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IN HUMAN RIGHTS AND DEMOCRATISATION

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February-July 2007

THESIS TOPIC:

**'STATE-TERRORISM & THE IMPLICATIONS FOR
HUMAN RIGHTS'**

Deadline: 16th of July 2007.

UNIVERSIDAD DE SEVILLA

Faculty of Law and Department of International Law

Supervisors: Prof. Dr. Carmen Marquez Carrasco

Prof. Dr Francisco J. Contreras

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ABSTRACT

Prevention of human rights violations is the motivating power of this thesis. Prevention which means to address the root causes of systematic human rights violations, such as state terrorism.

The following thesis, deals with the definition of state-terrorism.

- Chapter 1, approaches the phenomenon from its conceptual point of view, attempting to throw some light into the general understanding of the concept itself.
- Chapter 2, is having a more in depth legal examination of the implications surrounding the practice of state terrorism; & is consisted by an attempt to discover whether there is a legal definition of the phenomenon.
- Chapter 3, is based on a philosophical arguing line, and through the paths of philosophy is attempting to clarify in a most possible efficient way the shadowed areas of the practice, phenomenon and concept of state terrorism, and the implications for human rights.
- & finally, Chapter 4 is comprised by the general conclusions of my research and recommendations.

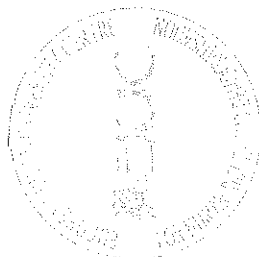
This research-based thesis has been builded upon the foundational basis of human rights, as the starting point of every argument comprising it.

That is to say, that this paper is an elaboration and a critical analysis, of the relationship of state-terrorism and human rights.

Human rights are creatures of international law, created for protecting primarily the individual from the state's interference with the enjoyment of her freedoms; the relationship of the state and the individual is one that is in constant need of examination, critical academic analysis & re-evaluation.

The damage that human rights are being subjected to, is obviously entailed in the very essence of state-terrorism; they belong as entities in the extreme opposite sides of the same reality.

In conclusion, this paper as a product of human rights based research, travelling through the disciplines of International Criminal Law, Law, Comparative Law, Philosophy, Philosophy of Law and Human Rights Law, Political Science and in certain cases Psychoanalysis as a legal tool; Psychology and Sociology, is being intended to become a contribution to the understanding of the new born concept of globalised terrorism and the implications surrounding it.



1. INTRODUCTION; A quest for a definition

In the Preamble of the Universal Declaration of Human Rights¹, it is clearly and prudently stated; 'freedom from fear...': *'Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.'*

In terrorism, fear is the tool used for achieving the realization of the desired goals, and at the same time, fear is the re-action of the terroristic action. Irrespectively of means and perpetrators, we are facing at an interference with the individuals enjoyment of fundamental rights necessary for the fulfilment of the persons natural desire of freedom and individuality, privacy and all the space and conditions that may render possible the self-fulfilment and the self-autonomy of the individual.

Professor Raz, very interestingly argues², that, in order for an individual to reach complete and fully enjoyment of her natural rights; in order for a society to reach real equality for the people and provide the same opportunities for all, then, the state should provide, all the basis and ground for her to make the choices she wants at the different stages of her life; freed from limitations in potential and possibilities due to race, gender, class, religion, and I would add, all the discriminatory man-made categories of people, labelling and identifying each and everyone falling under its heading as copies and identical.

Utopic ideals for many, but nonetheless, as very wisely Professor Costas Douzinas argues³, 'human rights will come to an end, if we do not re-invent their utopian ideals'.

Everybody has something to say, when the word terrorism sounds in a conversation. It is in every day's news, in the phraseology of the media and in the rhetoric's of politicians, all around the globe. Holds the highest place in the emergency challenges, in every governmental agenda, and has been characterised as an emerging vital philosophical debate, amongst other things. As far as the legal

¹ Universal Declaration of Human Rights 1048, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

² Raz, Joseph, 'The Morality of Freedom', University of Oxford, 1988.

³ Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000.

debates are concerned, I would be bold to say that chaos and procrastination hold by far the dominating status.

It seems like terrorism has developed through time and practice an immune system against its legal analysis and criminal coding. Legal experts, lawmakers and academics have failed repeatedly to efficiently deal with the criminal analysis of the act itself. The concept of terrorism travels around linguistics, political science, philosophy and law without a nuisance, and even the International Criminal Court – ICC- failed till now, to include the crime of terrorism in its jurisdiction⁴.

There is not a legal definition under international law to define the act of terrorism, or of state-terrorism, and state-supported terrorism⁵.

There have been plethora of drafts and pieces of legislation and ofcourse the national laws, in which, very interestingly, one can find a lot of similarities in different countries regulations and laws when dealing with the same matters, but also, some extremely different approaches; undeniably very little ink on state-terrorism, except in cases of state-supported terrorism, or state terror; this is a fact which arguably can be more efficiently analyzed, by mobilizing the helping tools, instruments and techniques that Comparative Law has to offer.

A bright exception is the Arab Convention on Terrorism, which states in Article 3, 'Contracting States undertake not to organize, finance or commit terrorist acts or to be accessories thereto in any manner whatsoever.'⁶ In this law, the lawmaker clearly forbids the state from assuming the role of the perpetrator of the crime of terrorism. The legitimate user of violence as the state is being called; the state 'has not to commit terrorist acts.' The crime of state terrorism, is existing in national & regional legislation, but does not enjoy a universal consensus in International Law.

Nevertheless, its existence in a legally binding document, as the Convention in question, can be argued to prove its actual existence as a crime.

