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**Rethinking terrorism in international law.
An enquiry into the legal concept of
international state terrorism**

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Abstract of the thesis

This thesis investigates the concept of international state terrorism with a view to providing a legal definition thereof. It proposes to qualify certain uses of state armed force in the light of the category of international terrorism. The latter is understood as the commission of violent acts aimed at spreading terror among a population in order to achieve political goals, and is usually identified as an activity solely perpetrated by non-state actors. However, in international relations states do resort to terrorism against other states. That is to say, armed force is at times used to coerce another state's government by means of directly targeting its population. This use of force relies on large-scale violations of human rights and should be tackled specifically.

The paradigm at stake is proposed drawing on existing documents and academic studies. Elements are derived, on the one hand, from the definitions of peacetime and wartime terrorism; on the other hand, from the legal definition of aggression and the analysis of war-like use of force. The overall aim of the research is both to provide a substantive definition of international state terrorism and to identify which legal consequences it would entail in terms of international responsibility.

Table of Acronyms

AP I	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
AP II	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts
DCCIT	Draft Comprehensive Convention against International Terrorism
GC IV	Geneva Convention relative to the Protection of Civilian Persons in Time of War
HRC	Human Rights Council
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
ILC	International Law Commission
UN	United Nations
UNGA	United Nations General Assembly
WG	Sixth Committee Working Group

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I. Introduction

1.1. Background to the research

From 27 December 2008 to 18 January 2009, the Israeli army carried out a military intervention in the Gaza Strip, the so-called Operation 'Cast Lead'. During this period of time, Gaza was bombed from the sky and the sea and, in the second phase of the offensive, was invaded by land. Eventually, Palestinian casualties amounted approximately to more than 1400, most of them civilians. On the other hand, 13 Israeli citizens were killed, 10 soldiers and 3 civilians.¹

Operation 'Cast Lead' was judged as "the most violent, the most brutal and the bloodiest offensive against Palestinian civilians and their property since the beginning of Israeli occupation in 1967".² The pattern of widespread destruction was clearly testified by the way the first attacks were carried out: the air bombing took place during rush hour, when the streets of Gaza were crowded with people.³ On top of that, the suffering of the civilian population appears to be a distinctive feature of the Israel's military activities throughout the entire operation.⁴

These events constitute the background to the present thesis. The circumstances that characterised the conflict in Gaza, namely deliberate large-scale violations of human rights and International Humanitarian Law (IHL),⁵ may suggest new

¹ See Human Rights Council (hereinafter: HRC), Doc. A/HRC/12/48, 2009, paras. 30-31.

² Palestinian Centre for Human Rights, 2009, p. 9. See also HRC, Doc. A/HRC/12/48, 2009, par. 1880: "[b]oth Palestinians and Israelis whom the Mission met repeatedly stressed that the military operations carried out by Israel in Gaza from 27 December 2008 until 18 January 2009 were qualitatively different from any previous military action by Israel in the Occupied Palestinian Territory. Despite the hard conditions that have long been prevailing in the Gaza Strip, victims and long-time observers stated that the operations were unprecedented in their severity and that their consequences would be long-lasting".

³ "The timing and form of the Israeli air strikes indicate the Israeli intended to cause maximum civilian casualties; the strikes took place during rush hour, coinciding with the changing of the school shifts. This is the time of day when the highest number of civilians, and children in particular, are on the streets of Gaza. [...] According to PCHR's investigations, the sudden bombing of the first day resulted in the death of 334 Palestinians, including 238 police officers, 12 children and 6 women. [...] More than 5,000 school children were shocked and injured by the bombing and air strikes", see Palestinian Centre for Human Rights, 2009, p. 21.

⁴ See subsection 3.2.3.

⁵ For a thorough analysis of armed attacks directly involving the civilian population and for an overall assessment of the operation, see in general the following reports: HRC, Doc. A/HRC/12/48, 2009;

interpretations on the use of international armed force.⁶ The concept of aggression⁷ indeed does not seem to be the most appropriate to address such types of grave violations of human rights. That is to say, an ulterior legal concept could be more suitable in order to qualify a certain use of armed force whose apparent primary aim is to coerce another state's government by means of directly targeting its population. In fact, this manner of using state force appears to share some characteristics with the crime of international terrorism, namely causing terror among a population to achieve political goals.⁸

The foregoing considerations lead to one question. When a state resorts to armed force not for the purpose of occupying a territory and when related armed attacks aimed directly at targeting the civilian population and its livelihoods, is it possible to consider such use of force as an act of international terrorism? The present research will propose a reading of the use of international armed force in the light of the category of international terrorism. Thus, it will put forward a definition of international state terrorism.⁹

At the outset, it must be pointed out that the work does not intend to assess whether Operation 'Cast Lead' may be qualified as an act of international state terrorism. Although that event constitutes the starting point of this thesis, the analysis will be carried out on a more general level. At the same time, Operation 'Cast Lead' will be further analysed because it provides relevant elements to the concept of international state terrorism.¹⁰

1.2. Problems and hypotheses

Since combating terrorism entails coping with one of the most serious threats to human rights, *all* acts of terrorism should be tackled. Hence, it seems appropriate to

Palestinian Centre for Human Rights, 2009; B'tselem, 2009. For a day-by-day first-hand account on the events occurred in Gaza, see in general Arrigoni, 2011.

⁶ For the purposes of the present work, the phrases 'use of force' or 'international force' must be understood as meaning 'armed force'.

⁷ For the definition of aggression, see subsection 3.2.1.

⁸ See subsection 3.2.2.

⁹ See subsection 3.2.3.

¹⁰ See subsection 3.2.3.

define a specific legal prohibition concerning that use of armed force, which aims to spread large-scale terror among the population of a state.

The line of the argumentation is the following. According to IHL, terrorism is a war crime for which any combatant or state official may be prosecuted.¹¹ Conversely, international norms on terrorism in peacetime solely address acts of non-state entities and individuals.¹² The present research intends to put forward that states may commit terrorist acts even when they use armed force against another state or entity. Inasmuch as terrorism is understood as the perpetration of violent acts, the purpose of which is to spread terror among civilians in order to achieve some political goals, there are no reasons to exclude that states could commit such type of acts.

Therefore, the topic of international state terrorism seems to be significant both in the legal and in the theoretical perspective. Defining international state terrorism would complement not only the existing legal framework on international terrorism but also the very concept of terrorism. Indeed, the latter deals only with non-state actors and this, in turn, results in the exclusive criminalisation of non-state terrorist acts.¹³

Furthermore, international state terrorism is closely linked to one of the most relevant issues concerning international law, namely responsibility of states. The lack of accountability of powerful states is both a shortcoming of and a threat to international law. Therefore, acknowledging the responsibility of states for terrorist acts would be a key achievement in its improvement. The international society would be provided with an instrument to address this particular breach of law, consisting of the systematic violation of the protection of civilians granted during wartime. Defining a substantive prohibition on acts of state terrorism and clarifying which legal consequences would arise from such acts, indeed, means to enhance states' accountability on the international plane.

¹¹ For the analysis of terrorism in time of war, see section 2.3.

¹² See Draft Comprehensive Convention against International Terrorism, Doc. A/59/894, 2005, art. 2. For the analysis of terrorism in time of peace, see section 2.2.

¹³ See sections 2.1 and 2.2.

1.3. Research question and outline

International state terrorism encompasses at least two aspects, i.e. the crime of individuals and the wrongful act of states. The present work will address only the second issue.

Moving from the idea that it is theoretically possible to conceive the legal paradigm of international state terrorism,¹⁴ the research question focuses on how to define it under international law. That is to say, what could be the constitutive elements of a legal definition of international state terrorism? On the one hand, the investigation will deal with the substantial aspect of the prohibition on international state terrorism.¹⁵ On the other hand, it will attempt to define the legal consequences that could arise from these acts of international state terrorism in terms of state responsibility.¹⁶

In the second chapter of the thesis, the reasons about the appropriateness of conceiving the prohibition on international state terrorism will be explained in relation to the broader concept of terrorism. This part of the work will provide the reader with the theoretical arguments upon which the concept of international state terrorism is put forward.

Different definitions of terrorism in international law will be studied in order to present an overview of the matter. Firstly, the reasons for which states criminalise terrorism as an autonomous offence with respect to the violent acts, which constitute the physical conduct, such as mass murder or destruction, will be analysed. Whilst the second section will pay attention to international (non-state) terrorism in peacetime, with particular consideration to the Draft Comprehensive Convention against International Terrorism (DCCIT) and to some scholarly studies, the third section will deal with terrorism in wartime. A comparison between the DCCIT's definition of terrorism and the IHL's provisions on terrorism will contribute to the understanding of the differences and similarities between terrorism in both peacetime and wartime. Lastly, the study will show how international state terrorism has been conceived so far, both in the debates at the United Nations (UN) and in academic studies.

¹⁴ See section 2.4.

¹⁵ See section 3.2.

¹⁶ See section 3.3.

In chapter three, a definition of international state terrorism will be put forward. Firstly, the international values that are threatened by state terrorism will be examined in order to explain the reasons for conceiving such a paradigm. Secondly, legal texts and scholarly analyses will be studied to single out the constituent elements of the definition at stake.

Finally, the paradigm of international state terrorism will be considered in the light of the law of state responsibility, in particular with respect to the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts. Here, both international legal frameworks on the use of force and on state responsibility for acts of aggression will be studied. In the light of this examination, the analysis will try to understand which legal consequences could arise from acts of state terrorism in terms of international responsibility.

II. International state terrorism. A theoretical perspective

This chapter aims at understanding whether it is possible to conceive the paradigm of international state terrorism from a theoretical point of view. Such a possibility will be analysed through a comparison with the international framework on non-state terrorism and in the light of the values, which underlie such a framework. The first section explores the reasons for criminalising terrorism and the values threatened by terrorist violence. The second and the third sections give an overview of the definitions of terrorism in peacetime and in wartime, providing a comparison of such definitions. Finally, section four investigates how the concept of international state terrorism has emerged in international debates on terrorism.

2.1. Why define terrorism?

Terrorism¹⁷ has become a matter of international concern since the first half of the XX century.¹⁸ After the second World War, the UN and its specialised agencies started to adopt a series of conventions with the purpose of criminalising specific acts of terrorism such as the taking of hostages or crimes against internationally protected persons.¹⁹ Nowadays, a debate surrounds the adoption of the DCCIT, which intends to be the final legislative step.²⁰ This Convention does not aim at criminalising single physical acts, such as murder, destruction or taking of hostages, but rather terrorism as an autonomous crime.²¹

From the onset, some questions must be identified. Firstly, what is the rationale for criminalising terrorism as a independent offence? Why should the terroristic purpose of a crime, i.e. the spread of terror among a targeted social group, change the nature of

¹⁷ See below for the definition of terrorism.

¹⁸ The earliest attempt of criminalising terrorism on the international level is the League of Nations Convention for the Prevention and Punishment of Terrorism, 1937.

¹⁹ For a historical overview of UN Conventions on international terrorism, see Gioia, 2004, pp. 11 ff.. A list thereupon is available at <http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml> (consulted on 29 April 2012).

²⁰ See Draft Comprehensive Convention against International Terrorism, Doc. A/59/894, 2005 (hereinafter: DCCIT).

²¹ See section 2.2 for the analysis of the text.

offences such as murder or destruction instead of being simply deemed as an aggravating circumstance? Further, when is terrorism a matter of international concern? Accordingly, the concept of terrorism will first be addressed in order to explain the overall reasons for its criminalisation. Then, the analysis will move on to the international dimension of terrorism.

It is common knowledge that states used to criminalise terrorism as an autonomous offence. The reason lies in that terrorism is deemed not only as harmful for basic social values, such as people's lives, but also as a threat to the very existence of the state. Indeed, as a form of political violence, terrorism aims at challenging the legitimacy of governments and public institutions.²² On the side of the state, labelling political violence as 'terrorist' is a key element to delegitimize it:

The term 'terrorism' was originally used to indicate violence inflicted by the dominant forces of a society, as during the *Régime de la Terreur* following the French Revolution [...]. The meaning developed in the nineteenth century in such a way to include violence outside the control of the state, such as the assassination of political leaders perpetrated by anarchists. Since then, the latter has become the most common meaning [...]. This partly reflects a specific political objective. Saying that terrorism is 'unconventional' implies a specific legal and political position, generally expressed by all states. They view the political activity of certain armed groups as *an illegitimate form of obtaining and enforcing power*. This rests on the fact that these groups break certain constitutional constraints. But, most importantly, they are labelled 'terrorists' because of their challenge to the monopoly of (the legitimate use of) political violence held by a state within a territory.²³

²² "Groups resort to terrorism in order to acquire, maintain or extend political power over a society. Because of its use of violence, terrorism is seen as *an unconventional strategy for political struggle*, when compared with other forms that are generally adopted in a political regime, such as campaigning and voting during elections for various levels of government, and solving disputes through legal procedures [...]", see Tosini, 2007, p. 665.

²³ Ibid..

Terrorist violence aims at political changes within a society.²⁴ Any state, therefore, has an interest in combating terrorism, precisely because the latter challenges the legitimacy of the former. In turn, the peculiarity of terrorist violence lies on its means, namely the spreading of terror among a certain group of people, usually the civilian population.²⁵ Domenico Tosini put forward the following definition of terrorism: “the use (or the threat) of violence against civilians (and personnel not engaged in combat operations) by non-state entities for specific political purposes”.²⁶

Thus, the basic reason for considering terrorism as an autonomous offence is that it threatens fundamental values of organised societies. On the one hand, violent acts outrage fundamental human rights such as right to life and to personal security. On the other hand, terrorism tries to influence governments’ behaviour outside constitutional mechanisms of political participation. So, human rights and normal political life are the main values at risk when dealing with terrorist violence.

The criminalisation of terrorism on the international level arguably relies on similar reasons, namely the protection of fundamental values of the international society. However, since distinct legal orders provide different meanings for the word ‘terrorism’, it is much more difficult to find a precise definition on the international plane.²⁷ As shortly shown, the lack of an internationally agreed upon definition of terrorism does not actually affect the consensus on the rationale for its criminalisation.

²⁴ “Unlike drugs, or car crime, or the Mafia, for example – where the nature of the crimes involved implies that an individual is acting in his or her own egoistical, material or other kinds of personal interest – all actions defined as ‘terrorist’ are based on *motivations that are mainly political* [...]”, see *ibid.*, p. 666.

