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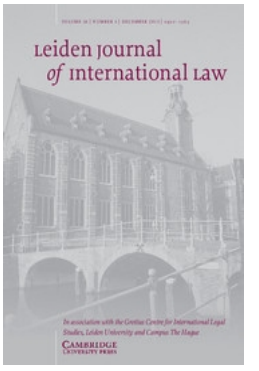

Introduction: The Co-Constitution of Legal Expertise and International Security

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INTERNATIONAL LEGAL THEORY

Introduction: The Co-Constitution of Legal Expertise and International Security

ANNA LEANDER AND TANJA AALBERTS*

1. INTRODUCTION

The role of experts in international legal process is part of a long-standing debate. In his prominent contribution to this debate, Koskenniemi critically scrutinizes how the fragmentation of international law has led to an expansion of the role of functional experts, and has resulted in a technicalization of the field. Any issue can be dealt with through a variety of legal regimes, and depending on how it is framed or problematized, the specialized knowledge of a particular kind of expert is essential for lawyers and judges to gain insight into the complex non-legal technicalities of the issue at hand.[1] This expansion of the role of scientific experts was foreseen (and advocated) by Schachter in the 1970s, who called for a 'systematic collaboration with other scientific and professional groups' as necessary for the adequate execution of the international judicial task. In Schachter's view, a unified international legal profession would be able 'as a class irrespective of specialization to take part in the communication and collaboration that define their invisible college'.[2] The unity and strength of international law would, in other words, be bolstered by the conversation with outside experts.

Some forty years later, Koskenniemi paints a very different picture of the implications of the multiple conversations between international law and scientific expertise, and problematizes their relationship as one in which:

> the law defers to the politics of expertise: for what might be 'reasonable' for an environmental expert is not what is 'reasonable' to a chemical manufacturer; what is

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1 M. Koskenniemi, 'The Fate of Public International Law: Between Techniques and Politics', (2007) 70 *Modern Law Review* 1.

2 O. Schachter (1977), 'The Invisible College of International Lawyers', (1977) 72 *Northwestern University Law Review* 217–26.

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> 'optimal' to [a] development engineer is not what is optimal to the representative of an indigenous population; what is 'proportionate' to a humanitarian specialist is not necessarily what is proportionate to a military expert.[3]

In this interdisciplinary symposium we pick up the conversation at this point. We depart from Schachter's insight that expertise is increasingly central to international law and from Koskenniemi's worry that this leaves law deferring to the 'politics of expertise'. However, what is noteworthy about the latter's otherwise perceptive presentation of the politics of expertise is the juxtaposition of law and expertise, of lawyers and (other) functional experts, ignoring the expertise of law(yers) itself.

This symposium seeks to move the discussion on the expertization of international law forward in two ways: first by insisting that the (politics of) expertise is not merely about extra-legal, scientific expertise. It equally concerns legal knowledge as a particular form of expertise itself. The 'politics of expertise' to which law is 'deferring' is therefore not merely external. This has significant theoretical and practical implications, which can only be dealt with by a more adequate understanding of how this politics of *legal* expertise functions. Therefore, second, the symposium proposes a way of further theorizing the politics of (legal) expertise by exploring it in terms of co-constitutive processes — the processes through which legal expertise and their objects generate each other – as will be elaborated below. While the increasing legalization, fragmentation, and technicalization has certainly made the role of (legal) expertise – and hence contestation between expertises – increasingly prominent, this is not a new phenomenon per se. And while the contributions to this symposium focus on the role of legal expertise in contemporary issues of international security, the overall argument concerns a more permanent feature of international legal practice.

In other words, this symposium explores the politics of (legal) expertise both as a general issue and as something that has become more salient within an increasingly complex world. It does so by focusing on the politics of legal expertise in relation to contemporary international security. The articles explore this relation in the context of cyberwarfare, pre-emption, and extrajudicial assassinations respectively. Before presenting the articles, this introduction situates them by explaining the significance of analysing legal knowledge as expertise, by fleshing out the notion of co-constitution, and by showing how it is dealt with in international security.

2. The significance of analysing legal expertise

Most of the literature on expertise in international law shares the external perspective presented by Schachter and Koskenniemi. At a recent international legal conference on the role of experts in international decision-making, contributions discussing the specific role of legal expertise were conspicuously absent.[4] Instead,

3 Koskenniemi, *supra* note 1, at 10.

4 COST Action IS1003 research seminar 'Irrelevant, Advisors or Decision-Makers? The Role of "Experts" in International Decision-Making', organized by the Erasmus School of Law in Rotterdam, 24–5 June 2011. This conference also was one of the triggers for the current symposium.