⁴ www.un.org/law/icc/statute/iccq&a.htm,

⁵ www.icc-cpi.int/home.html&l=en

⁶ Arab Convention on Terrorism, Part Two, Principles of Arab Cooperation for the Suppression of Terrorism, Chapter I, The Security Field, Section I, Measures for the prevention and suppression of terrorist offences: Article 3.

As well as, the Organization of African Union's Convention⁷ on the Prevention and Combating of Terrorism, hence, this is to be dealt with later in this paper, in relation to the definitional legal key issues.

This paper seeks to deal with terrorism from a different perspective, that is to say, with terrorism as a criminal act perpetrated by the state, of the government of the day. Vivid examples are also to be taken from the contradictory relationship of human rights and counter-terrorism.

It is not an easy subject to work on, but at the same time the challenges surrounding its blurred and unclarified areas, impose a duty upon all academics to address the issues of state-terrorism and state-supported terrorism in order to give birth to a complete convention on international terrorism, and, not eclectically criminalising the act, depending upon the perpetrator; in other words when the same terrorist act is committed by a state, there should be the same confrontation and punishment for the crime by the appropriate court, as if it has been committed by a private individual or a group of individuals⁸.

The absence of the crime of state-terrorism of a complete convention of international terrorism will be a great overlooking in the part of the lawmakers. The reality is that we need a full and complete law about terrorism. There is a duty upon all intellectuals, and especially on experts of legal philosophy to reflect on the matters and challenges emerging from this phenomenon, and clarify as well as define the concepts adequately.

This paper's main mission is to form a critical analysis of the concept of state terrorism. To outline the challenges that it gave birth under its new globalised form, and always in relation with the mother term of terrorism, as a criminal act. It is inevitable, an essay on state-terrorism to be surrounded by paragraphs about terrorism itself. There has been a lot of ink spilled about terrorism, but in contrast, the bibliography on state terrorism is limited. I will try to outline the main difficulties and sub problems of this shadowed area of international law, and by avoiding arguing from a conspiracy theories side, I will try to efficiently deal with the main

⁷ Organization of African Union Convention on the Prevention and Combating of Terrorism (Algiers July 1999).

⁸ See: M.C. Boire, "Terrorism Reconsidered as Punishment. Towards an evaluation of the acceptability of terrorism as a method of social change or maintenance", Stanford Journal of International Law, Spring 1985.

problematics and dilemmas that a law expert is bound to face when working with these multidimensional and evolving polymorphic crimes.

It is important to note that terrorism as a phenomenon of the globalised era that we are bound to live in; is a continuously evolving concept; a fact that holds a contributing role, in the repeatedly postponing legal environment surrounding the concepts of terrorism and state terrorism; their different routes and roots.

Prevention, of human rights violations in the future can be an important instrument. 'Prevention that also means to address the root causes of systematic human rights violations'⁹. In this sense it is important and necessary to address the practice of state terrorism as the roots and cause of systematic human rights violations.

This paper, deals with the problematics of defining state-terrorism. To date, any attempts to define state-terrorism, has been unsuccessful and has contributed in an environment of international consensual legal procrastination.

For the purposes of this paper, the term 'state-terrorism' or 'state terrorism' will refer to the same phenomenon.

It is a quest, this paper, a journey through theory & practice; utopic ideals & undeniable cruel realities; through the spectrum of the different but interlinked disciplines of Law & Philosophy.

Philosophy of Law, International Criminal Law, International Human Rights Law & Humanitarian Law; are the tools and at the same time guiding instruments for the realisation of this thesis.

Psychoanalysis is also very important in considering the issues in question, psychoanalysis as a legal theory in which the law plays a formative role. 'For psychoanalysis the subject, rather than being a pre-given substance, or a fully constructed entity, is reflectively and intersubjectively constituted.'¹⁰ Hence, since state-terrorism, is targeting to the mental element of its victims, using the tool of fear as means of achieving its goals, then arguable, since fear is a feeling, it can only be viewed adequately by subjective criteria. In this sense, psychology and psychoanalysis have a rather important role to play in our understanding of the

⁹ Nowak, Manfred, 'Introduction to the Human Rights Regime', The Raoul Wallenberg Institute For Human Rights Library, Martinus Nijhoff Publishers, Leiden/Boston, 2003, p. 341.

¹⁰ Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000, p. 297.

phenomenon of terrorism. Psychoanalysis and in particular its Lacanian revision are fast becoming the latest great frontier for jurisprudence.¹¹ Hence, this is to be dealt with efficiently in philosophical terms at the 3rd chapter of this paper,

From a human rights perspective, it is arguable that we are witnessing the diminishment of the value of the importance of human rights. Humanity made big steps towards the realisation of a universal system of values and rights, human rights that every human being is entitled by birth, and minimum standards and procedures for its universal and regional protection; and values that can lead humanity to a better future. Empowerment of the individual is the very essence of human rights, and participation, non-discrimination and accountability, arguably, the most important elements.

Hence, witnessing the new security emergency plans and governmental practices towards the realization of the desired absolute security, through the mobilization of totalizing control's theoretical paths and techniques, under the heading of the 'War on Terror', cannot omit to admit, that the states are pushed towards protection of rights to suppression of rights agenda.

This thesis is being intended to become a contribution to the understanding of the new phenomenon of globalised terrorism. The optic corner that this paper is viewing the phenomenon is through its other hypostasis, of terrorism, committed by the state; state-terrorism. By reversing the roles of the parties in a terrorist assault; where the state seizes to be the victim, and is a participatory party, but in the role of the perpetrator.