²⁵ “The use of violence against civilians (or personnel not engaged in combat operations) depends on a *communicative and strategic component of terrorism*. Apart from hurting or killing the victims who are the immediate targets of violence, a terrorist act also aims to generate a state of terror so as to influence other actors [...]. Indeed, terrorism is used as a mean for attaining several objectives: for a demonstrative purpose in terms of public opinion (in order to focus people’s attention on certain issues); for an intimidatory purpose in terms of that part of the population that has not been directly targeted (viewed as actors who might influence the government); for a coercive purpose in terms of the state (viewed as a target that is able to satisfy certain political demands); and, finally, for propaganda purposes in terms of the community, which is viewed as a target that might provide political support and whose interests a terrorist organization wants to represent while competing with other organisations”, see *ibid.*, p. 667.

²⁶ *Ibid.*, p. 667.

²⁷ “The controversial issue of terrorism has [...] been approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition [...]”, see Koufa, 2001, par. 24. Whilst the present work deals with the manifold definitions of terrorism, it does not specifically address the issue of the lack of international agreement on such a definition. For a thorough research thereupon, see in general Saul, 2006.

In this regard, Ben Saul observed that:

In State practice, view through the lenses of UN organs and regional organizations, the bases of criminalization are that terrorism severely undermines: (1) basic human rights; (2) the State and the political process (but not exclusively democracy); and (3) international peace and security [...]. Treating terrorism as a distinct category of criminal harm symbolically expresses the international community's desire to condemn and stigmatize 'terrorism', as such, beyond its ordinary criminal characteristics. Doing so normatively recognizes and protects vital international community values and interests.²⁸

Similar reasons for criminalising terrorism were stated in the UN General Assembly (UNGA) resolution 49/60 of 1994.²⁹ Furthermore, they were reaffirmed in the preamble of the DCCIT³⁰ which in turn declares that "acts of terrorism in all its forms and manifestations [...] endanger or take innocent lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings; [...] threaten the territorial integrity and security of States".³¹

The terrorist threat to human rights and to the security of states is not *per se* a matter of international concern, since it could remain within the scope of domestic jurisdiction. Instead, terrorist acts must have an international element: the conduct should have transnational effects³² or threaten international peace and security or other

²⁸ Saul, 2006, pp. 10-11.

²⁹ "Acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society", see United Nations General Assembly (hereinafter: UNGA), Doc. A/RES/49/60, 1994, par. I(2).

³⁰ Par. 6 of the DCCIT preamble contains the same wording as par. I(2) of UNGA res. 49/60.

³¹ DCCIT, preamble, paras. 4-5.

³² Art. 4 DCCIT: "The present Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis [...] to exercise jurisdiction [...]". The same provision is envisaged in art. 3 common to the following UN conventions, which already came into force: International Convention for the Suppression of Terrorist Bombings (1997), International Convention for the Suppression of the Financing of Terrorism (1999), International Convention for the Suppression of Acts of Nuclear Terrorism (2005). See also Cassese, 2006, p. 938, which maintains that "the conduct must be *transnational* in nature, that is, not limited to the territory of one state with no foreign elements or links whatsoever [...]".

international values.³³ However, it can be noticed that serious domestic terrorist acts are becoming more of an international concern, as they are perceived as a danger to international values.³⁴

These concerns have always urged states to search for a legal definition of the crime of international terrorism. The next two sections will analyse how terrorism has been conceived in international law, in the two different contexts of peacetime and wartime respectively.

2.2. International terrorism in time of peace

As mentioned above, a well-known problem related to any legal efforts to criminalise international terrorism is the constant lack of consensus on its definition. In turn, such a lack has always hindered the rise of a customary norm.³⁵ According to Saul, it can only be contended that a customary norm on the *prohibition* of terrorism exists.³⁶ Also, UNGA res. 49/60, the broadest international condemnation of terrorism, only provides for the *reasons* for criminalising terrorism, yet falls short of a legal definition.³⁷ Furthermore, not even UN Security Council (UNSC)'s resolutions provide

³³ See Saul, 2006, pp. 13-14. Saul contends that 'domestic' terrorist acts which affect international values should amount to international crimes. This approach relies on an analogy with crimes such as genocide, which is of international concern even though it may entirely occur within the boundaries of a single state. Moreover, the author states: "[i]f international regulation of terrorism is limited to international terrorist acts, then the international elements of offences should encompass the diverse ways in which terrorism may affect international interests", see *ibid.*, p. 62.

³⁴ See for example the United Nations Security Council (UNSC) statement on terrorist acts which occurred in Nigeria in November 2011: "[t]he members of the Security Council reaffirm[...] that terrorism in all its forms and manifestations is criminal and unjustifiable, regardless of its motivation, wherever, whenever and by whomsoever committed, and should not be associated with any religion, nationality, civilization or ethnic group. The members of the Security Council reaffirm[...] the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts", see UNSC, Doc. SC/10437 AFR/2278, 8 November 2011.

³⁵ See Saul, 2006, p. 191. Also Georges Abi-Saab underlines the lack of *opinion juris* as to the definition of international terrorism; see Abi-Saab, 2004, pp. XIII and XX. Conversely, Antonio Cassese maintains that "many factors point to the formation of substantial consensus on a definition of terrorism in time of peace" and that an international crime thereupon already exists; see Cassese, 2006, pp. 936 and 957. For a critique of Cassese's position, see Saul, 2006, pp. 211-12.

³⁶ "At best, there is international consensus on condemning terrorism, or support for a *prohibition* on terrorism, but which is insufficiently precise to support individual criminal liability", see Saul, 2006, pp. 191 and 213.

³⁷ See Saul, 2006, pp. 210 ff.; see also Zolo, 2009, pp. 32-33.

for a precise definition of terrorism.³⁸ Additionally, and significantly, the crime of terrorism has not yet been included in the Statute of the International Criminal Court (ICC), due to the lack of consensus on a definition.³⁹

Moving from these considerations, it is worth understanding, in detail, how terrorism in peacetime is conceived and defined. For this purpose, both the DCCIT's definition and scholarly studies will be examined.

Art. 2(1) of the DCCIT provides:

Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes: (a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.⁴⁰

The physical conduct envisaged in art. 2 is quite broad. It encompasses not only violations of the right to personal integrity and the right to life. It also includes, on the one hand, damages to public or private property, public facilities and the environment; and, on the other hand, any economic loss deriving from such damages. Furthermore, the subjective element is related to the alternative purpose of intimidating a population or influencing the behaviour of public institutions.

The definition of terrorism provided by the DCCIT is generally accepted.⁴¹ The negotiations are currently stalemated due to the lack of consensus on art. 20,⁴² which

³⁸ See Saul, 2006, pp. 249-250.

³⁹ See *ibid.*, pp. 182-183; Zolo, 2009, p. 201. See also International Criminal Court (ICC), Doc. ICC-ASP/10/32, 2011, paras. 14-17.

⁴⁰ DCCIT, art. 2(1).

⁴¹ Provisions of a similar broad nature may be found in some regional treaties. See art. 1 of the EU Framework Decision on Combating Terrorism; art. 1(2) of the Arab Convention for the Suppression of Terrorism, Cairo, 1998; art. 1(3) of the Convention of the Organization of the Islamic Conference on Combating International Terrorism adopted at Ouagadougou, 1999; art. 1(3) Organization of African Unity Convention on the Prevention and Combating of Terrorism, Algiers, 1999.

deals with the scope of application of the Convention.⁴³ It is worth mentioning that this Convention is meant to be the conclusive step of the international legislative process in combating terrorism.

Some scholars have summarised the constituent elements, which seem to be at the basis of many national, regional and international definitions of terrorism. Saul listed the elements present in most definitions:

(1) any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life, including by acts against property; (2) where committed outside an armed conflict; (3) for a political, ideological, religious, or ethnic purpose; and (4) where intended to create extreme fear in a person, group, or the general public, and: (a) seriously intimidate a population or part of a population, or (b) unduly compel a government or an international organization to do or to abstain from doing any act.⁴⁴

In turn, according to Antonio Cassese the international crime of terrorism:⁴⁵

(i) is an action normally criminalized in national legal systems; (ii) is transnational in character, i.e. not limited in its action or implications to one country alone; (iii) is carried out for the purpose of coercing a state, or international organization to do or refrain from doing something; (iv) uses for this purpose two possible modalities: either spreading terror among civilians or attacking public or eminent private institutions or their representatives; and (v) is not motivated by personal gain but by ideological or political aspirations.⁴⁶

⁴² A number of the articles refer to the 2005 draft. Originally it was art. 18. In most recent drafts, art. 20 has become art. 3. See UNGA Sixth Committee Working Group (WG), Doc. A/C.6/65/L.10, 2010, Annex II.

⁴³ For recent developments on the debate around the scope of application of the DCCIT, see in general UNGA Ad Hoc Committee (Committee), Doc. A/62/37, 2007; WG, A/C.6/65/L.10, 2010.

⁴⁴ Saul, 2006, pp. 65-66.

⁴⁵ It must be underlined that in Cassese's view these elements are contained in a customary norm and a discrete international crime of peacetime terrorism already exists.

⁴⁶ Cassese, 2006, p. 957.

In both scholarly definitions, only serious criminal offences may amount to acts of terrorism. As to the subjective element, Saul's definition considers the spread of terror as an *aim* linked to that of intimidating a population or influencing the behaviour of public institutions. This formulation is similar to art. 2 DCCIT. However, the latter even considers conduct that does not aim at spreading terror, as terrorism. Indeed, in art. 2 intimidating a population or compelling a government to behave in a certain manner are alternative purposes. That is to say, a criminal act could be judge as a terrorist act even though it is not aimed at spreading terror at all.

Cassese's definition in turn regards the spread of terror as a *means* for coercing public institutions. Other means may be the commission in general of violent acts against public authorities. Yet, the exclusive purpose is to compel governments or international organisations to behave in a certain manner.⁴⁷

Both Saul and Cassese consider that the *motive*, which may be political, ideological, philosophical, religious or ethnic, is a fundamental element of the definition of terrorism. Indeed, the motive must be 'public-oriented'.⁴⁸ Criminal law usually does not take into account the reasons why a crime is committed. It solely considers the intention of the actor to commit the criminal offence, without dealing with any underlying personal motives. Thus, the public-oriented nature of the motive is a specific feature of the definition of peacetime terrorism.⁴⁹

Finally, it must be highlighted that in all mentioned definitions international terrorism is a crime of non-state actors. Accordingly, the DCCIT is an instrument of law enforcement aimed at rendering national laws more uniform and effective, as well as at enhancing cooperation among states in their counter-terrorism strategies. Also scholarly proposals are based on norms and practices regarding non-state terrorism. Therefore, it

⁴⁷ "It can be said that for terrorism to materialize two subjective elements (*mens rea*) are required. First, the subjective element (*intent*) proper to any underlying criminal offence: the requisite psychological element of murder, wounding, kidnapping, hijacking and so on (*dolus generalis*). Second, the *specific intent* of compelling a public or a prominent private authority to take, or refrain from taking, an action (*dolus specialis*)", see *ibid.*, p. 940.

⁴⁸ See Saul, 2006, p. 45.

⁴⁹ "*Motive* in criminal law is normally immaterial [...]. Motive exceptionally becomes relevant here: [...] criminal conduct must be inspired by non-personal inducements. Hence, if it is proved that a criminal action (for instance, blowing up a building) has been motivated by non-ideological or non-political or non-religious considerations, the act can no longer be defined as international terrorism, although it may of course fall under a broader notion of terrorism upheld in the state where the act has been accomplished", see Cassese, 2006, p. 940.

can be said that the international concern over terrorism primarily relates to acts committed by non-state actors.

2.3. Terrorism in time of war

As shown below, the crime of terrorism in wartime has a different meaning than the crime of terrorism in peacetime. Such a difference is related to the peculiarity of armed conflict, whose inherent violence leads to a change in the nature of the terrorist offence.

Several provisions of IHL deal with terrorism. Art. 51(2) of Additional Protocol I⁵⁰ (AP I) and art. 13(2) of Additional Protocol II⁵¹ (AP II) to the Geneva Conventions state that “[...] [a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”.

Art. 33 of the Fourth Geneva Convention⁵² (GC IV) provides that “[n]o protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”.

Art. 4(2)(d) AP II states that “acts of terrorism” against persons who do not or have ceased to directly participate in hostilities “are and shall remain prohibited at any time and in any place whatsoever”. The meaning of terrorism in these articles varies and serves different purposes. Accordingly, the analysis will distinguish between, on the one hand, arts. 33 GC IV and 4(2)(d) AP II and, on the other hand, arts. 51(2) AP I and 13(2) AP II. Since the latter provisions are more relevant for the present work they will be examined more thoroughly.

The meaning of terrorism in art. 33 GC IV “is mainly concerned with the illicit use of terror in the context of the maintenance of public order in an occupied territory”.⁵³

⁵⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (hereinafter: AP I).

⁵¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 (hereinafter AP II).

⁵² Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereinafter: GC IV).

⁵³ Jodoin, 2007, p. 91. See also Uhler and Coursier, 1958, pp. 225-226.

The subjects of the provision are so-called protected persons.⁵⁴ In turn, the definition of “acts of terrorism” provided by art. 4(2)(d) is based on art. 33 GC IV and concerns “acts of violence committed against non-combatants and their property”.⁵⁵ Both provisions aim to protect civilians and persons *hors de combat* from violent acts, which are usually committed in order to terrorise a population and annihilate any resistance, especially in occupied territories.

Arts. 51(2) AP I and 13(2) AP II provide an identical specific prohibition on terrorist acts, respectively in international and in non-international armed conflicts. First and foremost, it is worth noting that the prohibition of “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”⁵⁶ has become a rule of customary IHL.⁵⁷ The commentary of the International Committee of the Red Cross (ICRC) on AP I explains the meaning of this norm as follows:

1940. [T]he prohibition covers acts intended to spread terror; there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and persuade them to surrender. This is not the sort of terror envisaged here. This provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage.⁵⁸

4785. [...] Attacks aimed at terrorizing are just one type of attack, but they are particularly reprehensible. [...] 4786. Any attack is likely to intimidate the civilian population. The attacks or threats concerned here [art. 13(2) AP II] are therefore those, the primary purpose of which is to spread terror [...].⁵⁹

⁵⁴ Art. 4 GC IV: “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals [...]”.

⁵⁵ Jodoin, 2007, p. 95. See also International Committee of the Red Cross (hereinafter: ICRC), 1987, p. 1375.

⁵⁶ This is the wording of the second part of arts. 51(2) AP I and 13(2) AP II.

⁵⁷ Henckhaerts and Doswald-Beck, 2005, pp. 8-11.

⁵⁸ ICRC, 1987, p. 618.

⁵⁹ ICRC, 1987, p. 1453.