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the discussion on the expertization of international law is focused mainly on technical questions of how to handle the role of scientific expertise within legal contexts, including, for example, questions of how different forms of expert evidence can be presented, how expert panels should be constituted and handled, or how judges may deal with their roles as 'expert manager' in the context of New Evidence Scholarship.[5] In addition, Koskeniemmi highlights the tensions between the cognitive vocabularies used by experts, informed by a balancing of interests, and the normative vocabulary of legal rules, universal principles, and judicial precedents that defines international law.[6] This presentation of law versus expertise has significant impact on how the politics of expertise is understood. When the political implications are brought in, it is usually in the form of Koskenniemi's worry that international law becomes dependent on – and even gets monopolized by – external experts. The prospect that legal expertise itself may be divided, political, and politicizing is then not confronted.

As a discerning exception to this tendency to frame the discussion as that of law versus expertise, Kennedy identifies lawyers themselves as powerful experts in an increasingly legalized world:

> Although it is easy to think of international affairs as a rolling sea of politics over which we have managed to throw but a thin net of legal rules, in truth the situation today is more the reverse. ... Indeed, to say the world is covered in law is also to say we are increasingly governed by experts – *legal* experts.[7]

Combining this perspective with that of Schachter and Koskenniemi, the image of law as a form of expertise can actually be discomforting for many, both within and outside the legal profession. For one thing, it has the sullying implication that legal expertise is an expertise among many others, and to be studied and understood in similar terms. The legal expert finds that s/he is seated among the many other experts at Koskenniemi's table. S/he is not merely listening and drawing upon the conversation, or setting and enforcing the rules of debate as a neutral arbiter. This in turn makes it difficult to fall back on law and regulatory processes to settle the disputes and uncertainties about knowledge and expertise. In a world where expertise has become inherently 'transgressive', in the sense of crossing conventional issue and audience boundaries, this is profoundly disturbing.[8] Process rules, often sanctioned by law, have become the standard way of compensating for the lack of a scientific 'Archimedean point' from which to select among and determine conflicting knowledge claims. However, if legal expertise is degraded to the status of just another expertise among others, this option of finding a neutral solution is gone.

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5 For example M. Schudson, 'The Trouble with Experts – and Why Democracies Need Them', (2006) 35 *Theory and Society* 491, at 496; and P. Tillers, 'Introduction: Visualizing Evidence and Inference in Legal Settings', (2007) 6 *Law, Probability and Risk* 1; as well as the discussions in the articles that follow in the special issue.

6 Koskenniemi, *supra* note 1, at 8

7 D. Kennedy, 'Challenging Expert Rule: The Politics of Global Governance', (2005) 27 *Sydney Law Review* 5. See also W. G. Werner, 'The Politics of Expertise: Applying Paradoxes of Scientific Expertise to International Law', in M. Ambrus et al. (eds), *The Role of Experts in International Decision-Making: Advisors, Decision-Makers or Irrelevant?* (forthcoming).

8 H. Nowotny, 'Democratising Expertise and Socially Robust Knowledge', (2003) 30(3) *Science and Public Policy* 1516.

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By the same token legal knowledge loses its status as an objective and clean stranger to the politics of expertise, as Schachter's unified college observing and directing it from above. Rather, legal expertise becomes part of the political game, susceptible to dirtying itself by making alliances with various outsiders and (just like them) of dividing up into faction.[9]

One attractive and tempting solution to the exposure of the politics of legal expertise is to try and re-establish the status of legal expertise as a different, purer, kind, acting from the outside, and hence to reclaim the authoritative role of law. However, it is doubtful whether it is feasible to try and wish or argue the politics of legal expertise out of existence. Instead of sweeping the politics of legal expertise under the carpet, Kennedy suggests that we need to confront it, and through theoretical engagement gain a more adequate understanding of what these experts do, and the nature, limits, and contestability of legal expertise. This turn to reflexivity — to asking what the politics of expertise in law specifically may be — indeed seems a more promising and consistent reaction to the recognition that lawyers are among the experts who govern us. This symposium specifically aims to push the discussion about the politics of legal expertise forward by reflecting upon the co-constitutive relationship between expertise and its object, as we will now elaborate.