In the wake of the 11 September 2001 terrorist attacks in the United States, the United Nations Security Council unanimously adopted resolution 1373, which, among its provisions, obliges all States to criminalize assistance for terrorist activities, deny financial support and safe haven to terrorists and share information about groups planning terrorist attacks.

Resolution 1373, obliges all States to criminalize assistance for terrorist activities, but there are so many States that provide assistance to terrorist organisations, including some of the greatest powers of the so called first world countries, States activities which would easily fall under the prohibited acts of

¹¹ Idem.

terrorism, under the European's Arrest Warrant¹² list of terrorist acts; the Academic Definition of Terrorism, or the International Convention for the Suppression of the Financing of Terrorism¹³.

In this line of reasoning, one can innocently come to the conclusion, that the establishment of a proven act of terrorism, committed by the State, formulates state-terrorism. But criminal responsibility is always individual, a legal issue that will be explored in depth in the second chapter of my thesis, which deals with more specialized legal questions.

¹² <http://europa.eu/scadplus/leg/en/lvb/l33167.htm>

¹³ International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

2. WHAT IS STATE-TERRORISM?

By performing a quick search, through the internet's search engines, one can easily come across a definition of state-terrorism, provided by Wikipedia¹⁴.

'State-terrorism is a controversial term, which means violence against civilians perpetrated by a national government or proxy state. Whether a particular act is described as "terrorism" may depend on whether the international community considers the action justified or necessary, or whether the described act is carried out as part of an armed conflict. It has to be mentioned, that the opinion of the International community cannot be defined and determined with universal agreement. State-terrorism, where applicable, may be directed toward the population or infrastructure of the state in question or towards the population of other states. Although attacks on non-combatant civilians may occur during a time of war, they are not usually considered terrorism, especially if these are attacks on the enemy's war fighting capacity (for example an industrial port). The terrorism may be carried out by the state's own forces, such as an army, police, state-supported militias, or other organisations, where it is more usually called state-sponsored terrorism.'

Care should be taken to differentiate state-terrorism from acts of violence carried out by government agents, which are not specified by government policy¹⁵ or past conduct. A murder carried out by a policeman, for example, is not state-terrorism unless the government sanctioned the action by policy or conduct such as a pattern of attacks by state agents in the past that has gone unpunished, leading perpetrators to assume they act with impunity.

The above definition, has no legal status or applicability in a court of law, but, can help in the sense of throwing some light into the understanding of the concept itself.

The term, state-terrorism, is probably more political than legal, nonetheless, for the purposes of this thesis, my elaboration needs to be restricted to events and situations of the sort that raise legal questions and problematics; & key legal issues that have come before tribunals, domestic and international and international bodies.

The Nuremburg and Tokyo trials, the International Criminal Court, the ICTY and other tribunals charged with prosecuting perpetrators of particular atrocities, the UN and domestic cases seeking asylum and refugee status, punishment of foreign

¹⁴ http://en.wikipedia.org/wiki/State_terrorism (consulted at 03 March 2007)

¹⁵ see *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-AR72 para. 654.

officials or recompense for wrongful death, torture, injury and loss constitute relevant case law. Military action in defense of empire and other displays of overwhelming power to intimidate others either by way of reprisal or to protect of paramount national interests have yielded uncountable instances of the deliberate use of terror or the toleration of terror by state actors or by members of one ethnic group against another. Genocide is just one example.

'Terror, domestic or cross-border, may be unleashed by dysfunctional government or by the venality of rulers as an instrument of policy or by inability to govern: the Khmer Republic, Sierra Leone, Liberia, Bosnia, Afghanistan, Iraq, Ivory Coast, Sudan, Somalia, Rwanda, Haiti and, arguably, Zimbabwe at various times are examples, in no particular order. Non-state actors like the Lord's Resistance Army in Uganda and warlords in a number of other countries are subsets of the foregoing. To a greater or lesser extent, such terror will have overseas implications, economic, political and demographic'.¹⁶

The constant development of our legal understanding of the term terrorism, is constructing, as some argue, an even cloudier landscape and tends to lead experts to be more confused than ever. Some argue that by trying to establish and include the crime of state-terrorism in a complete international convention on terrorism, will lead the international community to a dead-end, and will have as final outcome the further delay of an international consensus; '...a comprehensive convention should not engender another form of terrorism: State-terrorism.'¹⁷

'Governmental or "State" terror: Sometimes referred to as "terror from above", where a government terrorizes its own population to control or repress them.'¹⁸ These actions usually constitute the acknowledged policy of the government, and make use of official institutions such as the judiciary, police, military, and other government agencies. Changes to legal codes permit or encourage torture, killing, or property destruction in pursuit of government policy¹⁹.

¹⁶ Andrew Grossman, 'A Research Guide to Cases and Materials on Terrorism', Hauser Global Law School Program, New York University School of Law, Published May 2006. www.nyulawglobal.org/globalex/Terrorism.htm (consulted at 28 January 2007).

¹⁷ Saleh Elmarghani (Libya), Ad Hoc Committee on Assembly, Resolution 51/210, 38th Meeting (AM) <http://www.terrorism-research.com/state/> (consulted at 28 January 2007).

¹⁹ see *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-AR72 para. 654 (current customary international law takes also forces into account that are not part of a legitimate government, but nonetheless have de facto control over defined territory).

For example, after assuming power, official Nazi policy was aimed at the deliberate destruction of "state enemies" and the resulting intimidation of the rest of the population. At the same line of reasoning, Stalin's "purges" of the 1930s are examples of using the machinery of the state to terrorize a population. The methods he used included such actions as rigged show trials of opponents, punishing family or friends of suspected enemies of the regime, and extra-legal use of police or military force against the population.