On the basis of the foregoing explanations, it can be maintained that the definition of terrorism in wartime has a narrower scope than the definition of terrorism in peacetime.⁶⁰

As to the objective element of the definition, “the *prohibited conduct* arguably consists of any *violent action* or *threat* of such action *against* civilians [...]. In contrast, the prohibition on terror does not cover terror caused as a by-product of attacks on military objectives [...]”.⁶¹ Therefore, any *lawful* attacks against combatants cannot result in an act of terrorism, even when they cause terror among civilians as an *incidental effect*.⁶² Conversely, when an attack is carried out *unlawfully* against military persons or military objects with the primary purpose of terrorising civilians, such an attack may amount to an act of terrorism. Indeed, “[i]n such a case the terror inflicted on civilians would [...] not be incidental in nature since it would, by implication, constitute the primary purpose of the attack”.⁶³ According to the ICRC, “[e]xamples of acts of violence cited in practice as being prohibited under this rule include offensive support or strike operations aimed at spreading terror among the civilian population, indiscriminate and widespread shelling, and the regular bombardment of cities [...]”.⁶⁴ The International Criminal Tribunal for the former Yugoslavia (ICTY) also found that the protracted campaign of sniping and shelling or indiscriminate and disproportionate attacks carried out with the primary purpose of spreading terror among civilians amount to terrorism under IHL.⁶⁵

⁶⁰ See Saul, 2006, p. 297; Cassese, 2006, p. 946.

⁶¹ Cassese, 2006, pp. 946-947. “Beyond all doubt, [art. 51 paragraphs 2 and 4] ban terrorist activities insofar as they are directed against civilians. By definition, terrorist acts are acts ‘the primary purpose of which is to spread terror among the civilian population’ [...]. Acts of terrorism are always either attacks against civilians or indiscriminate attacks which usually strike civilians. However, terrorist acts *need* not necessarily or exclusively strike civilians or the civilian infrastructure”, see Gasser, 2002, p. 556.

⁶² See Jodoin, 2007, p. 92. Conversely, Gasser states that attack against combatants in violation of arts. 35 and 37 AP I, i.e. respectively attacks which cause unnecessary sufferings or that are carried out feigning the status of non-combatants, could result in acts of terrorism; see Gasser, 2002, 557. See *contra* Jodoin, 2007, p. 82. See also International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY), *Galic* Trial Chamber, 2003, par. 135, in which it is stated that “[w]ith respect to the ‘acts of violence’ [underlying the crime of terror], these do not include legitimate attacks against combatants but only unlawful attacks against civilians”.

⁶³ See Jodoin, 2007, p. 94. See also Bartoli, 2008, pp. 121 ff..

⁶⁴ Henckhaerts and Doswald-Beck, 2005, p. 11.

⁶⁵ See ICTY, *Galic* Trial Chamber, 2003, par. 597, in which it is stated that “[t]he Majority has [...] found that a campaign of sniping and shelling was conducted against the civilian population of ABiH-held areas of Sarajevo with the primary purpose of spreading terror”; ICTY, *Galic* Appeals Chamber, 2006, par.

With respect to the subjective element, IHL requires acts to be committed with *dolus specialis*.⁶⁶ Hans-Peter Gasser pointed out that:

The *intention* to spread terror among civilians is a necessary element for defining acts of terrorism, for the simple reason that in war any use of deadly force may create fear among bystanders, even though the attack may be directed at a lawful target (e.g. aerial bombardment of a military target close to a civilian area).⁶⁷

Therefore, the substance of the subjective element of wartime terrorism is the intention to spread terror among individual civilians or among the civilian population. Conversely, the motive is immaterial:⁶⁸ IHL does not require an ulterior public-oriented motive.⁶⁹ This is a fundamental difference in respect to terrorism in time of peace, which is characterised by the political/ideological motive underlying the violent act. Thus, at the core of the definition of wartime terrorism is “the category of the victim, not the actor or the motives underlying his actions”.⁷⁰

In the *Galic* case, the ICTY set the elements of the crime of wartime terrorism:

1. Acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population. 2. The offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of

102, “[t]he acts or threats of violence constitutive of the crime of terror shall not [...] be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof”.

⁶⁶ “‘Primary purpose’ signifies the *mens rea* of the crime of terror. It is to be understood as excluding *dolus eventualis* or recklessness from the intentional state specific to terror. [...] The crime of terror is a specific-intent crime”, see ICTY, *Galic* Trial Chamber, 2003, par. 136.

⁶⁷ Gasser, 2002, p. 556. “The only conspicuous purpose appears to be that of terrorizing the enemy. In other words, in international humanitarian law, terrorist acts are acts performed within the framework of the general goal of defeating the enemy. Their ultimate purpose is to contribute to the war effort. Instead of simply attacking civilians, a belligerent carries out actions [...] designed to beget profound insecurity and anxiety in the population (and consequently in the enemy belligerent)”, see Cassese, 2006, p. 947.

⁶⁸ See *ibid.*, p. 948.

⁶⁹ See Saul, 2006, p. 297.

⁷⁰ Jodoin, 2007, p. 97.

those acts of violence. 3. The above offence was committed with the primary purpose of spreading terror among the civilian population.⁷¹

On the basis of the elements mentioned above, Sébastien Jodoin has identified two types of terrorism in wartime, i.e. lawful and unlawful terrorism:

The first is composed of acts of terrorism committed against combatants - while this form of terrorism may constitute a violation of other rules of international humanitarian law, such as perfidy, it is not necessarily illicit. The second is composed of acts of terrorism committed against civilians or non-combatants: this form of terrorism is always illicit in the context of an armed conflict and may be termed the offence of terrorism in the law of armed conflict.⁷²

Additionally, under IHL terrorist acts may amount to war crimes. The ICTY has indeed stated that the breach of the prohibition of spreading terror among the civilian population is criminalised under customary IHL.⁷³

To sum up, it can be maintained that some remarkable differences between terrorism in peacetime and terrorism in wartime do exist. As to the former, a clear definition is not provided by international law. The physical conduct may have quite broad consequences, sometimes encompassing economic losses or environmental damages resulting from violent acts.⁷⁴ The public-oriented nature of the motive is a fundamental characteristic. Spreading terror is considered either as the purpose of the act or as the means by which a political goal is achieved. Alternatively, with respect to terrorism in wartime, a definition may be found in relevant treaties and customary law. Violent acts must be directed against civilians or the civilian population and must cause death or serious bodily injury. Most importantly, spreading terror among civilians must be the *primary* purpose of the act. Hence, indiscriminate attacks on combatants the primary purpose of which is to terrorise civilians amount to terrorism under IHL.

⁷¹ ICTY, *Galic* Trial Chamber, 2003, par. 133.

⁷² Jodoin, 2007, p. 96.

⁷³ ICTY, *Galic* Appeals Chamber, 2006, par. 98.

⁷⁴ See art. 2 of the DCCIT.

An ulterior difference between the two types of terrorism is that whilst in peacetime solely non-state terrorist acts are criminalised, wartime terrorism is an offence that may be perpetrated by both state and non-state actors. In fact, IHL does not distinguish on the basis of subjective qualifications of the actor, being its provisions applicable to *any* person who directly participates in hostilities. Thus, terrorist acts may be committed: by any combatants in international armed conflicts; by state soldiers and rebels in non-international armed conflicts; or by civilians directly taking part in hostilities in both situations.

Given the foregoing overview of the international legal framework on terrorism, the research will now move on towards the debate around so-called state terrorism. The aim is to understand whether any room for such a paradigm exists in international law.⁷⁵

2.4. The concept of international state terrorism

State terrorism is a controversial topic in international law. Together with non-state terrorism, the legal concept of international state terrorism bears the risk of being affected by political considerations, hence being used as a tool in geopolitical struggles among states. What can be definitely maintained is that international state terrorism is not a new notion in international law. Indeed, there has been much debate around the suitability and possibility of conceiving it as a legal paradigm.⁷⁶ As will be shown below, from a theoretical point of view it seems possible to consider state terrorism as an international wrongful act of states related to the use of armed force.

At the outset, it is worth to note that there are at least three meanings for the phrase ‘state terrorism’.⁷⁷ Firstly, it may relate to the use of violence by a state against its own citizens. This meaning is dated back to the French revolution and it is usually labelled ‘state terror’. Secondly, ‘state terrorism’ is used to refer to state sponsorship of or support for terrorist activities.⁷⁸ Such forms of terrorism are better known as ‘state-

⁷⁵ Chapter three will address international state terrorism from a legal viewpoint.

⁷⁶ For debates at UN level, see below.

⁷⁷ See Guillaume, 1989, p. 297.

⁷⁸ In regard to this topic, Kimberly Trapp has pointed out that “[t]errorism [...] is not merely a tool of the dispossessed. It is equally a tool used by states to achieve, in a deniable fashion, their foreign policy objectives. As a result, international law addresses the state as a potential terrorist actor, and states are

sponsored' or 'state-supported' terrorism.⁷⁹ Eventually, a third meaning relates to the *direct* use of armed force by states in international relations. In this perspective, 'state terrorism' describes military interventions carried out by armed forces of a state against another state or territory.⁸⁰ For the purposes of the present research, the phrase 'state terrorism' will be referred to the latter meaning.⁸¹

A remarkable condemnation of the use of state terrorism in international relations was made in UNGA resolution 39/159(1984). In this document, the General Assembly links state terrorism to the general prohibition on the use of force⁸² and to the right to self-determination of peoples.⁸³ In particular, the Assembly states:

Expressing its profound concern that State terrorism has lately been practised ever more frequently in relations between States and that military and other actions are being taken against the sovereignty and political independence of States and the self-determination of peoples [...],

1. *Resolutely condemns* policies and practices of terrorism in relations between States as a method of dealing with other States and peoples [...].⁸⁴

State terrorism is perceived as a threat to the independent existence of states and to the maintenance of peaceful relations among states, as well as a factor likely to lead to war.⁸⁵ However, no definition is provided. In the context of the resolution, the concept of state terrorism seems to cover both state-sponsored/state-supported terrorism and

subject to an obligation to refrain from participating in, supporting, or acquiescing in acts of international terrorism", see Trapp, 2011, p. 9.

⁷⁹ As to the distinction between state sponsorship of and support for terrorism, this work will follow the distinction put forward by Trapp: "[s]tate sponsorship of terrorism is the term used in this book to denote terrorist conduct that is carried out by or on behalf of a state, i.e. terrorist conduct which is attributable to the state. State support for terrorism refers to a state's assistance in the commission of terrorist acts in cases where the act is not attributable to the state. State support can take many forms, including training, financial support, provision of arms and/or technology, assistance with diplomatic assets (provision of passports and other forms of cover), provision of transportation or intelligence and permitting use of territory as a base of operations", see *ibid.*, p. 24.

⁸⁰ See Guillaume, 1989, pp. 297-299. See also Koufa, 2001, paras. 42 ff., 51 ff. and 62 ff., which lists similar types of state terrorism: regime or government terror, state-sponsored terrorism and international state terrorism.

⁸¹ See section 3.1 for further explanations.

⁸² For the analysis of the regulation of armed force in international law, see subsection 3.3.1.

⁸³ See UNGA, Doc. A/RES/39/159, 1984, preamble, par. 1.

⁸⁴ UNGA, Doc. A/RES/39/159, 1984, preamble, par. 2, and art. 1.

⁸⁵ See UNGA, Doc. A/RES/39/159, 1984, preamble, par. 3.

terrorism as direct use of armed force. In fact, in the preamble, the term is coupled with the words “military” (use of armed force) and “other actions” (sponsorship by means of state agents or support for clandestine groups in foreign territory).

The issue of state terrorism was also raised by some delegations at the UN Ad Hoc Committee on International Terrorism. In the 1973 report, state terrorism was defined as follows:

Terror inflicted on a large scale and with the most modern means on whole populations for purposes of domination or interference in their internal affairs, armed attacks perpetrated under the pretext of reprisals or of preventive action by States against the sovereignty and integrity of third States, and the infiltration of terrorist groups or agents into the territory of other States.⁸⁶

As to academic analyses, some scholars have examined state terrorism within the broader context of aggressive measures, which states may use in international relations. In this regard, Michael Stohl maintained that:

[T]he concept of terrorism [...] describe[s] many of the uses and threats of the use of force within the international system [...]. [T]he use of terror tactics is common in international relations and [...] the state has been and remains a more likely employer of terrorism within the international system than insurgents and with much grater effect. I [...] [present] a definition of *terrorism* that is consistent with that employed to examine both insurgent and state terrorism in domestic situations. By *terrorism* I mean ‘the purposeful act or threat of violence to create fear and/or compliant behavior in a victim and/or audience of the act or threat’.⁸⁷

Stohl conceives state terrorism as a form of ‘coercive diplomacy’, a type of overt behaviour of states.⁸⁸ The author cites some examples concerning both war and non-war situations. As to war situation, Stohl recalls the 1972 bombing of Hanoi in Vietnam,

⁸⁶ Official Records of the General Assembly, Twenty-Eighth Session, Supplement No. 28 (A/9028), 1973, par. 24, cited in Koufa, 2001, par. 64. This definition will be further analysed in subsection 3.2.1.

⁸⁷ Stohl, 1984, p. 43.

⁸⁸ See *ibid.*, p. 44.

which was carried out by the United States in order to bring both North and South Vietnamese to negotiations. The campaign of air bombing was intended as a shock treatment, aimed at achieving the US's political goal of finding an agreement between the parties to the conflict.⁸⁹ With respect to non-war situation, the author cites the general behaviour of Israel towards its Arab neighbours:

Israelis reprisals and bombing raids are designed as much to instil fear as they are to produce damage. The Israelis perceive that they must constantly remind their adversaries how costly another war or assistance to the Palestinians is and will continue to be. The key elements of such a tactic are available to any Third World nation that is in a position of clear superiority vis-à-vis a nearby adversary.⁹⁰

More recently, Beau Grosscup expressly linked the use of aerial bombardment by states to terrorism:

Over the past quarter-century the rise in the popularity of strategic bombing has occurred within a Western political context in which concern with terrorism has risen to prominence. As a strategy that purposely target civilians and their livelihoods, the question of whether or not strategic bombing constitutes terrorism could have been from its very conception, and in the contemporary political climate should now be, a most poignant and pressing concern.⁹¹

[W]hy is the plan that proposes to attack a whole society with a massive bombardment and warns that 'the political imperative to keep civilian casualties to a minimum will have to be put to one side' greeted with humour, indifference or applause? Why is the plan not openly and universally castigated at least as 'wrong-headed' or, more important, as a morally and politically repugnant strategy of terrorism?⁹²

⁸⁹ See *ibid.*, pp. 44-45.

⁹⁰ *Ibid.*, p. 45.

⁹¹ Grosscup, 2006, p. x.

⁹² *Ibid.*, p. 4.