3. Legal expertise and its objects are co-constitutive of each other

Insisting on co-constitution is a way of capturing processes of mutual, simultaneous, and ongoing creation and production of expertise and its object. One side of *co*-constitution is the constitution of objects by expertise. By providing a particular specialized lens to investigate a problem, experts will come up with solutions that fit the range of their spectacles, and create their own blind spots along the way. Hence the expertise comes to (re)constitute the reality which it is describing. It therefore matters what kind of expertise comes to prevail in the discussions about, for example, the risks of piracy in the Gulf of Aden, nuclear energy, or irregular migration. It will shape the understanding of what the problem is, what actions, strategies, and policies should be pursued, and how resources should be allocated. At the same time, the problem definition will be core for what kind of expertise is mobilized. This points to the other side of *co*-constitution: the constitution of expertise by its object. Obviously, expertise is always called upon in relation to a particular object. For the risks of piracy in the Gulf of Aden, a great variety of expertise could be mobilized, including expertise from the Combined Maritime Forces in the area, a private insurance company, a local fishermen's organization, the African Union, or the Puntland governor. The particularity of the object will define which specific (combination) of expertise is eventually called upon. This expertise is then (re)constituted in the process as *the* expertise for this particular

9 D. Kennedy, *Of War and Law* (2006).

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issue. The object, in other words, at once constitutes the expertise. Expertise and its object are continuously co-constituting each other.

Since the contemporary world is marked by a 'democratization' of knowledge and hence a multiplication of possible expertise(s), while concurrently lacking overarching and independent criteria for comparing – let alone deciding on the relevance of – different, incompatible forms of expertise, the contexts in which these kinds of co-constitutive processes are salient are bound to be multiple. It is, for example, difficult to imagine any straightforward way of settling disputes such as that over whether the religious, social/ethnographic, or medical expertise should weigh most in the implementation of HIV/Aids strategies in Africa.[10] In practice, therefore, 'there is no realistic chance for any kind of scientific body or advisory committee to reassert their claims to a monopolistic control of scientific authority' on any given issue.[11] Instead the nature of expertise (or more precisely bundle of expertise*s* in plural) is constituted in relation to the issue at hand and often changes over time. Insisting on co-constitution is a way of underscoring that the productive relationship between these two sides (i.e. expertise and its referent object) is not sequential but simultaneous. In this sense co-constitution is closely related to post-structuralist understandings of 'performativity' and, much along the lines of these approaches, it involves an understanding of power and politics as reproduced in practices.[12]

As aforementioned, this symposium discusses the politics of expertise through highlighting the co-constitutive processes linking *legal* expertise and its objects. To see the salience of this approach it is important to underline that Koskenniemi's disturbing picture of fractionalized expertise is also highly relevant for legal expertise itself. As the debate on the fragmentation of international law underlines, legal expertise is indeed increasingly characterized by a functional specialization, with an expansion of differentiated legal regimes each with their own vocabularies, logics, and expertise. When questions to international law are posed in general terms ('is *x* legal according to international law?'), they can invariably only be answered in the context of specified legal regimes. Hence, any expertise is a particular and situated one and will define the legal question in its own terms, leading to particular categorizations and (re)presentations of the world as it supposedly 'is'. By framing a problem in a particular way, lawyers also select the facts that come to constitute the reality they are describing. This of course makes the process of how (a specific form of) legal expertise becomes relevant crucial. Yet, to understand precisely this, it is equally important to recall that, just as other forms of expertise, legal expertise is constituted in part by its objects. As Jasanoff in her work on expertise in courts observes, one of the 'more subtle findings from ethnography and sociology [is that] expertise often does not pre-exist the disputes the expert is summoned to settle, but

10 R. Rottenburg, 'Social and Public Experiments and New Figurations of Science and Politics in Postcolonial Africa', (2009) 12(4) *Postcolonial Studies* 423.

11 H. Nowotny, 'Transgressive Competence: The Narrative of Expertise', (2000) 3 *European Journal of Social Theory* 5, at 19.

12 See, for example, J. C. Alexander, *Performance and Power* (2011).

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is contingently produced within the very context of disputation'.[13] Understanding the politics of co-constitution in this context requires, in other words, focusing on the processes by which specific kinds of legal expertise and their objects reproduce and reinforce each other, and, of course, also on the objects and experts that are pushed out in the process.