I will agree with Ariel Heryanto's working definition of state-terrorism, under which, he describes it to be a series of state-sponsored campaigns that induce intense and widespread fear over a large population, involving some basic elements.²⁰

To be found liable of criminal responsibility, of a crime as multidimensional as terrorism, does not require to prove one *actus reus*, as for the crime of murder, that all it requires under criminal law, is to prove the *actus reus*, which is the actual act that resulted to the death and the *mens rea* of the crime which is, the otherwise called, guilty mind; that is to say, that the prosecutor needs to prove that the perpetrator had in mind the intention to kill.

The crime of terrorism does not and cannot require a specific and codified *mens rea*, since the multidimensional spectrum that the perpetrators committing acts of terrorism form a plethora of different intentions.

As it has been argued, in terrorism, it is not only guilty the one that pulls the trigger, or presses the button for a bomb to be activated and explode. Terrorism is a criminal activity that requires accomplices, that demands a whole chain of interacting links to be mobilized, and, or a net of different factors playing a role in the process of achieving a goal to act accordingly.

The real problematic of actually discussing terrorism, state-terrorism, and state-supported terrorism, and attempting to adequately define these crimes, I believe is deriving from the fact that the mere attempt of defining them, implies the exclusion or inclusion of acts that may constitute or not terrorism.

What I mean is, that since terrorism, as a crime, can be achieved by numerous ways, and since it is evolving, and developing different forms and *actus reus*, as well as *mens reas*, day by day, then it could be argued that keeping the crime flexible in its

²⁰ See: Heryanto, Ariel, 'State Terrorism and Political Identity in Indonesia Fatally Belonging (Politics in Asia Series)', Routledge; 1 edition, December 16, 2005.

constitution and²¹ establishment, might serve legal practitioners as an asset in the administration of justice.

On the other side of the coin though, this flexibility of our legal understanding of the crime of terrorism, it could also lead legal practitioners in misinterpreting the purposes of the criminalisation of the acts that constitute terrorism, which will arguably lead at a miscarriage of justice. The list of real cases falling under the second hypothesis of a miscarriage of the criminal justice is by far longer, than the list of real cases falling under the description of the first hypothesis.

As the Canadian Arab Federation stated in its factum in the Canadian Supreme Court decision of the Suresh case, the concept of terrorism is 'open to politicized manipulation, conjecture and polemical interpretation'.²¹

²¹ Suresh [2002] 1 SCR 3, [94].

i. Terrorism

To understand state-terrorism, it would be helpful if not necessary to look at the definition of terrorism, as it has been given by the United Nations Conventions and by the legal instruments of the international community of the day.

The United Nations Office on Drugs and Crime definitions of terrorism website²² dated, Wednesday, 04 April 2007, explicitly puts forward the fact that there is no international consensus on a single definition, which subsequent to the absence of an international legally binding instrument covering this blurred area of international law.

In the same website one can come across the so called, **Academic Consensus Definition:** which states that: "Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought"²³.

There are many that have accepted a broad definition according to which terrorism is simply politically or ideologically motivated violence that is directed against civilians or non-combatants. In fact, this broad definition has become sufficiently widespread that Jeff McMahan refers to it as the "orthodox definition"²⁴.

'Terrorism has been described variously as both a tactic and a strategy a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination'²⁵. The problem still remains with defining such acts as terrorism in order to prosecute certain heinous crimes. "Whether terrorism should be treated primarily as an international crime or should be viewed mainly as a political problem [which may

²² www.unidoc.org (Consulted at 04 April 2007).

²³ Alex P. Schmid and Albert J. Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Databases, Theories, and Literature* (1988).

²⁴ See Jeff McMahan, "The Ethics of Killing in War," *Ethics* 114(2004): 693-733, apt. 729.

²⁵ *International Terrorism and Security Research*, <http://www.terrorism-research.com/> (Consulted at 28 January 2007).

have international criminal elements] has been debated by the international legal community for years."²⁶

There is the argument which says that "one man's terrorist is another man's freedom fighter", as Derrida points out²⁷, that for instance, the French "resistants" were labelled "terrorists" by the Germans during World War Two.

The common sense and logic reasoning lead us to the obvious conviction of all violent acts that consequent to the harming of human beings as being *prima facie* evil and unjustified. Nevertheless, every accusation has the natural legal right to provide with defense, a right that has been denied to the majority of the accused suspected terrorists²⁸, although it is clearly ensured under the title of the right to a fair trial²⁹. Those to be charged and tried must be charged with a recognizable crime under law and tried before an independent and impartial tribunal, in full accordance with international standards of fair trial.

Nevertheless, it is very important to distinguish acts of terrorism from acts of resistance³⁰; since, International Law grants a people fighting an illegal occupation the right to use 'all necessary means at their disposal' to end their occupation³¹.

Many scholars assert that some terrorist acts could be prosecuted as crimes against humanity in the meantime. But there are a lot that argue that this is a favourable solution. A more explicit jurisdiction over crimes of terrorism would be beneficial because terrorism is really a separate category of crimes and as such mandates separate prosecution. In addition, because terrorist activities are very closely linked, all those who are directly or indirectly involved should be liable to prosecution, not only those who 'pull the trigger'.

²⁶ Rosalyn Higgins, *The General International Law of Terrorism*, Terrorism and International Law, eds. Rosalyn Higgins and Maurice Flory, (London: Routledge, 1997), 21.

²⁷ Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

²⁸ See Guantanamo. (FBI Memorandum Details Guantánamo Commander's Repeated Refusal to Abandon Illegal and Ineffective Interrogation Techniques, ACLU).

