Terror and ensure security. Rodiles demonstrates how Security Council Resolutions 1373 and 2178 have served as a foundation for a number of extraordinarily wide-ranging initiatives.⁶ Thus, he explains, terrorism is linked to "violent extremism," and a whole field has emerged, of "Preventing and Countering Violent Extremism." The UN secretary-general has devised an "Action Plan to Prevent Violent Extremism," and multiple levels of national governments, the private sector, non-governmental organizations, and other entities are involved in constructing and occupying this field, with organizations such as Hedayah, a think tank producing research on terrorism, prescribing best practices, coordinating with governments, and developing further networks. The resulting "Countering Terrorism Apparatus" has the ambitious goal of shaping identities of the target populations, developing "resilient individuals" who would resist the narratives that are thought to justify terrorism. As Rodiles points out, this initiative leads to the "securitization" of life in its most intimate aspects and dimensions. Communities are transformed by this campaign, "religious, family, and school communities are instrumentalized as security providers."⁷ With such a manipulation and distortion of community, it is hardly surprising that the targeted communities have been harmed, and that they have resisted this securitization. International human rights lawyers have also pointed out that what passes as "security" is often pursued at the expense of others whose lives are made less secure.

Using Heath's typology, these developments are an instance of one aspect of "discursive security," whereby actors other than the state might shape and develop security discourse; however, the think tanks and other non-state actors in this case have, if anything, worked far more effectively and ambitiously to extend the classic logic of state security to every aspect of life. As Rodiles points out, the operationalizing of discursive security reproduces the classic security model of war by trying to win over hearts and minds.⁸ Rodiles also suggests how other fields, such as gender, development, and education can become infiltrated by this singular vision of security.

Maryam Jamshidi of the University of Florida Levin College of Law explores how the securitization following the War on Terror has affected the communities that are the targets of initiatives such as the campaign to end violent extremism.⁹ She asks the crucial question: whose security matters? Jamshidi focuses on how the

⁶ Alejandro Rodiles, *Making Sense of Violent Extremism*, 116 AJIL UNBOUND 230 (2022).

⁷ *Id.* at 234.

⁸ *Id.* at 233.

⁹ Maryam Jamshidi, *Whose Security Matters?*, 116 AJIL UNBOUND 236 (2022).

communities that are perceived as a “threat” by that war have been affected, and how they have attempted to contest and rethink security discourse, mounting a campaign to “Abolish the War on Terror,” and developing a different model of human flourishing.

Jamshidi points out how it is precisely the classic security paradigm, as outlined by Rodiles, that has made certain communities—Muslim, African, Middle Eastern, and South Asian—feel increasingly vulnerable. The campaign for “Abolishing the War on Terror,” by contrast, argues that socioeconomic empowerment rather than the expansion of the security state, might achieve real well-being. Further, this campaign illustrates again what Heath calls “security pluralism,” an effort by communities to advocate for their own well-being through an alternative vocabulary and program, and in so doing, undermine the monopoly of the state and its experts on defining the meaning and significance of security. Ultimately, this and other projects seek not so much to redefine security, as to “eschew the language of security itself,”¹⁰ replacing it with the practice of solidarity.

Jaya Ramji-Nogales of Temple University Beasley School of Law shows how the War on Terror has been animated by ideas of race.¹¹ In her powerful words, “race legitimizes the security frame and is legitimated by it.”¹² While the experts who have expanded the War on Terror claim to have developed new technologies and sciences to fight it, old and established forms of racism still endure in many cases. Giving content to Heath’s broader question of who possesses “epistemic authority” to decide how security should be defined and achieved, Ramji-Nogales argues that national security is confined to a limited set of actors who are basically driven by very old narratives.

Several essays hint at what might be termed the “political economy” of security, and Ramji-Nogales, drawing upon the work of Asli Bâli, points out that “counter-terrorism serves as sort of racist gravy train.”¹³ That is, these actors deploy familiar racist tropes in elaborating on the idea of security and are often rewarded for doing so with increased funding and recognition. Ramji-Nogales concludes by arguing for an anti-racist approach that would expose these flawed features of classical security law; and, like Jamshidi, she asserts that it is solidarity rather than efforts to rethink and “infiltrate” the security apparatus and its logic, that will bring about real change. Both Ramji-Nogales and Jamshidi offer, from different but related perspectives, a powerful critique of the countering extremist violence project Rodiles describes.