States usually argue that strategic bombing, which is said to minimise civilian casualties in the targeting of military objects, is inherently different to terrorism: unlike the latter it aims not at directly or wilfully targeting civilians.⁹³ Yet, a historical examination shows that since World War II strategic bombing has constantly been used to hit civilian populations as well as those infrastructures, facilities and livelihoods, which are essential for the life of the civilian population.⁹⁴ The doctrine of ‘Shock and Awe’ or ‘Rapid dominance theory’, which underlay the last war in Iraq, expressly supported the strategy of gaining military advantages by means of terrorising the enemy. The authors of this theory state that it “is aimed at influencing the will, perception, and understanding of an adversary rather than simply destroying military capability”.⁹⁵

Grosscup contended that this doctrine is to be considered as a form of state terrorism:

Rapid dominance theory is the latest revision of classical post-First World War strategic bombing theory. Though modified in some respects, the central goal of shock and awe remains consistent with strategic bombing policy: to rain terror from the skies on civilians and their infrastructure, thereby forcing capitulation of their political/military leadership. Thus, like its predecessor, it is a strategy of state terrorism.⁹⁶

Moreover, Danilo Zolo noted that the acts of the state are never labelled ‘terrorist’, even if they cause higher levels of destruction and larger losses of lives than acts of non-state actors.⁹⁷ He maintains that, since in contemporary wars ordinary weapons cause

⁹³ See *ibid.*, p. 165.

⁹⁴ See *ibid.*, pp. 179 ff..

⁹⁵ Ullman and Wade, 1996, p. 2. “[T]he objective is to apply brutal levels of power and force to achieve Shock and Awe. In the attempt to keep war ‘immaculate’, at least in limiting collateral damage, one point should not be forgotten. Above all, war is a nasty business or, as Sherman put it, ‘war is hell’. While there are surely humanitarian considerations that cannot or should not be ignored, the ability to Shock and Awe ultimately rests in the ability to frighten, scare, intimidate, and disarm”, see *ibid.*, p. 34. For an overall analysis of this theory, see Grosscup, 2006, pp. 1 ff..

⁹⁶ Grosscup, 2011.

⁹⁷ See Zolo, 2006, p. 130. On this point, see also Stohl, 1984, pp. 43 and 55; Grosscup, 2006, pp. 156 ff.. “In addition to their ‘mistakes’ ‘tragic errors’ and ‘stray bombs’, [North America and its allies] may at

high-level and indiscriminate destruction, the use of armed force has become inherently terroristic.⁹⁸ For this reason, Zolo proposes that *any* illegal use of international armed force, which relies on military supremacy and mass-destruction weaponry, should fall under the definition of terrorism.⁹⁹

There exists strong disagreement with regards to this stance. Indeed, critics argue that the use of international armed force is already regulated under the UN Charter.¹⁰⁰ Also, Special Rapporteur Kalliopi Koufa seems to share this view.¹⁰¹ However, it is worth noting that her report takes into account the concept of international state terrorism:

(a) While war is not necessarily, or even normally, a species of terrorism, belligerent practices and threats may be. (b) Terrorist acts can be committed by States against States, in both war and non-war situations. [...] (d) From the legal point of view, the distinction between (international) State terrorism and State-sponsored terrorism is immaterial, since the invocation of either one of them would have exactly the same results (i.e. identification of the violated international law norms, articulation of charges reflected in the relevant international law norms, renunciation of alleged behaviour, etc., and the attendant question of responsibility).¹⁰²

The legal concept of state terrorism was also addressed during the work on the DCCIT. Reports of both the Ad Hoc Committee on Terrorism and the Sixth Committee Working Group show that it is a matter of major concern. The possible inclusion of

times ‘use inappropriate force’ ‘violate human rights’ or ‘circumvent, undermine or break the law’. But they never commits acts of terrorism”, see Grosscup, 2006, p. 174.

⁹⁸ With reference to cluster munitions, a similar reasoning has been adopted by Grosscup: “The bombing nations will continue the production, sale, and use of cluster munitions because they are an essential component of their strategy to conduct modern war. When they work as designed, within their footprint they kill or maim both soldiers and ‘the ocean they swim in’, or assumed sympathetic enemy civilians. As unexploded devices, they help control the combat zone and terrorize its inhabitants. Once the war has ended, with the enemy gone, unexploded ordnance remains to remind former enemies of the killing power of the past war’s adversary”, see Grosscup, 2011.

⁹⁹ See Zolo, 2009, pp. 34-35. Of course, the author argues that violent acts, whose level of gravity is comparable to that of states, such as 11/9 attacks, must be criminalised as terrorist as well.

¹⁰⁰ See Guillaume, 1989, p. 299; Annan, 2005, par. 91.

¹⁰¹ See Koufa, 2001, par. 66.

¹⁰² Ibid., par. 67.

state terrorism in the Convention's definition has constantly been discussed.¹⁰³ On the other hand, the Working Group Coordinator and other delegations have always rejected such proposals. These objectors maintain that since the Convention is an instrument concerning law enforcement, state terrorism should be dealt with in a different context.¹⁰⁴ Admittedly, references to state terrorism made during the works on the DCCIT appear not to be suitable for a legal definition. Indeed, the various proposals tend to refer at the same time to all three hypotheses of state terrorism, namely state terror, state-sponsored/state-supported terrorism and international state terrorism.¹⁰⁵ However, it is noteworthy that these concerns regarding state terrorism have been taken into account in most recent drafts of the Convention.¹⁰⁶

To sum up, it can be said that the notion of international state terrorism is not new in international debates, as this issue has been raised, since the seventies, in the UN. Furthermore, official discussions during the works on the DCCIT show constant concern for the matter, which was eventually taken into account during the drafting process. The main problem, still, is that the concept of state terrorism seems to be used in a political rather than legal meaning. The definition put forward in 1973 could be a starting point, even though it seems too broad and tends to encompass both state-

¹⁰³ As to the Ad Hoc Committee, see Docs. A/56/37, 2001, par. 15; A/58/37, 2003, par. 9; A/59/37, 2004, par. 15; A/60/37, 2005, par. 13; A/62/37, 2007, par. 5; A/64/37, 2009, paras. 1 and 6; A/65/37, 2010, paras. 3 and 11; A/66/37, 2011, paras. 2 and 11. As to the WG, see Docs. A/C.6/55/L.2, 2000, par. 6; A/C.6/62/SR.16, 2007, par. 115; A/C.6/63/SR.14, 2008, par. 46; A/C.6/64/SR.14, 2009, par. 36; A/C.6/65/L.10, 2010, par. 11; A/C.6/66/SR.28, 2011, par. 79.

¹⁰⁴ See WG, Doc. A/C.6/64/SR.14, 2009, par. 39-41. See also WG, Doc. A/C.6/65/L.10, 2010, par. 22: "[...] The Coordinator reiterated that the draft convention was a criminal law enforcement instrument intended to assure individual criminal responsibility, informed by enhanced cooperation on the basis of an *aut dedere aut judicare* regime. The core rationale for focusing on the individual had been that other fields of law, in particular the Charter of the United Nations, international humanitarian law and the law relating to the responsibility of States for internationally wrongful acts, adequately covered the obligations of States in situations where acts of violence were perpetrated by States or their agents and that such laws continued to apply to situations pertaining to particular cases".

¹⁰⁵ See Ad Hoc Committee, Doc. A/65/37, 2010, par. 18, where references are made to "the notion of State terrorism, including acts committed by Governments against innocent civilians" and to "activities undertaken by the armed forces of a State that [are] not covered by international humanitarian law". Furthermore, the same paragraph reproduces the proposal by Nicaragua of amendment to the definition of terrorism which relates to cases of state-sponsored terrorism.

¹⁰⁶ See WG, A/C.6/65/L.10, 2010, in which it is stated that "[t]he Coordinator recalled that in all the various positions the main concerns had revolved around three issues: (a) [...]; (b) [...]; (c) activities of military forces of a State in peace time, also taking into account related concerns about 'State terrorism'. In the overall scheme of the draft convention, draft article 3 [formerly draft article 18] addressed all these aspects and had thus been the central focus of the discussions".

sponsored/state-supported terrorism and terrorism as the direct use of armed force. Additionally, the issue of state terrorism has never been addressed by relevant UN resolutions or declarations. The only official condemnation of state terrorism is contained in UNGA res. 39/159, however it is quite isolated, dated and vague.

Nevertheless, claims regarding state terrorism are not only of a political nature. From the legal viewpoint, it does not seem unreasonable to maintain that certain manners of using armed force may amount to terrorism. Scholarly research has clearly shown that terror tactics are an effective tool in international relations.¹⁰⁷ Moreover, IHL envisages that members of both state and non-state armed forces may commit terrorist acts during armed conflicts. That is to say, international law already envisages that members of the state apparatus may be involved in the commission of terrorist acts. Hence, it follows that it may be reasonable to define state terrorism as a wrongful act of states or as a crime of state officials.¹⁰⁸

Moreover, what must be pointed out is that the rationale for defining international state terrorism is to protect those values, which underlie both the criminalisation of non-state terrorism and the prohibition on aggression, that is, human rights and international peace and security.¹⁰⁹

That being said, the next chapter will investigate how international state terrorism could be defined as a legal paradigm.

¹⁰⁷ See above in this section.

¹⁰⁸ According to the main purpose of the present thesis, international state terrorism will be analysed against international norms on state responsibility and on the use of force. Questions related to state terrorism as an international crime entailing individual responsibility will not be addressed.

¹⁰⁹ See section 3.1.

III. International state terrorism. A legal perspective

Chapter three deals with the legal definition of international state terrorism. The first section explains the rationale behind conceiving such a paradigm. A close comparison with the reasons for the criminalisation of non-state terrorism intends to show that the values under threat, i.e. human rights and international peace and security, require to address the issue of state terrorism as well. In section two, a definition of international state terrorism will be proposed, based on elements derived from existing legal texts and scholarly analyses. Primarily, it will be derived from the definition of aggression. In the third section, the paradigm of international state terrorism will be analysed in the light of the norms on international responsibility, with a view to identify which legal consequences could arise from terrorist acts committed by states.

The overall purpose of this chapter is to analyse the concept of international state terrorism in the perspectives of substantial international law and of the law of state responsibility.

3.1. Reasons for a paradigm

At the outset of the analysis, it seems useful to restate the rationale for defining international state terrorism. It is worth to recall that the latter is part of the broader concept of the use of armed force by states.¹¹⁰ Accordingly, an explicit prohibition on state terrorism would serve as protection for those values, which underpin the general prohibition on the use of force, namely international peace and security.¹¹¹ These are paramount principles of contemporary international society with which the use of armed force is at odds.¹¹² Acts of international state terrorism constitute a breach of the peace

¹¹⁰ See Guillaume, 1989, p. 299; Koufa, 2001, paras. 62 ff.. See also UNGA, Doc. A/RES/39/159, 1984, preamble, pars. 1-2.

¹¹¹ The international framework on the use of force and related state responsibility will be dealt with in subsection 3.3.1.

¹¹² For a solemn proclamation of such values, see UNGA, Doc. A/RES/25/2625, 1970.

as well as aggression,¹¹³ which in turn have been considered “the most serious and dangerous form of the illegal use of force”.¹¹⁴

Moreover, reasons for theorising and shaping the paradigm of international state terrorism may be inferred from those that underlie the criminalisation of international (non-state) terrorism. Relevant legal texts proclaim that the latter seriously imperils certain values, namely international peace and security, friendly relations among States, international cooperation, human rights, fundamental freedoms and security of states.¹¹⁵ That is to say, international (non-state) terrorism threatens human rights and the security of states, which are deemed to be fundamental values of the international society. Furthermore, terrorism works in the most horrendous manner, namely killing civilian people. This is the reason why states have criminalised it as an autonomous offence: terrorism is considered to deserve ulterior criminal consideration than those violent acts constituting the physical conduct.¹¹⁶

International state terrorism seems to work in a similar fashion, that is, spreading large-scale terror among the population of a state.¹¹⁷ Additionally, it makes use of higher degrees of violence as it resorts to means of warfare (e.g. aerial bombardment).¹¹⁸ Thus, state terrorism appears to breach the international values mentioned above and, therefore, it would deserve particular attention and condemnation.

The special heinousness of acts, which aims to expressly kill civilians, leads to conclude that not only non-state terrorism needs to be tackled but state terrorism should as well. As shown below, states may use armed force for purposes other than conquering a territory or overpowering an enemy state. When military operations are carried out with the intent of influencing political choices of a foreign state by means of terrorising its civilian population, such activities should be qualified as acts of state terrorism.

¹¹³ See UNGA, Doc. A/RES/39/159, 1984, paras. 3, 5 and 6. For the analysis of the concept of international state terrorism in relation to the definition of aggression, see section 3.2.

¹¹⁴ UNGA, Doc. A/RES/3314(XXIX), 1974, preamble, par. 5.

¹¹⁵ See UNGA, Doc. A/RES/49/60, 1994, par. I(2); DCCIT, preamble, paras. 4-6. See also Saul, 2006, pp. 10-11. See in general section 2.1.

¹¹⁶ See Saul, 2006, pp. 66-68.

¹¹⁷ See subsection 3.2.1.

¹¹⁸ See section 2.4.

Of course, that is not to say that non-state terrorism and state terrorism are two aspects of the same phenomenon. The former is a form of political violence, that is, a struggle that a political group starts in order to challenge the legitimacy of a certain state. On the contrary, state terrorism is a particular use of armed force, which states resort to as a tool in international relations.¹¹⁹ From this point of view, the two types of terrorism are completely different. From another point of view, they converge on the means, namely the spread of terror among civilians. In this regard, it is worth noting that this is also the feature which peacetime and wartime terrorism share. Hence, it may be maintained that as long as terrorist acts are generally prohibited in international law, such a prohibition should encompass *any* acts of terrorism, whether state or non-state.

A final premise appears to be necessary for the sake of the present discourse. As already mentioned, the phrase ‘state terrorism’ even refers to state sponsorship of or support for terrorist activities. State sponsorship of terrorism relates to “terrorist conduct that is carried out by or on behalf of a state, i.e. terrorist conduct which is attributable to the state”,¹²⁰ whilst “[s]tate support for terrorism refers to a state’s assistance in the commission of terrorist acts in cases where the act is not attributable to the state”¹²¹ but rather to clandestine groups. This twofold meaning of state terrorism will not be addressed by the present work. As shortly shown, both state-sponsored and state-supported terrorism have long been recognised within international law. Admittedly, they do not pose problems as to their definition, but rather they do with respect to questions of attribution for the sake of international responsibility.¹²²

As a matter of fact, since 1970 the General Assembly solemnly proclaimed that states have the duty not to engage in terrorist and clandestine activities which, amounting to an illegal use of force, actually endanger the security of other states.¹²³

¹¹⁹ See Stohl, 1984, p. 43; Grosscup, 2006, pp. 179 ff.. With regard to state-sponsored and state-supported terrorism, see Trapp, 2011, p. 9.

¹²⁰ Trapp, 2011, p. 24.

¹²¹ Ibid..