²⁹ <http://www.aclu.org/intlhumanrights/gen/24249prs20060223.html> (Consulted at 16 March 2007).

³⁰ Article Ten of the Universal Declaration of Human Rights, the Sixth Amendment of the US Constitution, and Article Six of the European Convention of Human Rights.

³¹ See : Derrida at: Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

³¹ The right to self-determination by armed struggle is permissible under the United Nations Charter's Article 51, concerning self-defence.

ii. State-terrorism

State terrorism, does not exist according to the International Community. This term, does not refer to anything, in the eyes of the law, and even if a legal practitioner chooses to use it as a term in accusing a state or country of terroristic practices and actions, the outcome would not be the desired one.

In any case, this is the reality, but does not mean that the inexistence of an international recognition of the term can render this thesis void; on the contrary. It is logically arguable, that law's duty is to evolve according to the new conditions that every era engenders. Law, in that line of reasoning has the ability to transform and develop, as for instance in the case of cyber-terrorism, or bio-terrorism. For example, 100 years ago any lawmaker would laugh her head off in the sound of the term cyber-terrorism, but today is an undeniable fact, and lawmakers are bound to deal with it.

For example, Saddam Hussein used chemical weapons on his own Kurdish population without any particular change or expansion of policies regarding the use of force on his own citizens. 'They were simply used in an act of governmental terror believed to be expedient in accomplishing his goals.'³²

Nevertheless, state terrorism is an undeniable fact today, requiring action in order to eliminate its effects on human rights and the lives of human beings as far as the enjoyment of their inderogable rights is concerned; and this is what this paper's discussion is based on.

In the Ad Hoc Committee on Assembly³³, Yun Yong Il (Democratic People's Republic of Korea) said "the 'illegal United States invasion of Iraq' and 'Israel's occupation of Arab territories and invasion of Lebanon' constituted State terrorism. Unilateral and military invasion of other countries, overthrowing legitimate Governments and the massacre of civilians brought about a 'vicious circle of terrorism' and should be addressed immediately. State terrorism was the result of some countries abusing the war on terror for political purposes, which the Ad Hoc Committee should give priority in combating. The right way to eliminate State terrorism should be identified, while discussing the drafting of the comprehensive convention on international terrorism."

State involvement in terror, are these activities, where government personnel carry out operations using terror tactics. These activities may be directed against other

³² <http://www.terrorism-research.com/state/> (Consulted at 17 March 2007).

³³ Ad Hoc Committee on Assembly, Resolution 51/210, 38th Meeting (AM), 05 February 2007.

nations' interests, its own population, or private groups or individuals viewed as dangerous to the state. In many cases, these activities are terrorism under official sanction, although such authorization is rarely acknowledged openly. Historical examples include the Soviet and Iranian assassination campaigns against dissidents who had fled abroad, and Libyan and North Korean intelligence operatives downing airliners on international flights.

In addition, quoting a letter from representatives of the Libyan Government, in Smith v. Socialist People's Libyan Arab Jamahiriya, 886 F.Supp. 306, 314 (E.D.N.Y. 1995): "[T]he proposals contained in this draft shall be binding [when] ... State terrorism against Libya shall end, there shall be a halt to threats and provocations against it".

State-terrorism does not exist in international law, as I pointed out above, but it does exist in international relations. The Spanish judge Baltasar Garzón views particular political systems as instances of state-terrorism: "*State-terrorism is a political system whose rule of recognition permits and/or imposes a clandestine, unpredictable, and diffuse application, even regarding clearly innocent people, of coercive means prohibited by the proclaimed judicial ordinance.*"³⁴

The first forms of terrorism, some argue³⁵ that, was state terrorism. In ancient Greece there was the traditional saying stating, 'control the people through the fear of gods', and using fear as a tool for controlling the public.

Terrorism is being described as, '...an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets.'³⁶

An anxiety-inspiring method of repeated violent action, which may be employed by state actors; but on the other hand, the state is the only legally entitled to use violence. Adopting the Weberian idea of the "monopoly of legitimate violence"; Freud insisted, that, 'all law and right, come from violence'.³⁷ 'Law is the

³⁴ http://en.wikipedia.org/wiki/State_terrorism (Consulted at 17 March 2007).

³⁵ As element of political systems of governance.

³⁶ www.unidoc.org (Consulted at 28 January 2007).

³⁷ Freud, Sigmund, 'Why War in Civilisation, Society and Religion', James Strachey ed. And trans., Penguin, 1985.

replacement of individual violence by the organised violence of the community and is directed against those who resist it.³⁸

There is another theoretical approach preferring to use different words and terms less charged, in order to get more people to listen to them. In this line of reasoning, the exchange of the term state-terrorism with a term such as state brutality, or human rights violations, or state terror would be more possible to get accepted as a realistic legal academic piece of work.

Notwithstanding, there is the sociological³⁹ definition of the concept, which states that: State-terrorism is a systematic governmental policy in which massive violence is practiced against a given population group with the goal of eliminating any behaviour that promotes political struggle or resistance by members of that group. Any state that engages in terrorism is not a protector of citizens; rather, it violates civil and human rights through assassinations, mass killings, and imprisonments, often along with a display of corpses in the streets so that the remaining population will accept the violent state out of terror and intimidation. The main assumption of such a state is that it can control the population by destroying its leaders and the culture of resistance. States that fail to establish hegemony by accountable democratic political order are unstable and insecure; hence, they engage in state-terrorism⁴⁰.