The politics of the co-constitutive relationship between legal expertise and its objects in this sense has been discussed across a range of contexts. It is a core example for one of the key voices theorizing co-constitutive processes generally: Bourdieu uses it to account for 'state-building'. On his account, state-building is a co-constitutive process in which legal scholars were constituting the law of the state that in turn constituted them as legal experts.[14] It is also explicit (but under-theorized and usually not politically reflected upon) in some of the most practice-oriented legal literature such as that dealing with 'preventive' and/or 'proactive law'. The point of these literatures is to advocate a legal practice where legal expertise is mobilized (and hence constituted as expertise) in relation to specific objects (for example, a contract, a merger, or a public–private partnership) to create (that is, constitute) these objects in ways that preventively/proactively avoid future legal conflict.[15] Finally, in international law, specifically, Schachter partly captures the constitutive relationship when discussing the creative role of lawyers in extending law to new areas (such as outer space, the seabed, and the environment) according to emerging needs in international society.[16] He does not, however, insist sufficiently on the politics of this process in which lawyers partake in creating the 'reality' they are regulating and which in turn constitutes them as experts. The symposium therefore speaks to and deepens this discussion about the politics of the co-constitutive relation between legal expertise and its object, which in this case concerns international security.

4. The co-constitution of legal expertise and international (in)security

In international security, the salience and urgency of understanding the politics of the co-constitutive processes involving legal expertise and its objects stand out with particular clarity. Legal expertise has become a constant feature of most activities in international security. Legal expertise is constantly invoked in international security, by both states and armed forces who wish to legitimize their actions, and by human rights advocates, companies, or individuals who seek to contest them. In international security, legal expertise therefore risks being reduced to mere 'politics by other means' or even 'war by other means', as most explicitly suggested by the notion of 'lawfare' that is in vogue with both politicians and

13 S. Jasanoff, '(No?) Accounting for Expertise', (2003) 30 *Science and Public Policy* 157, at 159.

14 Most clearly in P. Bourdieu, *Sur l'état: Cours au Collège de France 1989–1992* (2012). For a recent engagement with the usefulness of his thinking to study the international, see the special issue in (2011) 5 *International Political Sociology* 219.

15 L. M. Brown, *Manual of Preventive Law: How to Prevent Legal Difficulties in the Handling of Everyday Business Problems* (1950). H. Haapio and G. Seidel, *Proactive Law for Managers* (2011).

16 Schachter, *supra* note 2, at 223–4

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academics.[17] This practical politicization of legal expertise has triggered interest in and engagement with 'legalistic politics'.[18] When analysing this engagement of legal expertise and international security in terms of co-constitution, different practices of co-constitution can be distilled from the literature.

In one way, co-constitution works through texts and intertextual relationships. This means that when authoritative text(s) present an object as a matter of security, they not only constitute it as a matter of security, but at once reaffirm a specific understanding of what kind of expertise can constitute security. In the context of the interplay between legal expertise and international security, a recent article argued that the complex formulation of UN Security Council Resolution 1976 (2011) redefined both what kind of security and what kind of legal expertise was relevant in the context of Somali piracy as it turned it into a 'question of security and at the same time inseparably a question of development … this means that the UN Security Council policy on piracy is rearticulated along the lines of the so-called security–development nexus'.[19] In the broader context, intertextual co-constitution obviously is not limited to written text but can be taken to include all kinds of texts, including images, statistical presentations, or 'texts' produced through discourse.[20] In addition to a focus on textual or discursive co-constitution, one can analyse co-constitutive, performative practices that are not necessarily linguistically articulated and/or reflected in texts. They are captured through observations of what is done rather than what is said.[21] This also means that co-constitution is not only, or not merely, a matter of big and authoritative speech acts, but equally pertains to the 'small nothings' and everyday practices as politically salient in co-constitutive processes.[22] In this context it was recently shown how the practices linked to the post-9/11 requirements for financial control resulted in an expanded and transformed understanding of security and a co-constitutive transformation of the relevant legal expertise.[23]

Finally, some practice accounts draw specific attention to the role of 'technologies', understood as the various heterogeneous instruments through which the

17 The expression 'politics by other means' is used to refer to legal expertise by Jasanoff, *supra* note 13, at 159. See also Kennedy, *supra* note 9; and W. G. Werner, 'The Curious Career of Lawfare', (2010) 43 *Case Western Reserve Journal of International Law* 61. For an example of the usage of lawfare, consider the following statement made by a jurist closely linked to the US defence establishment: 'The new relevance of international law has not been lost on terrorist groups and rogue states, even if they do not observe it: such groups and governments use new informational technologies to exploit images of dead civilians and other evidence of alleged law-of-war violations as part of a growing practice that some describe as "lawfare"' John Beard, 'Law and War in the Virtual Era', (2009) 109 *American Journal of International Law* 424.