¹²² For an in depth study on questions of attribution related to state-sponsored and state-supported terrorism, see *ibid.*, pp. 34 ff.

¹²³ “Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the

Moreover, the 1974 definition of aggression envisaged the possibility that state-sponsored terrorism may amount to aggression;¹²⁴ and, the International Court of Justice stated that the latter “may be taken to reflect customary international law”.¹²⁵

As to substantive rules applicable to this type of state terrorism, Kimberly Trapp maintained that:

The prohibition of state sponsorship or support for acts of international terrorism is an instantiation of rules under general international law, in particular the prohibition of aggression, the prohibition of the use of force, and the principle of non-intervention.

[...] In order that a state’s involvement in terrorism amount to an act of aggression [as defined in the UN Definition of Aggression], the terrorist attack must be attributable to the state and be of such gravity as to amount to an act of aggression had it been carried out by the state’s military forces. If the terrorist attack is not grave enough to be characterized as an act of aggression, but is nevertheless attributable to the state, the state’s conduct amounts to a prohibited use of force [as set out in Article 2(4) of the UN Charter and the UN Declaration on Friendly Relations]. [...] Where conduct is not attributable to a state, and the state is only supporting (rather than sponsoring) international terrorism, [...] [s]upport that itself amounts to a use of force breaches the prohibition of the use of force, while other forms of support, to the extent that the aim of the terrorist force is interventionist (very broadly defined), breach the principle of non-intervention.¹²⁶

commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force”, see UNGA, Doc. A/RES/25/2625, 1970, principle one.

¹²⁴ “[T]he following [act] [...] shall [...] qualify as an act of aggression: g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to [acts of aggression], or its substantial involvement therein”, see UNGA, Doc. A/RES/3314(XXIX), 1974, art. 3(g).

¹²⁵ “[The] description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law. The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces”, see International Court of Justice, *Nicaragua*, 1986, par. 195.

¹²⁶ Trapp, 2011, pp. 33-34.

Considering the foregoing, terrorist acts committed by a state's agent seem to already be addressed by international law and recognised as state-sponsored terrorism.¹²⁷ Instead, the present research intends to deal with that comprehensive use of armed force, which, although usually qualified as aggression, appears to have some characteristics for which it may amount to state terrorism, as defined below.¹²⁸ The next sections will exactly analyse such characteristics.

3.2. Elements for a definition

In order to define international state terrorism, the present work will rely on legal and scholarly materials concerning both non-state terrorism and the use of armed force. In particular, the analysis will draw on the following sources: the 1974 UNGA definition of aggression; the already mentioned 1973 proposal on state terrorism; scholarly analyses on the use of armed force; the legal definition of terrorism in peacetime and in wartime. From each source, elements that may contribute to defining international state terrorism will be singled out. Finally, a comprehensive definition will be put forward.

3.2.1. Objective element

Since international state terrorism fits into the broader concept of the use of armed force by states, the objective elements of the paradigm will be firstly derived from the definition of aggression provided by international law. The UN General Assembly defined aggression as follows:

Art. 1. Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this

¹²⁷ “The direct participation of state organs in a terrorist attack would result in that attack being attributable to the state. France’s use of a state organ (secret service agents) to destroy the ‘Rainbow Warrior’ Greenpeace ship in Auckland Harbour amounted to state sponsorship of terrorism”, see *ibid.*, p. 29.

¹²⁸ See subsection 3.2.3.

Definition. *Explanatory note*: In this Definition the term ‘State’: a) Is used without prejudice to questions of recognition to whether a State is a member of the United Nations [...].

Art. 3. Any of the following acts, regardless of a declaration of war, shall [...] qualify as an act of aggression: a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State [...].¹²⁹

This definition intends to give a more precise meaning to the phrase ‘use of armed force’.¹³⁰ Furthermore, it is worth to note that it was incorporated in art. 8*bis* of the ICC Statute concerning the crime of aggression.¹³¹

The definition of aggression encompasses several elements. For the sake of defining international state terrorism, the present work will consider the following: that “[a]ggression is the use of armed force by a State against the sovereignty [...] or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations”;¹³² that the word ‘State’ has a broad meaning that may refer to political entities the legal status of which is not clearly defined;¹³³ that violent acts which amount to aggression are “a) the invasion or attack by the armed forces of a State of the territory of another State [...]; b) [b]ombardment by the armed forces of a State against the territory of another State [...]”.¹³⁴

A second source for the present analysis is the aforementioned definition of state terrorism provided by the 1973 report of the UN Ad Hoc Committee on International Terrorism. In this context, ‘state terrorism’ is defined as:

¹²⁹ UNGA, Doc. A/RES/3314(XXIX), 1974.

¹³⁰ It has been pointed out that the definition of aggression “only concerns itself with military activity”; see Röling, 1986, p. 316.

¹³¹ See International Criminal Court, Doc. RC/Res.6, 2010.

¹³² UNGA, Doc. A/RES/3314(XXIX), 1974, art. 1.

¹³³ *Ibid.*, art. 1, Explanatory note. It has been pointed out that art. 1 “was intended to cover clearly defined territories whose statehood was disputed, such as existed in Germany, Vietnam, Korea, and Israel”; see Bassiouni and Ferencz, 2008, p. 223.

¹³⁴ UNGA, Doc. A/RES/3314(XXIX), 1974, art. 3(a-b).

Terror inflicted on a large scale and with the most modern means on whole populations for purposes of domination or interference in their internal affairs, armed attacks perpetrated under the pretext of reprisals or of preventive action by States against the sovereignty and integrity of third States, and the infiltration of terrorist groups or agents into the territory of other States.¹³⁵

It is useful to restate that this definition contains elements of both state terrorism as direct use of armed force and state-sponsored/state-supported terrorism. What is relevant for the paradigm of international state terrorism is that the use of armed force may result in “terror inflicted on a large scale [...] on whole populations for purposes of domination or interference in their internal affairs [and] armed attacks perpetrated [...] by States against the sovereignty and integrity of third States”.¹³⁶ This part of the definition partially corresponds to that of aggression, even though some other elements are present, and it therefore seems helpful to the current analysis.

As to scholarly sources, useful elements may be drawn on Yoram Dinstein’s analysis of the concept of war.¹³⁷ This author distinguishes between military actions which amount to war and those, which consist in closed incidents ‘short of war’. Such a distinction hinges on what he defines as ‘comprehensive’ use of armed force:

[N]ot every episodic case of use of force by States amounts to war. Only a comprehensive use of force does.¹³⁸ Force is comprehensive if it is employed (i) spatially, across sizeable tracts of land [...]; (ii) temporally, over a prolonged period of time; (iii) quantitatively, entailing massive military operations or a high level of firepower; (iv) qualitatively, inflicting extensive destruction. [...] [G]enerally only a combination of all four [criteria] will paint a clear picture of the nature of hostilities.¹³⁹

¹³⁵ Official Records of the General Assembly, Twenty-Eighth Session, Supplement No. 28 (A/9028), 1973, par. 24, cited in Koufa, 2001, par. 64.

¹³⁶ Ibid.

¹³⁷ Dinstein, 2005.

¹³⁸ Ibid., p. 13.

¹³⁹ Ibid., p. 12.

Thus, in Dinstein's view 'comprehensiveness' is the element that characterises those military activities that amount to war.

To sum up, the objective element of the definition of international state terrorism is basically related to the illegal use of armed force. In particular, relating to acts of aggression by states against the sovereignty or political independence of other states. Examples of violent acts are invasion, attack and bombardment. The 1973 definition of state terrorism adds that such armed force should inflict large-scale terror on the population of the targeted state. Finally, in order to distinguish such armed attacks from mere incidents 'short of war' the use of force must be comprehensive.

3.2.2. Subjective element

Dinstein further proposed to distinguish total war from limited war. The former is characterised by the pursuit of total victory on the enemy¹⁴⁰ or by total use of military resources against the adversary.¹⁴¹ Conversely, limited war has narrow purposes:

In a limited war, the goal may be confined to the defeat of only some segments of the opposing military apparatus; the conquest of certain portions of the opponent's territory (and no others); or the coercion of the enemy Government to alter a given policy (e.g., the Kosovo air campaign of 1999), without striving for total victory. Now and then, it is not easy to tell a limited war (in the material sense)¹⁴² apart from a grave incident 'short of war'. The difference between the two is relative: more force, employed over a longer period of time, within a larger theatre of operations, is required in a war setting as compared to a situation 'short of war'.¹⁴³

¹⁴⁰ "Many a war is unquestionably 'total' in that it is conducted with total victory in mind. Total victory consists of the capitulation of the enemy, following the overall defeat of its armed forces and/or the conquest of its territory, and if this is accomplished the victor is capable of dictating peace terms to the vanquished", see *ibid.*.

¹⁴¹ "A war is total also when the means, used to attain a limited objective, are total. That is to say, war may be catalogued as total when the totality of the resources (human and material) of a belligerent state is mobilized [...]", see *ibid.*, p. 13.

¹⁴² War in a technical sense relates to formal elements such as the declaration of war and the signature of a peace treaty. War in a material sense concerns the existence of armed hostilities between two states; see *ibid.*, pp. 9-10.

¹⁴³ *Ibid.*, p. 13.

Dinstein points out that not every type of war has the purpose of overcoming the enemy or conquering its territory. This element is present also in the 1973 definition of state terrorism, which identifies the purposes of “domination or *interference in [third States’] internal affairs*”.¹⁴⁴ Moreover, the definition of aggression provides that acts of aggression may be committed “against the sovereignty [...] or *political independence* of another State”.¹⁴⁵ Of course, phrases such as ‘interference in internal affairs’ or ‘political independence’ have quite broad meanings and may be construed in several ways. However, what is remarkable is that states may use armed force for different purposes than conquering a foreign territory or defeating an enemy state, that is, the typical purposes of war of aggression. As shortly shown, these findings are of special interest for the topic of international state terrorism.

In the context of the present research, it is particularly relevant to recall one of the various military goals of limited wars listed by Dinstein: “the coercion of the enemy Government to alter a given policy”.¹⁴⁶ This kind of objective is quite similar to the typical non-state terrorist purpose. Indeed, art. 2 of the Draft Comprehensive Convention against International Terrorism (DCCIT) provides that a person commits an act of terrorism “when the purpose of the conduct, by its nature or context, is [...] to compel a Government or an international organization to do or abstain from doing any act”.¹⁴⁷ As to scholarly definitions, Saul maintains that an internationally recognised purpose of terrorist acts is to “unduly compel a government or an international organization to do or to abstain from doing any act”.¹⁴⁸ Similarly, Cassese states that acts of international terrorism are “carried out for the purpose of coercing a state, or international organization to do or refrain from doing something”.¹⁴⁹

On account of this, Dinstein’s findings that the use of armed force may aim at coercing the enemy to alter a given policy does seem to correspond to the non-state terrorist purpose of coercing a state to do or to abstain from doing something. That is to

¹⁴⁴ Official Records of the General Assembly, Twenty-Eighth Session, Supplement No. 28 (A/9028), 1973, par. 24, cited in Koufa, 2001, par. 64 (emphasis added).

¹⁴⁵ UNGA, Doc. A/RES/3314(XXIX), 1974, art. 1 (emphasis added).

¹⁴⁶ Dinstein, 2005, p. 13.

¹⁴⁷ DCCIT, art. 2.

¹⁴⁸ Saul, 2006, p. 66.

¹⁴⁹ Cassese, 2006, p. 957.

say, armed force by states could be used in order to achieve goals that are usually attributed to non-state terrorist actors.

Finally, attention must be paid to the most relevant feature of terrorism, namely the spread of terror among civilian population. The civilian status of the victims and the method of spreading terror characterises not only peacetime terrorism but especially wartime terrorism.¹⁵⁰ As mentioned above,¹⁵¹ IHL criminalises “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”.¹⁵² The scope of the norm solely encompasses acts that are intended to target civilians, both directly and by means of indiscriminate attacks on combatants, which primarily intend to terrorise the civilian population. The ‘primary purpose’ of the act must therefore be to target civilians. The core of the customary rule on wartime terrorism is the prohibition on the deliberate creation of a state of terror among civilians. This rule does not require any ulterior public-oriented motive as the definition of peacetime terrorism conversely does.

The definition of terrorism in wartime may serve as a comparison for the definition of international state terrorism, in particular for the purpose of distinguishing it from aggression. It must indeed be pointed out that any use of international armed force is likely to create a state of fear in the population of the targeted state, since for example widespread bombardments inherently cause fear and dread. Yet, following the definition of terrorism in wartime it could be maintained that the use of armed force by a state may amount to an act of international state terrorism solely when invasion, bombardments or attacks by its armed forces have the ‘primary purpose’ to spread terror among the enemy population.¹⁵³ That is to say, the evaluation of the purposes of the military

¹⁵⁰ It must be borne in mind that in the definition of terrorism provided by art. 2 DCCIT spreading terror is only one type of purpose. Indeed, according to art. 2 an act of terrorism could be committed even though a state of terror is not created at all, when the violent act aims at coercing public institutions by other means. Furthermore, in times of peace terrorist acts can be also committed against military personnel. Indeed, outside armed conflicts military personnel are protected as well as civilians. See in general section 2.2.

¹⁵¹ See section 2.3.

¹⁵² Art. 51(2) AP I; art. 13(2) AP II.

¹⁵³ It seems quite useful to recall the words of Gasser already quoted above: “The *intention* to spread terror among civilians is a necessary element for defining acts of terrorism, for the simple reason that in war any use of deadly force may create fear among bystanders, even though the attack may be directed at a lawful target (e.g. aerial bombardment of a military target close to a civilian area)”, see Gasser, 2002, p. 556.

activities may lead to draw a distinction between armed force that amounts to aggression, and armed force that amounts to international state terrorism.¹⁵⁴

To summarise, the subjective element of acts of international state terrorism may be shaped drawing on both definitions of terrorism in peacetime and in wartime. With regard to the former, the purpose of the act would be “the coercion of the enemy Government to alter a given policy”¹⁵⁵ which is the goal of terrorism in general; in respect to the latter, the *primary* intention of armed attacks should be “to spread terror among the civilian population”.¹⁵⁶

The final step of the current analysis is then to propose a definition of the paradigm at stake.

3.2.3. A definition of international state terrorism

First and foremost, it is relevant to highlight that the proposal is exclusively based on the objective and subjective elements, which have been singled out throughout the preceding analysis. That being said, the paradigm may be defined as follows:

International state terrorism is the comprehensive use of armed force by a State against the sovereignty of another State or territory in order to coerce the Government of the latter to alter a given policy, in a manner inconsistent with the Charter of the United Nations.

The use of armed force shall qualify as an act of international state terrorism when invasion, bombardment or any other type of attack is systematically carried out by the armed forces of a state with the primary purpose of spreading large-scale terror among the population of the targeted State or territory.