The concept of 'systematic' was defined by the International Criminal Tribunal for Rwanda (hereinafter: ICTR) as follows: "thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources".⁴¹

What should be noted is that, 'systematic practice is at hand if acts are carried out pursuant to an explicit or implicit plan or policy'⁴². Such a policy can be deduced from the manner in which an act occurs. Namely, it suffices that a single act, committed within the framework of a systematic or widespread attack, has the

³⁸ Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000, p. 300.

³⁹ Asafa Jalata, 'State Terrorism and Globalization: The Cases of Ethiopia and Sudan', *International Journal of Comparative Sociology* 2005; 46; 79.

The online version of this article can be found at: <http://cos.sagepub.com/cgi/content/abstract/46/1-2/79>

⁴⁰ Oliverio, A. (1997) 'The State of Injustice: The Politics of Terrorism and the Production of Order', *International Journal of Comparative Sociology* 38(1-2): 48-63.

⁴¹ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T para. 580.

⁴² I.L.C. Draft Code of Crimes Against the Peace and Security of Mankind, Report of the International Law Commission on the Work of its 48th Session, 6 May – 26 July 1996, G.A.O.R., 51st Sess., Supp. No. 10, 30, U.N. Doc. A/51/10.

potential to demonstrate such a policy⁴³. If a multiplicity of victims is targeted, we talk about a widespread attack⁴⁴. Such a large-scale attack encompasses the cumulative effect of a series of inhuman acts to a singular effect of one act of extraordinary magnitude.

As for the *mens rea* element the perpetrator has to have knowledge of the wider context in which his acts occur. However, he does not need to have a concrete idea of the consequences of his acts.⁴⁵

Nonetheless, one of the definitions, which largely covers the question, is the one given by M.C. Boire⁴⁶, which considers an act to be one of terrorism when:

- a) It is a sought, violent act or activity, which provokes or invokes terror;
- b) It is committed by an individual with a political objective;
- c) It is aimed at individuals or property;
- d) It intends to incite psychological anxiety, terror or the feeling of helplessness to the public. These results are more significant than the immediate material damage of a terrorist act;
- e) It intends to influence and alter the behaviour of its targets in order to force them to support the objectives of the terrorists;
- f) It goes beyond any rights that society accords to its citizens.

After having defined the substantial components of terrorism, Varvitsiotis⁴⁷ suggests that we could divide them into the following categories:

The first is the individual and is used by small groups intending to achieve a political objective, which inspires only small groups of people. These are terrorist-ideology driven groups, such as the Bader-Meinhof in Germany and Brigade Rosse in Italy in the past. Separatist terrorist organisations such as the IRA and ETA are included in the same category despite the fact that their atrocities are targeted at small groups of the population.

⁴³ Prosecutor v. Dusko Tadic, para. 653.

⁴⁴ I.L.C. Draft Code of Crimes Against the Peace and Security of Mankind, *supra* note 55.

⁴⁵ Prosecutor v. Dusko Tadic, para. 657.

⁴⁶ M.C. Boire, "Terrorism Reconsidered as Punishment. Towards an evaluation of the acceptability of terrorism as a method of social change or maintenance", *Stanford Journal of International Law*, Spring 1985.

⁴⁷ Mr Ioannis Varvitsiotis is a former Minister in Greece and the Head of Greek Delegation of the EPP-ED Group in the European Parliament. http://www.epp-ed.eu/Press/pfocus/docs/terrorism_en.doc. (Consulted at 19 April 2007).

The second is State terrorism, which occurs when the State "intends to destroy the resistance of a political opponent in the fight for the control of power". This is when terrorism comes from the top and uses state (and/or para-state) mechanisms of repression. (i.e. Pol Pot in Cambodia).

In most dictatorships, the use of power reaches the limits of "state terrorism" especially in times of social and political unrest when it is used to repress ("repressive" state terrorism).

On the other hand, "preventative" state terrorism is used by the State in circumstances of social and political unrest and aims to prevent such situations, for example, as with the arrests of members of the Polish union Solidarnosc before the programmed protests in order to intimidate them.

Hence, state terrorism, today, under the veil of globalization, has taken gigantic form, since the target population is not easy to be identified within national borders or regional societies; but it can affect the global society, through media, or by the constant threaten of a global attack, which might even touch upon the actual threat of human kind's extinction.⁴⁸ Hiroshima & Nagasaki, for example, has been a uniquely worst terror attack in history. The holocaust, was undoubtedly the worst form of state-terrorism ever been witnessed by humanity, but Hiroshima & Nagasaki, is very likely to be repeated, and this is something that any thinking logically human being can come to conclude, if consider that there is a huge war & weaponry industry that researches, invents, and manufactures weapons of unprecedented power and magnitude. The holocaust is so much condemned, that does not even occur to us that may be repeated in our lifetimes.

⁴⁸ 'Arthur Koestler in Janus: A Summing Up, 'If I were asked to name the most important date in the history and prehistory of the human race, I would answer without hesitation 6 August 1945. The reason is simple. From the dawn of consciousness until 6 August 1945, man had to live with the prospect of his death as an individual; since the day when the first atomic bomb outshone the sun over Hiroshima, mankind as a whole has had to live with the prospect of its extinction as a species...', www.tamilnation.org (Consulted at 18 March 2007).

iii. State-supported terrorism

According to Varvitsiotis⁴⁹, we must distinguish "state terrorism", whose victims are generally the state's own citizens, from "state-supported terrorism" which takes two shapes:

1. its use abroad against the State's opponents.
2. State-supported terrorism, under which a State helps and supports acts of international terrorist organisations which have several targets abroad.