Craig Martin of Washburn University School of Law asks a very specific question: should climate change be characterized as a “security” issue?¹⁴ Given the devastating impact of climate change on the everyday lives of people, and indeed its role in furthering wars and conflict, it seems to be intuitively obvious that climate change should be classified as a security threat, even if security is defined in a narrow way. Martin outlines how international security studies (ISS) would approach the issue of whether climate change should count as a security threat, and what follows if it does. Security here is understood as “protecting against threats . . . to certain specified values,” as well protecting some “referent object.”¹⁵ This approach addresses questions of security for whom, and for what values, which leads to further questions of the scope of security and an acknowledgement of different forms of security that could include climate security. Following the ISS approach, one that entails both a “widened” approach to security and a “pluralist” approach, Martin shows how the climate change threat is truly unprecedented. It requires the “referent object” of security to be understood as “humanity”; and the scale and range of threats cannot be easily

¹⁰ *Id.* at 240.

¹¹ Jaya Ramji-Nogales, *Race in Security*, 116 AJIL UNBOUND 242 (2022).

¹² *Id.* at 246.

¹³ *Id.* at 245.

¹⁴ Craig Martin, *Climate Change and Global Security: Framing an Existential Threat*, 116 AJIL UNBOUND 248 (2022).

¹⁵ *Id.* at 249.

comprehended and addressed. As Martin points out, “sheer magnitude and complexity of the problem”¹⁶ of climate change make it unique. The threats to well-being posed by climate change are so various that conventional security strategies are found wanting. By elaborating on these issues, Martin’s essay too points to the limitations of the national security framework.

The security of the state, then, cannot be ensured by the classic resort to enhancing sovereign powers; this is a singular case where only global action can work. It is telling that for Martin, the most effective institution promoting the needed global action is the UN Security Council, not acting to enhance securitization, but trying to coordinate and in effect require states to act in a concerted and focused manner that will serve the whole of mankind.

Finally, Gina Heathcote of SOAS University of London explores the relationship between feminism and security studies.¹⁷ Feminism might be seen as a form of “plural security”; it questions and contests the conventional security paradigm, revealing in particular its state-oriented and gendered structures. Heathcote argues, however, that the rich complexities and transformative potential of feminism have been reduced by various filtering techniques, as well as by the fragmentation of security concerns into discrete areas of international law and defined domains. Filtering and fragmentation have affected the way in which feminism has been read and understood in current discussions on feminism. As a consequence, feminism has been reduced to a form “amenable to the institution” and “mainstream international legal epistemologies.”¹⁸ Drawing on connections among feminism, decolonization, and legal pluralism, and the pioneering work of Sylvia Tamale, Heathcote concludes by suggesting how Tamale’s work on African feminism—which might be seen as “security pluralism”—goes well beyond expanding the definition of security and instead unsettles and renders uncertain the very concept of security.

If we return to the Treaty of Nanking, we may observe another related set of issues raised by the concept of “security,” and these may be further explored by deploying the important insights provided by these essays. It is a testament to how wide-ranging Heath’s article is, that he deals with economic security and, further, that he recognizes the peculiarities of “security” in the context of provisions in investment treaties that prescribe “full protection and security” to investments. Here, it is not the security of the state that matters, but the security of property.¹⁹

The resulting tensions between state security and security of alien property are suggested in the defining case of *AAPL v. Sri Lanka*, in which the Arbitration Tribunal found in effect that the Sri Lankan government while taking action against insurgents, failed to provide security to a foreign investment—this at a time when that government was involved in a civil war, surely one of the gravest threats to sovereign security. The Sri Lankan government certainly saw itself as engaged in a war against terrorism. In the midst of the conflict, however, it was security of alien property that was paramount, as James Gathii points out in his perceptive analysis that Heath draws upon.²⁰ To what extent, then, is classic realist security model focused on the sovereign and the people it is supposed to protect subject to this powerful limitation? It is discriminatory security because, under this regime, the investor is usually a Western entity, and the property of such an investor often enjoys more protection than the property owned by locals.