¹⁵⁴ See subsection 3.2.3 for further elaboration on this point.

¹⁵⁵ These are the words used by Dinstein to describe one of the purposes of what he calls ‘limited wars’. He never relates such a purpose to terrorism. The link between Dinstein’s analysis of limited wars and the paradigm of international state terrorism is put forward by the present research.

¹⁵⁶ This is part of the wording of arts. 51(2) Protocol I and 13(2) Protocol II, and of the related customary norm.

For the sake of clarity, some explanatory notes are required. Firstly, the use of armed force must be *illegal*, i.e. in breach of the prohibition on the use of armed force set forth in the UN Charter and provided by customary international law.¹⁵⁷

Secondly, the use of armed force must be *comprehensive*, that is, to be employed “(i) spatially, across sizeable tracts of land; (ii) temporally, over a prolonged period of time; (iii) quantitatively, entailing massive military operations or a high level of firepower; (iv) qualitatively, inflicting extensive destruction”.¹⁵⁸

Thirdly, the words ‘state’ and ‘territory’ must be understood in broad terms, in the sense that *any* political sovereign entity may be the victim of an act of international state terrorism, regardless of its status under international law.¹⁵⁹

Fourthly, the intent underlying the use of armed force should be that of *coercing* the government of the enemy state to do or to abstain from doing something. That is to say, the terrorist act must aim at *illegitimately influencing* the behaviour of the public institutions of the targeted state.¹⁶⁰ This subjective element differs from so-called *animus agressionis*, namely the aim “to invade and conquer foreign territory, or destroy the foreign State apparatus, and so on”.¹⁶¹ The latter constitutes the typical intent of acts of aggression.¹⁶²

Fifthly, violent acts that underpin the use of armed force must have the *primary* purpose of *terrorising* the population at a large-scale degree. In other words, invasion, bombardment or other types of military activities should be carried out in order not to defeat the enemy forces but rather to spread terror among the enemy population. In this regard, weaponry should be used not to achieve military advantages in the conflict but to target *directly* and *systematically* the whole population in order to terrorise it. That is

¹⁵⁷ The legal framework on the use of international force will be analysed in subsection 3.3.1.

¹⁵⁸ Dinstein, 2005, p. 12. It is worth noting that comprehensiveness renders distinguishable state terrorism as direct use of force from state terrorism as indirect use of force, namely state-sponsored terrorism through agents of the state. Whilst the former consists in military activities carried out by the armed forces of a state, the latter relies on covert operations undertaken by a state’s intelligence. That is to say, states may commit acts of terrorism in several and different manners.

¹⁵⁹ See UNGA, Doc. A/RES/3314(XXIX), 1974, art. 1, Explanatory note: “In this Definition the term ‘State’[...] [i]s used without prejudice to questions of recognition to whether a State is a member of the United Nations [...]”. See also Bassiouni and Ferencz, 2008, p. 223.

¹⁶⁰ As shown above, such use of force could be qualified as ‘limited war’.

¹⁶¹ Cassese, 2005, p. 273.

¹⁶² “[I]n the case of aggression, it would seem that a claimant State should prove that the state’s officials that planned and unleashed aggression had the *animus agressionis*”, see *ibid.*.

to say, the spread of terror should be a *means* whose final aim is to influence the enemy government.

It goes without saying that the two paragraphs of the definition must be read in conjunction. On the one hand, the intent of coercion (first part) could *per se* fall within the category of aggression without amounting to terrorism. On the other hand, armed attacks, the primary purpose of which is to spread terror among civilians (second part), may amount to ‘simple’ war crimes committed in the context of an act of aggression. In order to qualify the use of armed force as international state terrorism both elements must be present. Hence, the spread of terror among the civilian population must be *systematically* carried out through a comprehensive use of state force, in order to coerce the enemy government to alter its policies. In this sense, the two parts are closely linked and interdependent.

It must be underlined that such a definition does not have any claim of being exhaustive. Its elements are exclusively drawn on existing norms, proposals or scholarly analyses. Gaps or shortcomings may be present. Rather, the overall aim is to show that it is possible to define international state terrorism as a legal concept. The latter appears to be quite useful since the definition of aggression is not appropriate to interpret the particular heinousness of state terrorism. Admittedly, aggression does not specifically address that use of armed force, which is carried out by means of terrorising a population, as particularly repulsive. Hence, it cannot be contended that the current regulation of the use of international armed force already encompasses the concept of state terrorism.¹⁶³ Moreover, the possibility of conceiving international state terrorism as an autonomous manner of using armed force is provided by existing sources.

The lack of interest in addressing such a phenomenon seems to lie more on political reasons than on legal ones. As a matter of fact, states are reluctant to bind themselves by means of international norms. Whether this is so with regard to aggression, it is even truer when state terrorism comes to the forefront. Indeed, considering international state terrorism as a legal concept means not only to deal with constraints on the possibility for states to use armed force, but also to judge that use of force as especially negative and heinous.

¹⁶³ This stance was stated by the former UN Secretary-General Kofi Annan; see Annan, 2005, par. 91.

An example of how the definition may work in concrete terms could be the so-called ‘Dahiya doctrine’, a strategic concept elaborated on by some Israeli military officials after the 2006 war between Israel and Hizbullah.¹⁶⁴ The name relates to the southern neighbourhood of Beirut, which being a Hizbullah’s stronghold, was one of the main targets of Israel’s military campaign. The doctrine has been summarised as follows:

The military approach expressed in the Dahiye Doctrine deals with asymmetrical combat against an enemy that is not a regular army and is embedded within civilian population; its objective is to avoid a protracted guerilla war. According to this approach Israel has to employ tremendous force disproportionate to the magnitude of the enemy’s actions. *The intent of this [...] is to harm the civilian population to such an extent that it will bring pressure to bear on the enemy combatants.* Furthermore, this policy is intended to create deterrence regarding future attacks against Israel, through the damage and destruction of civilian and military infrastructures which necessitate long and expensive reconstruction actions which would crush the will of those who wish to act against Israel.¹⁶⁵

The above description of the Dahiya doctrine relies on several statements and analyses carried out by officials of the Israeli Defense Army (IDF). Major-General Eisenkot made one of the earliest public statements in March 2008 on that topic: “What happened in [...] Dahiya [...] will happen in every village from which Israel is fired on. [...] We will apply disproportionate force on it (village) and cause great damage and

¹⁶⁴ As shortly shown, the core elements of this strategic doctrine are the disproportionate use of force against the counterpart and the explicit intent of targeting civilian infrastructures, mainly in order to establish a state of deterrence towards the enemy. Thus, since the ‘Dahiya doctrine’ puts forward to hit the livelihoods of the population in order to influence the policies of the enemy government, it appears to be an interesting example of how international state terrorism could work in concrete terms. The analysis will firstly provide an overview of the doctrine at stake, then moving to a comparison with the elements of the definition of international state terrorism. However, it falls out of the scope of the present research to assess whether this doctrine actually constitutes an example of international state terrorism.

¹⁶⁵ Public Committee Against Torture in Israel, 2009, p. 21 (emphasis added).

destruction there. From our standpoint, these are [...] military bases [...]. This is not a recommendation. This is a plan. And it has been approved [...]”.¹⁶⁶

The new pattern of the Israeli military strategy is constituted by a disproportionate use of armed force aimed at influencing actual and future behaviour of the enemy government. What is explicitly said is that not only military but also civilian objects and infrastructures are considered legitimate targets for attacks. The most effective way to cope with non-state actors is deemed to make the civilian population suffer. This, in turn, would put political pressure on the belligerent counterpart. Such goals have been clearly stated by Major-General (Ret.) Giora Eiland in an essay dealing with a possible third war between Israel and Lebanon:

Such a war will lead to the elimination of the Lebanese military, the destruction of the national infrastructure, and intense suffering among the population. There will be no recurrence of the situation where Beirut residents (not including the Dahiya quarter) go to the beach and cafes while Haifa residents sit in bomb shelters. Serious damage to the Republic of Lebanon, the destruction of homes and infrastructure, and the suffering of hundreds of thousands of people are consequences that can influence Hizbollah’s behavior more than anything else.¹⁶⁷

A similar view has been expressed by another military analyst and member of the army, Gabi Siboni, who stressed the importance of damaging the assets of the enemy as a punishment for having resort to force against Israel:

With an outbreak of hostilities, the IDF will need to act immediately, decisively, and with force that is disproportionate to the enemy's actions and the threat it poses. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher. Punishment must be aimed at decision makers and the power elite. [...] The IDF will make an effort to

¹⁶⁶ Yedioth Ahronoth, 2008.

¹⁶⁷ Eiland, 2008, p. 16.

decrease rocket and missile attacks as much as possible, but the main effort will be geared to shorten the period of fighting by striking a serious blow at the assets of the enemy.¹⁶⁸

The report of the UN Human Rights Council fact-finding mission on the conflict in Gaza considered the ‘Dahiya doctrine’ as “a qualitative shift from relatively focused operations to massive and deliberate destruction”.¹⁶⁹ What is noteworthy is that such a strategy was deemed not only applicable to the Gaza Strip,¹⁷⁰ but also appears to have been applied in Operation ‘Cast Lead’.¹⁷¹ Indeed, the latter was carried out through the systematic and deliberate targeting of civilian objects, infrastructures and the civilian population.¹⁷² The main goal of the military operation was to re-establish Israel’s deterrence towards Hamas’ policy of rocket launch;¹⁷³ and, the most effective means to achieve it was deemed to directly target civilian population’s livelihoods.¹⁷⁴

Besides, a further element seems to characterise the objective of re-establishing deterrence: the spread of terror and fear among the population.¹⁷⁵ In this regard, it seems particularly useful to recall some paragraphs of the report issued by the Human Rights Council fact-finding mission:

¹⁶⁸ Siboni, 2008.

¹⁶⁹ HRC, Doc. A/HRC/12/48, 2009, par. 1193.

¹⁷⁰ “This approach is applicable to the Gaza Strip as well. There, the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy”, see Siboni, 2008.

¹⁷¹ “The Mission [...] is able to conclude from a review of the facts on the ground that it witnessed for itself that what is prescribed as the best strategy appears to have been precisely what was put into practice”, see HRC, Doc. A/HRC/12/48, par. 1199; “[T]he picture which emerges points [...] to the full implementation of the Dahiye Doctrine during Operation Cast Lead”, see Public Committee Against Torture in Israel, 2009, p. 28.

¹⁷² For a thorough analysis of armed attacks involving civilians and civilian objects, see in general HRC, Doc. A/HRC/12/48, 2009; Palestinian Centre for Human Rights, 2009; B’tselem, 2009; Arrigoni, 2011.

¹⁷³ See Eiland, 2009; Evron, Y., 200.

¹⁷⁴ “[C]ivilian suffering appears to have been more intended than not, more permitted than prevented, and more integrated into Israeli strategic plans than unexpected or undesired. Cast Lead seems to have delivered precisely what its planners and implementers wanted in operational terms”, see Flibbert, 2011.

¹⁷⁵ “Punishing the Gazan population while striking at Hamas was a way of advancing this strategic objective [the reestablishment of deterrence], because attacks on the organization alone would not have had the desired political effect. Killing rocket squads and militants would not have created sufficient fear on the part of the Hamas leadership, and *fear is the essential ingredient in deterrence*”, see *ibid.* (emphasis added).

1883. The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: *the people of Gaza as a whole*. 1884. In this respect, the operations were in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas, and *possibly with the intent of forcing a change in such support* [...].

1891. It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a *deliberate and systematic policy* by the Israeli armed forces. It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population.

1893. The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel. It is in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a *deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population*, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.¹⁷⁶

The present research does not intend to assess whether Operation ‘Cast Lead’ could fall within the scope of the definition of international state terrorism. In particular, because the operation was part of a broader on-going armed conflict and, subsequently, the use of armed force must be assessed against IHL.¹⁷⁷

¹⁷⁶ HRC, Doc. A/HRC/12/48, 2009, paras. 1880-1895 (emphasis added).

¹⁷⁷ See *ibid.*, paras. 270-285. The above definition of international state terrorism is linked to the definition of aggression. Hence, this manner of using force should be assessed against *jus ad bellum* norms; for further analysis on the relationship between international state terrorism and aggression, see subsection 3.3.2.

However, both the ‘Dahiya doctrine’ and Operation ‘Cast Lead’, respectively as a strategic concept and as a military operation, share elements with the definition of international state terrorism. This is especially true in regard to the intent (coercing the enemy, which differs from militarily defeating it or conquering its territory); the object of the attacks (civilian infrastructures and the civilian population); and, the means by which ultimately influencing the policies of the enemy government (terrorising the population).¹⁷⁸ Therefore, the use of armed force presented in this work qualifying as state terrorism appears to be not only conceived on a strategic-military level but also possibly carried out in practice. That is to say, although the ‘Dahiya doctrine’ and Operation ‘Cast Lead’ may not actually fall within the proposed definition of international state terrorism, they both show that this paradigm may work in practice.

What must be pointed out is that certain military operations are *expressly* carried out with complete disregard for human rights, which are particularly endangered during armed conflicts. Better said, the supposed efficacy of certain military strategies relies on a systematic violation of IHL, and of human rights protected thereby, by means of directly attacking civilian objects as well as spreading terror among the civilian population. As already stated, the particular gravity of these violations of human rights seems to be better interpreted by the definition of international state terrorism than by that of aggression. Above all, because using force in this way is not only morally worse but also more serious on a legal level, for it entails a deliberate and systematic violation of basic international rules protecting civilians in time of war.

Even though it is quite unlikely that states will try to cope with such an issue, it is of scholarly interest to do it as well. Assuredly, it can be contended that on the practical level it is not advisable to complicate the framework on the prohibition of the use of force with ulterior definitions. This may be true. However, it can also be maintained that

¹⁷⁸ “[A]n important, if publicly unstated, objective of Cast Lead was to change the political environment in which Hamas operated by making it less welcoming and supportive. From this perspective, Israeli leaders expected at least some Palestinians to blame Hamas for their woes, with the operation further delegitimizing the Islamists”, see Flibbert, 2011; “Though it appears that Israel did not have a policy of intentionally killing civilians, it is possible to summarise and assert that the many casualties and widespread destruction were the result of a coherent strategy that incorporated two major elements into the planning of Operation Cast Lead: 1. The implementation of the ‘Dahiye Doctrine’, the principal tenet of which was to cause intentional suffering to civilians *so that they would bring pressure to bear on those who were fighting against the IDF* [...]”, see Public Committee Against Torture in Israel, 2009, p. 29 (emphasis added).

it is a matter of equality and justice to openly recognise that under certain circumstances even states may commit acts of international terrorism. The use of armed force by states inherently causes gross violations of human rights, since the very nature of war is killing people. Such violations become all the more grave when armed attacks directly target the civilian population as part of a strategic plan. Exterminating civilians is the essence of terrorism and when it is the state who acts, it should be acknowledged that it is committing a terrorist act.