Liberation movements against colonial regimes or of rebel groups against dictatorships raise several problems. These activities, under certain conditions, reach the limits of terrorism; however, one may argue that it is not a terrorist act when being used against military targets.

State-sponsored terrorism (SST) is a political term used to refer to finance/bounties, equipment and intelligence material given across international boundaries to terrorist organizations and the families of deceased militants for the purpose of conducting or rewarding attacks on civilians. States that sponsor terrorism may also provide a "safe-haven" for persons accused of terrorism and refuse to extradite them. As with any form of terrorism, SST is used because it is believed to produce strategic results where the use of conventional armed forces is not practical or effective.

Hence, the distinctions between state-sponsored terrorism, state terrorism, and "legitimate war" are controversial. Generally speaking, state-sponsored terrorism is simply a more specific form of state terrorism; the controversy largely arises in the definition of "state terrorism" as regards sponsorship, asymmetric warfare (clandestine warfare) and international character. In Western politics, however, the term state-sponsored terrorism is largely used in reference to certain politics and finance in the Arab world, i.e. politics and finance used to promote terrorism rooted in ideological Islamic nationalism amongst various radical Islamist militant groups.

The intentions of such terrorism are believed to be any or all of the following:

- Destabilisation of a target state;
- Creation of international visibility for a persistent problem;
- Acts of retaliation against a target state;

⁴⁹ http://www.epp-ed.eu/Press/pfocus/docs/terrorism_en.doc (Consulted at 18 March 2007).

- Attempts to promote a state's interests.

There are a lot of examples of state supported terrorism, and to date is better recognised by legal experts as a practice that falls under the jurisdiction of the law, but, nonetheless, the multidimensional entity of terrorism requires us to examine different processes of criminal actions, but, which always share one characteristic, the imposing of fear and anxiety, targeted on to human beings.

According to Terrorism Research⁵⁰ there are three different ways that states can engage in the use of terror, and these are:

- a) Governmental or "State" terror;
- b) State involvement in terror;
- c) State sponsorship of terrorism.

Another type of these activities is "death squads" or "war veterans". State sponsorship of terrorism: Also known as "state supported" terrorism, when governments provide supplies, training, and other forms of support to non-state terrorist organizations. One of the most valuable types of this support is the provision of safe haven or physical basing for the terrorists' organization. Another crucial service a state sponsor can provide is false documentation, not only for personal identification (passports, internal identification documents), but also for financial transactions and weapons purchases. Other means of support are access to training facilities and expertise not readily available to groups without extensive resources. Finally, the extension of diplomatic protections and services, such as immunity from extradition, diplomatic passports, and use of embassies and other protected grounds, and diplomatic pouches to transport weapons or explosives have been significant to some groups.

An example of state sponsorship is the Syrian government's support of Hamas and Hezbollah in Lebanon. Syrian resources and protection enable the huge training establishments in the Bek'aa Valley. On a smaller, more discreet scale, the East German Stasi provided support and safe-haven to members of the Red Army Faction (RAF or Baader Meinhof Gang) and neo-fascist groups that operated in West Germany. Wanted members of the RAF were found resident in East Germany after the fall of the Berlin Wall in 1989.

⁵⁰ <http://www.terrorism-research.com/state/> (Consulted at 07 March 2007).

Some scholars, argue that the Cyprus Problem: is being a fact even today, due to the Turkish State Sponsored Terrorism against Cyprus; & subsequently the Turkish continuous violations of numerous articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Turkish continuous violations include violations of Article 1 of Protocol 1, Article 2, 3, 5, 6, 8, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁵¹

iv. Military-police state

By proceeding in my research, the need to elaborate on the concept of another form of government emerges, that is to say, military-police state, that can in certain cases qualify as instances of state terrorism.

The term⁵² police state is a pejorative term for a state in which the government exercises rigid and repressive controls over the social, economic and political life of the population, especially by means of a secret police force which operates above the normal constraints found in a liberal democracy. A police state typically exhibits elements of totalitarianism and social control, and there is usually little distinction between the law and the exercise of political power by the executive. One of the last police states is the island-state of Singapore, even as the People's Republic of China has become increasingly democratic.

The classification of a country or regime as a police state is usually contested and debated. The classification is often established by an internal whistleblower or an external critic or activist group. The use of the term is motivated as a response to the laws, policies and actions of that regime, and is often used pejoratively to describe the regime's concept of the social contract, human rights, and similar matters.

Police states are authoritarian, and are often dictatorships; the South African apartheid system was a police state while being nominally a democracy (albeit with the native, Black African majority population excluded from the democracy). Nazi Germany, a dictatorship, was, at least initially, brought into being through the nominal democracy.

⁵¹ There are numerous leading cases decided at the European Court of Human Rights (ECHR), which set the legal authoritative precedent that makes it easier for all 200,000 Greek Cypriot Refugees to sue Turkey and claim back their homes and legal properties. See: *Loizidou v. Turkey* (Article 50) (1998) 26 E.H.R.R. ECHR.

⁵² http://en.wikipedia.org/wiki/Police_state (Consulted at 09 March 2007).

Under the political model of enlightened absolutism, the ruler is the "highest servant of the state" and exercises absolute power to provide for the general welfare of the population. This model of government proposes that all the power of the state must be directed toward this end, and rejects codified, statutory constraints upon the ruler's absolute power. Thinkers such as Thomas Hobbes supported this type of absolutist government.

As the enlightened, absolute ruler is said to be charged with the public good, and implicitly infallible by right of appointment, even critical, loyal opposition to the ruler's party is a crime against the state. The concept of loyal opposition is incompatible with these politics. As public dissent is forbidden, it inevitably becomes secret, which, in turn, is countered with political repression via a secret police.