The contributors argue for alternative visions—“plural understandings,” in Heath’s terminology. What is striking, however, is that none of these plural understandings are as established and entrenched in international law as

¹⁶ *Id.* at 250.

¹⁷ Gina Heathcote, *Filters and Fragments: Making Feminist Sense of Security*, 116 AJIL UNBOUND 254 (2022).

¹⁸ *Id.* at 257.

¹⁹ Heath, *supra* note 4, at 335.

²⁰ *Id.* at 336, citing JAMES THUO GATHII, *WAR, COMMERCE, AND INTERNATIONAL LAW* 168–85 (2009). For a recent important and related study of this broad theme, see KATHRYN GREENMAN, *STATE RESPONSIBILITY AND REBELS: THE HISTORY AND LEGACY OF PROTECTING INVESTMENT AGAINST REVOLUTION* (2021).

security in the context of alien property. Unlike the many of the other forms of plural understanding—whether in relation to the environment or feminism—the security of alien property has been continuously expanded and enforced by arbitral tribunals giving content and meaning to the “full protection and security” clauses of investment treaties. The security of foreign investments, then, is mundane, commonplace, “rarely controversial today and is widely accepted by both claimants and respondent states in arbitral proceedings.”²¹

The meaning of security for foreign investment is the subject of a dynamic jurisprudence that enhances investor rights and, most importantly, gives them legal effect.²² The consequences that follow are significant, for often, as Heath points out, the security of property is given priority over environmental concerns or the claims of Indigenous peoples and other disadvantaged communities. Security of foreign property, then, is uniquely powerful as compared to the forms of “plural security” expounded by the authors in this symposium. It could prevail not only against the rights of local communities that are often already marginalized, but indeed against the sovereign state itself. If property is to be secured, how might environmental protection or “environmental security” of the sort advocated by Martin be advanced in the event that such protection requires an infringement of property rights? And it is arguably in the Global South that many of the security threats created by climate change are vividly manifested, starkly real, as a result, for instance of desertification and rising sea levels.

Which theory or approach, of the several cumulatively presented in these explorations of security, can account for the extraordinarily potent and yet almost unnoticed phenomenon of the security of foreign investments? But what might appear anomalous or peculiar about the security of foreign investments appears less so if viewed from the perspective of imperial histories. It is surely telling that the United Kingdom, intent on expanding its empire, should do so by inserting the security of foreign property in the very first clause of the Treaty of Nanking—this as a means of consolidating their gains after a war waged against China because of its refusal to allow trade in opium. This version of security, then, like so many others, has been forged and developed in the process of colonial expansion. Indeed, more broadly, the operations of security are driven by technologies and imaginaries that are generated by imperialism—as suggested in different ways by Rodiles, Ramj-Nogales, Jamshidi, and Heath himself.²³

This compelling vision of security—imperial security—continues to exercise its power as against the well-being of many communities, especially in the developing world. The concept of human security, based on human rights,²⁴ as a counter to the realist vision of security, has arguably not become as effective in limiting the state as the concept of investor security. And it is this version of security, in all its dimensions, ranging from the War on Terror to investor security, that Heathcote’s vision, of a feminist, anti-colonial approach, must take on.

All this is perhaps to say that these essays, taken together, suggest how significant security discourse is to the broader concerns of international law and its histories. Security will continue to be a contested and controversial term.²⁵ But J. Benton Heath’s path-breaking article, and these rich and detailed essays, illuminate the international law and politics of security in new and provocative ways.

²¹ [Heath](#), *supra* note 4, at 335.

²² M. SORNARAJAH, [THE INTERNATIONAL LAW ON FOREIGN INVESTMENT](#) 426–27 (2017).

²³ [Heath](#), *supra* note 4, at 295.

²⁴ Hisashi Owada, *Human Security and International Law*, in [FROM BILATERALISM TO COMMUNITY INTEREST: ESSAYS IN HONOUR OF BRUNO SIMMA](#) (Ulrich Fastenrath, et al. eds., 2011).

²⁵ For a recent and far-ranging exploration of security, see [INTERNATIONAL CONFLICT AND SECURITY LAW](#) (Sergey Sayapin, et al. eds., 2022).