If the foregoing analysis were deemed sensible, the next step would be to investigate the legal consequences deriving from the commission of acts of international state terrorism. The following sections subsequently explore what type of responsibility such acts would entail.

3.3. International state terrorism and the law of state responsibility

An essential legal benchmark for this part of the work is the International Law Commission (ILC)'s Draft Articles on Responsibility of States for Internationally Wrongful Acts. Within the UN, these articles constitute the overall attempt to codify the international legal framework on state responsibility, that is, "the general conditions under international law for the State to be considered responsible for wrongful actions or omissions, and the legal consequences which flow therefrom".¹⁷⁹ Firstly, the responsibility arising from acts of aggression will be examined, in particular the legal consequences such acts imply. Then, the analysis will turn on the framework, which could possibly govern the responsibility for acts of international state terrorism.

¹⁷⁹ "[The] articles seek to formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts. The emphasis is on the secondary rules of State responsibility: that is to say, the general conditions under international law for the State to be considered responsible for wrongful actions or omissions, and the legal consequences which flow therefrom. The articles do not attempt to define the content of the international obligations, the breach of which gives rise to responsibility. This is the function of the primary rules, whose codification would involve restating most of substantive customary and conventional international law", see Crawford, 2002, p. 74.

3.3.1. State responsibility for acts of aggression

The *raison d'être* of the UN system is to ensure peace and security in the international plane.¹⁸⁰ Accordingly, art. 2(4) of the UN Charter prohibits any unilateral resort to force by states: “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. Two possible exceptions are envisaged. On the one hand, according to art. 51 states can use armed force for individual or collective self-defence.¹⁸¹ On the other hand, according to Chapter VII, the United Nations Security Council may authorise states to use armed force when it “determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression”.¹⁸²

The prohibition on the use of force is a paramount principle of contemporary international law.¹⁸³ From art. 2(4) a norm of customary nature originated, which is valid for the whole international society.¹⁸⁴ Additionally, the specific prohibition on aggression has become a peremptory norm of general international law,¹⁸⁵ also known

¹⁸⁰ See art. 1 Charter of the United Nations (hereinafter: UN charter).

¹⁸¹ Art. 51 UN Charter : “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security [...]”.

¹⁸² Art. 39 UN Charter: “[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”. Art. 42 UN Charter: “[s]hould the Security Council consider that [non-forcible] measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security”. Chapter VII of the UN charter provides for the so-called collective security system.

¹⁸³ Art. 2(4) of the UN Charter primarily refers to armed force. Yet, since 1945 the word ‘force’ has gained new meanings. At present, it also encompasses activities such as the use of economic force or the support to armed groups by states. For a comprehensive analysis of the phrase ‘use of force’, see Shaw, 2008, p. 1124; Cassese, 2005, p. 57.

¹⁸⁴ See Ronzitti, 2006, pp. 32-33.

¹⁸⁵ See Crawford, 2002, p. 246; Ronzitti, 2006, p. 33; Kemp, 2010, p. 48. See also International Court of Justice, *Nicaragua*, 1986, par. 190: “[a] further confirmation of the validity as customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law. The International Law Commission, in the course of its work on the codification of the law of treaties, expressed the view that ‘the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*’ (paragraph (1) of the commentary of the Commission to Article 50 of

as *jus cogens*.¹⁸⁶ As shortly shown, the latter is a type of customary law that has specific substantial features and which gives rise to a particular class of state responsibility.

Art. 53 of the Vienna Convention on the Law of Treaties (VCLT) defines *jus cogens* as follows:

[A] peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.¹⁸⁷

As part of *jus cogens*, the prohibition on acts of aggression belongs to those norms that are especially relevant within the international legal order. Art. 53 VCLT clearly provides that peremptory norms are particularly strong since they can be modified only by norms of the same nature.

The peculiarity of *jus cogens* is also testified by the rules, which govern state responsibility. Cassese distinguishes between ‘aggravated’ and ‘ordinary’ state responsibility, which respectively originate from breaches of peremptory norms of international law and from breaches of any other type of international norm.¹⁸⁸

In general, state responsibility arises from the commission of an act which is in breach of an international norm and which is attributable to the wrongdoer.¹⁸⁹ Legal consequences arising from ordinary responsibility are the obligation to cease and to not

its draft Articles on the Law of Treaties, *ILC Yearbook*, 1966-11, p. 247). Nicaragua in its Memorial on the Merits submitted in the present case States that the principle prohibiting the use of force embodied in Article 2, paragraph 4, of the Charter of the United Nations ‘has come to be recognized as *jus cogens*’. The United States, in its Counter-Memorial on the questions of jurisdiction and admissibility, found it material to quote the views of scholars that this principle is a ‘universal norm’, a ‘universal international law’, a ‘universally recognized principle of international law’, and a ‘principle of *jus cogens*’.”

¹⁸⁶ The phrases ‘peremptory norms of international law’ and ‘*jus cogens*’ will alternatively be used with no distinctions.

¹⁸⁷ Vienna Convention on the Law of Treaties, Art. 53.

¹⁸⁸ “[A]greement has now crystallized on the need to distinguish between *two forms or categories of State accountability*: responsibility for ‘ordinary’ breaches of international law, and a class of ‘aggravated responsibility’ for violations of some fundamental general rules that enshrine essential values (such as peace, human rights, self-determination of peoples)”, see Cassese, 2005, p. 244.

¹⁸⁹ See International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter: ILC’s Draft Articles), art. 1: “Every internationally wrongful act of a State entails the international responsibility of that State”. Art. 2: “There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State”.

repeat¹⁹⁰ the wrongful act and the obligation to make full reparation for the injury caused.¹⁹¹ What marks ordinary responsibility is a bilateral relation between two states. That is to say, the legal relationship and related consequences solely concern the wrongdoer and the injured state.¹⁹²

Conversely, aggravated responsibility arises from an act which breaches a norm of *jus cogens*. The wrongful act must be serious, namely it must consist in “a gross or systematic failure by the responsible State to fulfil the obligation”.¹⁹³ What ensues from the commission of such an act is that all states are involved in the legal relationship and this, in turn, affects the type of consequences that arise.¹⁹⁴ This particular type of responsibility is mirrored by art. 41 of ILC’s Draft Articles:

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.¹⁹⁵

The wrongdoer is under the same obligations, which arise from ordinary responsibility, i.e. cessation, non-repetition and reparation.¹⁹⁶ Yet, aggravated

¹⁹⁰ See art. 30 ILC’s Draft Articles.

¹⁹¹ See art. 31 ILC’s Draft Articles.

¹⁹² See Cassese, 2005, p. 262.

¹⁹³ See art. 40 ILC’s Draft Articles. “[...] The word ‘serious’ signifies that a certain order of magnitude of violation is necessary in order not to trivialize the breach [...]. To be regarded as systematic, a violation would have to be carried out in an organized and deliberate way. In contrast, the term ‘gross’ refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule. The terms are not of course mutually exclusive; serious breaches will usually be both systematic and gross”, see Crawford, 2002, p. 247.

¹⁹⁴ See Cassese, 2005, p. 273. See also Crawford, 2010, p. 413.

¹⁹⁵ Art. 41 ILC’s Draft Articles.

¹⁹⁶ See Crawford, 2002, pp. 252-253.

responsibility poses further obligations on all states.¹⁹⁷ Indeed, art. 41 provides that they must “cooperate to bring to an end” the breach and they must not “recognize as lawful” the situation created by the wrongful act or “render aid or assistance in maintaining” such a situation.

Moreover, the relevance of the general prohibition on the use or threat of force in international law is further embodied in art. 50(1)(a) of ILC’s Draft Articles. Such a provision deals with limitations to legitimate countermeasures,¹⁹⁸ stating that the latter “shall not affect [...] the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations [...]”. That is to say, the compliance with such a prohibition cannot be derogated from by an injured state, which faces a persistent wrongdoer: the efforts to compel the latter to comply with its obligations cannot overcome fundamental rules of the international legal order.¹⁹⁹

To sum up, the prohibition on using international force is followed by rules on state responsibility. Also, art. 5(2) of the definition of aggression states that “[a]ggression gives rise to international responsibility”,²⁰⁰ without further specifying what responsibility entails, though.²⁰¹ Yet, the peremptory nature of the prohibition on acts of

¹⁹⁷ Aggravated responsibility gives also rise to some rights for all state, e.g. the right to invoke the responsibility of the wrongdoer, which usually is a prerogative of the injured state; see Cassese, 2005, p. 274.

¹⁹⁸ Art. 49 ILC’s Draft Articles: “1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under Part Two. 2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State. 3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question”. In other words, countermeasures are “measures that would otherwise be contrary to the international obligations of an injured State *vis-à-vis* the responsible State, if they were not taken by the former in response to an internationally wrongful act by the latter in order to procure cessation and reparation”, see Crawford, 2002, p. 281.

¹⁹⁹ As part of *jus cogens*, the norm prohibiting use or threat of force has been said to belong to so-called ‘integral obligations’, namely “minimum obligations not affected by the reciprocity mechanism”; see Leben, 2010, p. 1198.

²⁰⁰ The entire art. 5(2) reads as follows: “[a] war of aggression is a crime against international peace. Aggression gives rise to international responsibility”. This article draws a distinction between ‘war of aggression’ and ‘aggression’, which respectively seem to lead to individual criminal responsibility and to state responsibility. It has been noted that “[t]he Drafters of the Definition thereby signalled clearly that not every act of aggression constitutes a crime against peace: only war of aggression does. That is to say, an act of aggression ‘short of war’ – as distinct from a war of aggression – would not result in individual criminal responsibility, although it would bring about the application of general rule of State responsibility”, see Dinstein, 2005, p. 125. See also Röling, 1986, p. 415; Harris, 2010, p. 802.

²⁰¹ In any case, the text of UNGA res. 3314 makes clear that “[a]ll acts of aggression are international delicts entailing state responsibility”; see Jørgensen, 2000, p. 240.

aggression entails that any breach thereof gives rise to aggravated responsibility. In turn, this triggers legal consequences for the totality of states.

That being said, the question arising is whether the framework on responsibility could be applicable to international state terrorism. What must be verified is whether the connection of such a paradigm to the definition of aggression entails also the application of the same norms on responsibility.

3.3.2. State responsibility for acts of international state terrorism

As mentioned above, international state terrorism is a phenomenon belonging to the use of armed force by states. It derives from the category of aggression and it could therefore be considered as a subcategory thereof. To be precise, elements of characterisation are: 1) the intention of coercing the enemy government to alter its policies; and, 2) the planning and execution of armed attacks with the primary purpose of spreading large-scale terror among the enemy population.

What follows from this definition, in terms of international responsibility, is that, at least, acts of international terrorism give rise to ordinary responsibility for breach of the general prohibition on the use of force.²⁰² Such acts amount to illegal use of armed force, which in turn entails basic legal consequences, i.e. cessation, non-repetition and reparation.

However, the main question in the context of the present work is whether aggravated responsibility can arise from acts of international state terrorism. As mentioned above, this class of responsibility is linked to the peremptory nature of the rule breached. So, would it be possible to maintain that the prohibition on acts of international state terrorism is part of *jus cogens* as well as the prohibition on acts of aggression?

The answer seems to depend on the perspective that one takes. Whether the prohibition on international state terrorism was deemed a new norm, completely detached from the prohibition on aggression, it would not be possible to maintain that

²⁰² “[W]hen a state actively participates in an act of terrorism, fails to prevent a terrorist offence, or fails to extradite or submit a terrorist actor to prosecution, the one act of terrorism may give rise to both individual criminal and state responsibility”, see Trapp, 2011, p. 10.

the former is part of *jus cogens*. As just mentioned, it should be considered a breach of the general rule on the illegal use of armed force.²⁰³

However, the above definition of international state terrorism requires the use of force to be comprehensive, that is, armed attacks must be carried out on a large-scale. This fashion of using armed force already amounts to aggression.²⁰⁴ The element that marks the paradigm of international state terrorism is the particular intent, i.e. the coercion of the enemy government. Such intent is distinct from the *animus aggressionis* that underpins an act of aggression. Hence, it follows that whether one fails to prove either such an intent or that armed attacks are systematically carried out with the primary purpose of spreading terror among the civilian population, the use of force falls back within the definition of aggression. Indeed, international state terrorism constitutes a subcategory of aggression.

Admittedly, violent acts underlying both aggression and international state terrorism lead to identical material effects, namely large-scale destruction and mass murders. Therefore, in this perspective it would not make sense to judge the prohibition on international state terrorism as different from the prohibition on aggression. Whether the latter concerns the gravest breaches of the values of the international society,²⁰⁵ i.e. peace and security, the former constitutes exactly the same type of act, yet with different and more specific intent.

Whether one accepts that international state terrorism is a subcategory of aggression, the ensuing relationship between the two is that of *species* (the former) to

²⁰³ Referring to state-sponsored terrorism, Trapp argues that “the terrorism-specific prohibition is merely an instantiation of rules under general international law that regulate the use of force. International terrorism engaged in by states, against other states, is but a particular form of using force in international relations”, see *ibid.*, pp. 14; see also *ibid.*, p. 33. Whether state terrorism as *indirect* use of armed force falls under the general prohibition on aggression, state terrorism as *direct* use of armed force logically falls under the same rules. Even though Trapp’s work exclusively deals with state-sponsored and state-supported terrorism, her analysis of state responsibility for terrorist acts can be referred also to international state terrorism. Indeed, both types of state terrorism fall under the rule on the use of armed force. This link has been highlighted even by Special Rapporteur Koufa: “From the legal point of view, the distinction between (international) State terrorism and State-sponsored terrorism is immaterial, since the invocation of either one of them would have exactly the same results (i.e. identification of the violated international law norms, articulation of charges reflected in the relevant international law norms, renunciation of alleged behaviour, etc., and the attendant question of responsibility)”, see Koufa, 2001, par. 67.

²⁰⁴ See UNGA, Doc. A/RES/3314(XXIX), 1974, art. 3.

²⁰⁵ See *ibid.*, preamble, par. 5.

genus (the latter). That is to say, the prohibition on international terrorism would be of the same legal nature as the prohibition of aggression, i.e. *jus cogens*. In turn, this implies that acts of international terrorism would give rise to aggravated responsibility and to the legal consequences that this class of responsibility entails.