18 J. Skhlar, *Legalism: Law, Morals, and Political Trials* (1964); and Werner, *supra* note 7.

19 G. C. Oliveira, 'New Wars at Sea: A Critical Transformative Approach to the Political Economy of Somali Piracy', (2013) 44(1) *Security Dialogue* 3, at 4

20 H. Stritzel, 'Securitization, Power, Intertextuality: Discourse Theory and the Translations of Organized Crime', (2012) 43 *Security Dialogue* 549.

21 This approach is often traced back to the broad 'practice turn' which borrowed figures of thought with origins in the anthropologies of, for example, Wittgenstein, Bourdieu, or de Certeau. See T. R. Schatzki, *The Site of the Social: A Philosophical Account of the Constitution of Social Life and Change* (2002); and T. R. Schatzki, K. Knorr-Cetina, and E. von Savigny (eds.), *The Practice Turn in Contemporary Theory* (2000).

22 J. Huysmans, 'What's in an Act? On Security Speech Acts and Little Security Nothings', (2011) 42 (4–5) *Security Dialogue* 315.

23 G. Favarel-Garrigues, T. Godefroy, and P. Lascoumes, 'Reluctant Partners? Banks in the Fight against Money Laundering and Terrorism Financing in France', (2011) 42(1) *Security Dialogue* 179.

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performative effects of co-constitution are produced.[24] It is not only language and everyday or mundane practices, but also the material, including statistical technologies, theorems, instruments of observation and bodies that are an important and integral factor to co-constitutive processes. In such accounts, both texts (such as the regulation of financial flows post-9/11) and technologies (such as those embedded in accounting software) figure prominently side by side and in interplay. The productive force of expertise in this context is illustrated by one of the more suggestive titles on financial modelling, suggesting that financial theories function as *An Engine, Not a Camera* in relation to the markets, and hence shape how the latter operate.[25] Linking this more specifically to legal expertise, it has recently been argued, with reference to the *Kadi* case, that financial blacklisting as a technology inscribes the post-9/11 security principles of pre-emption into the international juridical order in a process co-constituting both the legal expertise and the international security.[26] Similarly, it has been argued that the voluntary (soft-law) Codes of Conduct introduced to regulate private military markets have transformed both legal expertise by reinforcing the trends towards global constitutionalism and international security by further militarizing it.[27] Together, these accounts highlight the interplay between texts, practices, and technologies as ingredients of the performative, co-constitutive processes linking legal expertise and international security, as we will outline in the next section.

5. Outline of the issue

The articles in this special issue draw upon these different practices of co-constitution with varying emphasis in their analysis of the role of legal expertise in the context of international security. Moreover, they highlight different aspects of what the politics of legal expertise amounts to, as we will argue below.

The first contribution by Oliver Kessler and Wouter Werner focuses on the uncertainty generated in co-constitutive processes. They analyse the processes of co-constitution of legal expertise and security in cyberspace, showing that these processes generate uncertainty both about security and about legal expertise. Indeed, in their analysis of the co-constitutive processes generated by the Tallin Manual, Kessler and Werner expose how, rather than absorbing uncertainty, the paradoxical outcome of expert meetings is often that they produce new uncertainties or congeal existing ambiguities. In other words, legal expertise is conducive to increased insecurity, rather than safeguarding and regulating security. In addition, Kessler and Werner show how this expertise defines the world out there in relation to

24 This line of theorizing is often anchored in the (post-)Foucauldian tradition, included prominently in the work of feminist theorists such as Butler or Haraway, but with links to range of scholars as diverse as Deleuze and Latour. See e.g. J. Butler, *Bodies That Matter: On the Discursive Summits of 'Sex'* (1993); and D. Haraway, *Witness@Second_Millennium.Femaleman©_Meets_Oncomousetm* (1997).

25 D. MacKenzie, *An Engine, Not a Camera: How Financial Models Shape Markets* (2006).

26 M. de Goede, 'Blacklisting and the Ban: Contesting Targeted Sanctions in Europe', (2011) 42(6) *Security Dialogue* 499.

27 A. Leander, 'What Do Codes of Conduct Do? Hybrid Constitutionalization and Militarization in Military Markets', (2012) 1(1) *Global Constitutionalism* 91.

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particular (legal) categories, and how these, ultimately random, choices constitute international security in a particular way, generating ever more uncertainty. Hence rather than offering legal knowledge on how the risks of cyberwars might be dealt with legally, the Tallin Manual is generating uncertainty both about these risks and about the kind of legal expertise appropriate for handling them.