IV. Conclusion

As shown in chapter two, the international debate has mainly focused on international (non-state) terrorism. This sounds reasonable for two reasons. On the one hand, from a historical perspective terrorism has mainly consisted of political violence carried out by non-state actors against states and governments. On the other hand, it must be highlighted that states are the key actors in the making of international law. It follows that the latter mirrors the interest of states in combating political groups, which challenge their legitimacy outside an armed conflict. Subsequently, *non-state* terrorism has been the principal object of criminalisation in international law.²⁰⁶ Conversely, IHL provides for the criminalisation of any terrorist act, whether perpetrated by state or non-state actors.²⁰⁷ Yet, it must be pointed out that wartime terrorism diverges from peacetime terrorism, since it is not a form of political violence but rather a prohibited method of warfare. In this regard, the two types of terrorism are absolutely different. The common feature, instead, is the criminal conduct of spreading terror among the civilian population.

Besides, the analysis has also shown that an interest in contrasting state terrorism has somehow emerged. However, the meaning of this concept has always been influenced by the broader context of international relations, thus acquiring more a political sense than a legal one. Non-powerful states, for example, have a strong interest in condemning certain uses of armed force as terroristic. Claiming that a state is acting with the purpose of terrorising foreign populations rather than achieving military advantages, such as the conquest of a territory, means to blame that this kind of behaviour is particularly grave.

Chapter two also provided some examples of terror tactics adopted by states.²⁰⁸ Aerial bombing on the one hand, and sponsorship of covert operations or support for clandestine groups in foreign countries, on the other hand, are used as tools in international relations and may be qualified as terrorist acts. State terrorism is nothing but one way of using force to achieve geopolitical goals. The common feature of state

²⁰⁶ See sections 2.1 and 2.2.

²⁰⁷ See section 2.3.

²⁰⁸ See section 2.4.

terrorist tactics is that their primary aim is to cause fear among the population of the targeted state. Additionally, some strategic military doctrines, such as ‘Shock and Awe’,²⁰⁹ and the ‘Dahiya doctrine’,²¹⁰ expressly state that the means for pursuing certain military and political goals is to target civilian objects and infrastructures in order to spread fear against the enemy.

On the one hand, this means that state terrorism is a reality in international relations and therefore an aspect of the use of armed force. On the other hand, a major issue at stake is the respect for and protection of human rights. Terrorism by definition consists of serious violations of human rights. If this is true for terrorist acts carried out by non-state actors (non-state terrorism) and for operations conducted by states’ agents (state-sponsored terrorism), it is also true for war-like terrorist acts (international state terrorism). Non-state actors will never achieve the capacity of inflicting the level of widespread destruction, which states are conversely capable of wreaking through their armed forces and weaponry. For example, although Hamas could improve its capacity for launching rockets against Israel, it will never be capable of inflicting large-scale destruction in a similar manner as Operation ‘Cast Lead’ did.²¹¹ That is to say, whether the threat posed by international (non-state) terrorism is of major concern, the danger posed by international state terrorism is more serious because it is likely to jeopardise even more human rights as well as international peace and security.

Whereas chapter two dealt with the theoretical possibility of conceiving the paradigm of state terrorism under international law, chapter three attempted to define it as an international norm. The main aim of the investigation was to illustrate that international state terrorism could be defined as a legal concept.

As a matter of fact, it has always been, and continues to be, a politically loaded notion as well as that of non-state terrorism. The word ‘terrorism’ itself continues to be a label used to delegitimize and criminalise the adversary on a political level. However, this work has attempted to show that international state terrorism may also be a legal

²⁰⁹ See section 2.4.

²¹⁰ See subsection 3.2.3.

²¹¹ This statement should not be understood as an implicit and general qualification of Hamas’ or Israel’s actions as terrorist. Such a qualification can exclusively be made on a case-by-case basis and falls out of the scope of the present work.

concept. Although it still remains quite a controversial issue, a legal meaning detached from the political debate could contribute to enhancing the protection of human rights.

As shown above, the elements of the definition may be found in existing norms, texts and academic studies. To be precise, the paradigm has been shaped on the basis of the 1974 UNGA definition of aggression; the 1973 proposal on ‘state terrorism’; scholarly analyses on the use of armed force; the legal notions of terrorism in peacetime and in wartime.²¹² This research also attempted to put forward the type of international responsibility that could arise from acts of international terrorism.²¹³ On the whole, it can be said that the proposed paradigm of international state terrorism is mainly based on the definition of aggression.²¹⁴ What must be pointed out is that the concept of international state terrorism was built on *existing* legal materials with the purpose of showing that it is possible to *legally* define it.

Arguably, it must be acknowledge that from a practical standpoint overloading the definition of aggression might not be effective. Binding states to the prohibition of using armed force still proves extremely difficult. Yet, qualifying certain forms of aggression as terrorist acts would have a strong symbolic meaning, particularly in regard to acts of powerful states. Additionally, legally defining international state terrorism would achieve the goal of detaching such a concept from its actual political meaning. Not every use of armed force would fall under this category, only conduct which presents the characteristics defined above would fulfil the definition. In this way, the phrase ‘state terrorism’ could finally cease to be a politically loaded concept, at least under international law.

²¹² See subsections 3.2.1 and 3.2.2.

²¹³ See subsections 3.3.1 and 3.3.2.

²¹⁴ See subsections 3.2.3 and 3.3.2.

Bibliography

Abi-Saab, G., 'The Proper Role of International Law in Combating Terrorism', pp. xiii-xxii in Bianchi, A., (ed.), *Enforcing International Law Norms Against Terrorism*. Oxford and Portland Oregon: Hart Publishing, 2004.

Annan, K., *In Larger Freedom: Towards Development, Security and Human Rights for All*. Report of the United Nations Secretary-General, Doc. A/59/2005, 21 March 2005.

Arrigoni, V., *Gaza. Restiamo umani*. Roma: Manifesto Libri, 2011.

Bartoli, R., *Lotta al terrorismo internazionale. Tra diritto penale del nemico, jus in bello del criminale e annientamento del nemico assoluto*. Torino: Giappichelli, 2008.

Bassiouni, M. C. and Ferencz, B. B., 'The Crime Against Peace and Aggression: From its Origins to the ICC', pp. 207-242 in Bassiouni, M. C., (ed.), *International Criminal Law. Vol. 1. Sources, Subjects, and Contents*. Leiden: Martinus Nijhoff Publisher, 2008.

B'tselem, *Guidelines for Israel's Investigation into Operation Cast Lead*, February 2009, at http://www.btselem.org/press_releases/20090208 (consulted on 21 May 2012).

Cassese, A., *International Law*. New York: Oxford University Press, 2005.

Cassese, A., 'The Multifaceted Criminal Notion of Terrorism in International Law', pp. 933-958 in *Journal of International Criminal Justice*, no. 4, 2006.

Crawford, J., *The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries*. Cambridge: Cambridge University Press, 2002.

Crawford, J., 'International Crimes of State', pp. 405-414 in Crawford, J., Pellet, A., and Olleson, S., (eds.), *The Law of International Responsibility*. Oxford: Oxford University Press, 2010.

Dinstein, Y., *War, Aggression and Self-Defence*. Cambridge: Cambridge University Press, 2005.

Eiland, G., 'The Third Lebanon War: Target Lebanon', pp. 9-17 in *Strategic Assessment*, vol. 11, no. 2, 2008, at <http://www.inss.org.il/upload/%28FILE%291226472866.pdf> (consulted on 2 June 2012).

Eiland, G., 'Operation Cast Lead: Civil-Military Processes and Results of the Campaign', in *Strategic Assessment*, vol. 11, no. 4, 2009, at <http://www.inss.org.il/publications.php?cat=21&incat=&read=2632> (consulted on 1 June 2012).

Evron, Y., 'Deterrence: The Campaign against Hamas', in *Strategic Assessment*, vol. 11, no. 4, 2009, at <http://www.inss.org.il/publications.php?cat=21&incat=&read=2656> (consulted on 1 June 2012).

Flibbert, A., 'The Gaza War: Instrumental Civilian Suffering?', in *Middle East Policy*, vol. 18, no. 1, 2011, at <http://mepc.org/journal/middle-east-policy-archives/gaza-war-instrumental-civilian-suffering> (consulted on 24 May 2012).

Gasser, H. P., 'Acts of terror, "terrorism" and international humanitarian law', pp. 547-570 in *International Review of the Red Cross*, vol. 84, no. 847, 2002.

Gioia, A., 'Terrorismo internazionale, crimini di guerra e crimini contro l'umanità', pp. 5-69 in *Rivista di diritto internazionale*, no. 1, 2004.

Grosscup, B., *Strategic Terror. The Politics and Ethics of Aerial Bombardment*. London: Zed books, 2006.

Grosscup, B., 'Cluster Munitions and State terrorism', in *Monthly Review*, Vol. 62, Issue 11, 2011, at <http://monthlyreview.org/2011/04/01/cluster-munitions-and-state-terrorism> (consulted on 11 May 2012).

Guillaume, G., 'Terrorisme et Droit International', pp. 291-416 in *Recueil des Cours de l'Académie de Droit International*, v. 215, 1989.

Harris, D., *Cases and Materials on International Law*. London: Thomson Reuters, 2010.

Henckhaerts, J. M. and Doswald-Beck, L., *Customary International Humanitarian Law. Vol. I: Rules*. Cambridge: Cambridge University Press, 2005.

International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Geneva: ICRC-Martinus Nijhoff Publishers, 1987.

Jodoin, S., 'Terrorism as a War Crime', pp. 77-115 in *International Criminal Law Review*, no. 7, 2007.

Jørgensen, N. H. B., *The Responsibility of States for International Crimes*. Oxford: Oxford University Press, 2000.

Kemp, G., *Individual Criminal Liability for the International Crime of Aggression*. Antwerpen: Intersentia, 2010.

Koufa, K. K., *Terrorism and Human Rights*. Progress report prepared by the Special Rapporteur, United Nations Commission on Human Rights, Doc. E/CN.4/Sub.2/2001/31, 27 June 2001.

Leben, C., 'Obligations Relating to the Use of Armed Force and Arising from Peremptory Norms of International Law', pp. 1197-1204 in Crawford, J., Pellet, A. and Olleson, S., (eds.), *The Law of International Responsibility*. Oxford: Oxford University Press, 2010.

Palestinian Centre for Human Rights, *Targeted Civilians: A PCHR Report on the Israeli Military Offensive against the Gaza Strip*, 21 October 2009, at http://www.pchrgaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf (consulted on 21 May 2012).

Public Committee Against Torture in Israel, *No Second Thoughts. The Changes in the Israeli Defense Forces' Combat Doctrine in Light of 'Operation Cast Lead'*, November 2009, at http://www.stoptorture.org.il/files/no%20second%20thoughts_ENG_WEB.pdf (consulted on 2 June 2012).

Röling, B.V.A., 'The 1974 U.N. Definition of Aggression', pp. 413-421 in Cassese, A., (ed.), *The current Legal Regulation of the Use of Force*. Dordrecht: Martinus Nijhoff Publishers, 1986.

Ronzitti, N., *Diritto internazionale dei conflitti armati*. Torino: Giappichelli, 2006.

Saul, B., *Defining Terrorism in International Law*. New York: Oxford University Press, 2006.

Shaw, M., *International Law*. New York: Cambridge University Press, 2008.

Siboni, G., 'Disproportionate Force: Israel's Concept of Response in Light of the Second Lebanon War', in INSS Insight, no. 74, 2008, at <http://www.inss.org.il/publications.php?cat=21&incat=&read=2222> (consulted on 1 June 2012).

Stohl, M., 'International Dimensions of State Terrorism', pp. 43-58 in Stohl, M. and Lopez, G.A., (eds.), *The State as Terrorist. The Dynamics of Governmental Violence and Repression*. Westport: Greenwood Press, 1984.

Tosini, D., 'Sociology of Terrorism and Counterterrorism: A Social Science Understanding of Terrorist Threat', pp. 664-681 in *Sociology Compass*, no. 1/2, 2007.

Trapp, K. N., *State Responsibility for International Terrorism*. New York: Oxford University Press, 2011.

Uhler, O. and Coursier, H., *Commentary on the Geneva Conventions of 12 August 1949. Volume IV*. Geneva: ICRC, 1958.

Ullman, H. K. and Wade, J. P., (eds.), *Shock and Awe: Achieving Rapid Dominance*. National Defense University, 1996, at http://www.dodccrp.org/files/Ullman_Shock.pdf (consulted on 16 May 2012).

Yedioth Ahronoth, 'Israel warns Hizbullah war would invite destruction', 10 March 2008, at <http://www.ynetnews.com/articles/0,7340,L-3604893,00.html> (consulted on 2 June 2012).

Zolo, D., *La giustizia dei vincitori. Da Norimberga a Baghdad*. Roma-Bari: Laterza, 2006.

Zolo, D., *Terrorismo umanitario. Dalla guerra del Golfo alla strage di Gaza*. Reggio Emilia: Diabasis, 2009.

International documents

Treaties and drafts

Charter of the United Nations, 1945.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

Vienna Convention on the Law of Treaties, 23 May 1969.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977.

International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001.

Draft Comprehensive Convention against International Terrorism, Doc. A/59/894, Appendix II, 2005.

United Nations

General Assembly

Doc. A/RES/25/2625, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 24 October 1970.

Doc. A/RES/3314(XXIX), *Definition of Aggression*, 14 December 1974.

Doc. A/RES/39/159, *Inadmissibility of the policy of State terrorism and any actions by States aimed at undermining the socio-political system in other sovereign States*, 17 December 1984.

Doc. A/RES/49/60, *Measures to eliminate international terrorism*, 9 December 1994.

Human Rights Council, Doc. A/HRC/12/48, *Human rights in Palestine and other occupied Arab territories. Report of the United Nations Fact Finding Mission on the Gaza conflict*, 15 September 2009.

Ad Hoc Committee on International Terrorism, Docs. A/56/37 (2001) ; A/58/37 (2003); A/59/37 (2004); A/60/37 (2005); A/62/37 (2007); A/64/37 (2009); A/65/37 (2010); A/66/37 (2011).

Sixth Committee Working Group, Docs. A/C.6/55/L.2 (2000); A/C.6/62/SR.16 (2007); A/C.6/63/SR.14 (2008); A/C.6/64/SR.14 (2009); A/C.6/65/L.10 (2010); A/C.6/66/SR.28 (2011).

Security Council

Doc. SC/10437 AFR/2278, 8 November 2011, available at <http://www.un.org/News/Press/docs/2011/sc10437.doc.htm> (consulted on 28 April 2012).

International Courts

International Court of Justice

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports, 1986, 14.

International Criminal Tribunal for the former Yugoslavia

Case No IT-98-29-A, Prosecutor v. *Galic*, Trial Chamber, 5 December 2003.

Case No IT-98-29-A, Prosecutor v. *Galic*, Appeals Chamber, 30 November 2006.

International Criminal Court

Doc. RC/Res.6, *The crime of aggression*, 11 June 2010.

Doc. ICC-ASP/10/32, *Report on the Working Group on Amendments*, 12-21 December 2011.

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