The second contribution, by Anna Leander, also highlights the uncertainty regarding the outcomes of co-constitutive processes. She focuses in this context on the openness left by technological agency. Indeed, Leander brings a 'new materialist ontology', in which material objects and technologies (in her case drones) have agency, to bear on the analysis of co-constitutive processes. She shows how drones are 'actants' in the co-constitution of legal expertise and the US drone program focused on targeted killings. However, contrary to most analysts, she insists that technological agency does not foreclose politics. On the contrary, she argues that it increases the scope for disagreement and debate. Leander theorizes the resulting politics of legal expertise by combining the Latourian concept of actant with the Bourdieudian notion of the field. On this basis, she shows that drones as actants have reshaped the field of legal expertise, redefining both who the legal experts are and what their expertise rests on. She shows that corporate and civilian intelligence legal expertise has become far more central and that secrecy and transparency have become core to the establishment of expert status. This transformation through 'hybridization' of the co-constitutive processes linking legal expertise and the drone program raises critical questions about accountability and responsibility *in* the drone program but especially *for* its legal status more broadly.

These issues of hybridization and its relation to accountability are also central to the third contribution to the symposium, by Gavin Sullivan and Marieke de Goede. In their analysis of the UN 1267 Ombudsperson, they show that the creation of this specific form of legal expert role has been co-constitutive of a deepening transformation of the exceptionalism linked to the war against terror in international law. Indeed, Sullivan and de Goede show that the generation of new forms of legal expertise has increasingly embedded the law in pre-emptive politics and/or military practice and vice versa. To support their claims, they combine an analysis of UN documents, case law, and personal interviews with the Ombudsperson with a focus on procedural technologies of delisting and adjudication, including the implementation of novel legal (but highly speculative) standards on which they are based, as elements of co-constitution. On this basis, they show how security measures based on exceptionalism do not necessarily lead to 'lawless voids' but result in what could be identified as a practice of legalistic politics. In this encounter of the exception and its legal contestation, the Ombudsperson is instituted as a new figure of expertise and politico-legal authority to decide UN terrorism delisting decisions. However, rather than increasing accountability, this results in a paradox of legitimatization, where legal checks of security practices in fact 'work to legitimate and modulate those very practices'.[28]

28 See above.

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Together the contributions highlight different aspects of what the 'politics of *legal* expertise' can entail. One element that is exposed concerns the practice of defining expertise and its alleged foundation as objective source of knowledge. All papers reject the usual presentation of expertise as a specific kind of knowledge, which is specialized and technical, objective, scientific, and in any case apolitical, and expose how it is indeed inherently political. In different ways they discuss how legal expertise is identified amongst a plurality of experts' voices and gets to be defined in a particular way. A related theme across the contributions, following from this, concerns how legal expertise relates to the world out there, and to international security in particular. Talking directly to the conceptualization of (legal) expertise and international (in)security as co-constitutive of each other, the articles all insist that the politics of legal expertise works largely through the productive power of expertise; that is, through its role in sense- and world-making. In other words, expertise is not just an objective reflection or representation of an independent reality, but in fact contributes to what that reality looks like. If expertise has such productive power in constituting reality, the question what counts as expert knowledge becomes all the more relevant, as do the questions of who is identified as an expert, or as part of the relevant interpretive community, and on what basis they are identified as such. A third theme running through the contributions is thus a focus on the attribution of expertise, i.e. on who gets the privileged expert voice. Overall, the articles do not necessarily challenge the conventional definition of expertise as an authoritative (if not objective) source of knowledge, but are interested in how this expertise becomes authoritative.

This leads onto a fourth and final common theme: the insistence on the crucial importance of critical reflexivity regarding politics of *legal* expertise especially as it relates to international security. Indeed, the core role of legal expertise – not only for accountability and checks and balances but also for delimiting the scope of the law, the exception and the political – cries out for such reflexivity, as Kennedy also insists. In light of the above, such reflexivity requires a move beyond the juxtaposition of politics and law, i.e. beyond the juxtaposition of an apologetic view of legal expertise as just the continuation of security politics by other means, on the one hand, and a utopian view where politics neatly follows legal expertise, on the other. Rather, the articles in this symposium highlight that an analytics of co-constitution is necessary. It captures the dynamics involved as legal expertise and international security constitute each other, in processes involving both the mobilization and constitution of legal expertise in contemporary security constellations, and, vice versa, the mobilization and constitution of contemporary security constellations through legal expertise.

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