Liberal democracy, which emphasizes the rule of law, focuses on the police state's not being subject to law. Robert von Mohl, who first introduced the rule of law to German jurisprudence, contrasted the *Rechtsstaat* ("legal" or "constitutional" state) with the aristocratic *Polizeistaat* ("police state").

George Orwell's novel⁵³ *Nineteen Eighty-Four*, some argue that is more prophetic than fiction; in his political novel, Orwell, describes Britain under a socialist totalitarian régime that continuously invokes (and helps to create) a perpetual war. This perpetual war is used as a pretext for subjecting the people to mass surveillance and invasive police searches. The state destroys not only the literal freedom after action and thought meant by expressions like "freedom of thought", but also literal freedom of thought.

In times of national emergency or war, the balance which may usually exist between the freedom of individuals and national security often tips in favour of the state. This shift may lead to allegations that the nation in question has become, or is becoming, a police state. The problematics deriving from the blurred area of what necessity requires and what democracy permits, inarguably, permits for dangerous interpretations of the extent of the powers vested on the legitimate holder of the use of violence, in other words, the state.

Because there are different political perspectives as to what an appropriate balance is between individual freedom and national security, there are no definitive objective standards to determine whether the term "police state" applies to a particular

⁵³ Orwell, George, '1984', London: Penguin, 1990.

nation at any given point in time. Thus, it is difficult to evaluate objectively the truth of allegations that a nation is, or is becoming, a police state. One way to view the concept of the police state and the Free State is through the medium of a seesaw, where any law focused on removing liberty is seen as moving toward a police state, and any law which limits government oversight is seen as moving toward a Free State.

War is often portrayed in prose as being a perfect precursor for establishing a police state, as citizens are more dependent on their government and the police for safety than usual.

v. Conclusion

Terrorism, was always present, even in 1948, when the Universal Declaration of Human Rights was being published, terrorism, and state terrorism, were both present and in existence, having still fresh wounds all around Europe inflicted by the Nazi's State-terrorism.

The systematic, gross and absolute cancellation of inderogable human rights by the state-terrorism practiced, violating fundamental human rights, must be addressed in order to be eliminated. Terrorism committed by the state, is state-terrorism, and as such should be treated and classified.

The rule of law commands, 'no one is above the law', which means that we are all accountable under the eyes of justice. Terrorism is a crime, where different links at the same machine must act in order to fulfil the actus reus, in other words responsible is not only the one that pull the trigger, but all the supporting services concluding to that shooting. The mens rea of the crime is and ought to be flexible, since the plethora of intentions involved would not allow for different codification of the mens rea; hence, the perpetrator does not need to have a concrete idea of the consequences of his acts.⁵⁴

In that sense, we can not allow for state's impunity when it acts within the purposes of terrorism; when the protector of peoples rights, state, assumes the role of the violator of rights, through punishable otherwise terroristic acts, should be possible to be held accountable for the specific crime of state-terrorism.

⁵⁴ Prosecutor v. Dusko Tadic, para. 657.

The diminishment of the value of individual human rights in the name of collective rights or in the case of public safety and security, has changed the scenery of the human rights evolution we have witnessed since the Second World War, into a new table of negotiations of inderogable⁵⁵ fundamental and unquestionable human rights, such as the right not to be subjected to torture or degrading or inhuman treatment.⁵⁶ The right to privacy and the right to a fair trial or the standards of the Due Process of Law. 'If governments use torture and other ill-treatment, they resort to the tactics of terror. Both torturers and terrorists rely on fear to achieve their aims. Both deny and destroy human dignity. Both assume the end justifies the means.'⁵⁷

There are two sides of the same coin, for example Dershowitz, argues that torture happens, it always has and it always will. It happens in democracies, it happens in dictatorships, it happens in Iran and it happens in the US. Thus, he says: *'Every democracy, including our own, has employed torture outside of the law. Throughout the years, police officers have tortured murder and rape suspects into confessing — sometimes truthfully, sometimes not truthfully.'*⁵⁸

The United States of America for instance, has been accused of sponsoring state terrorism and maintaining a hypocritical stance on terrorism by various United Nations-recognized governments and by various individuals, including funding or harbouring terrorists and even conducting operations which can be considered terroristic according to international and even US definitions.

Terrorism's essence is fear, the feeling of fear, and its usage as a tool for achieving a goal. No matter how many forms has engendered, or changes, transformations, and metamorfosis have occurred, the essence of terrorism is the same through centuries, that is to say, although everything surrounding the phenomenon are changing and overextending the net of the elements comprising the concept, in reality the essence of it, is the same; and is summarised in the phrase: 'fear as a tool for achieving a goal.'

⁵⁵ In his 2002 book "Why Terrorism Works," Dershowitz claimed that Murad had been tortured for 67 days and might have revealed crucial information about the plot.

⁵⁶ The Universal Declaration of Human Rights article 5 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

⁵⁷ Amnesty International, Terror and Counter-Terror Defending Our Human Rights, AI Index: ACT 40/009/2006, 26 August 2006.

⁵⁸ <http://heathlander.wordpress.com/2006/07/30/dershowitzs-arguments-for-the-legalisation-of-torture-are-both-nonsensical-and-unnecessary/> (Consulted at 26 March 2007).

3. IS THERE A LEGAL DEFINITION?

"Where the law has become unpredictable in its application because individual guilt is less important to the regime than collective obedience, we are clearly no longer dealing with a legitimate monopoly of violence, but state terrorism."

(Schmid 1991: 29)

There is not a legal definition of the term of state terrorism, of the magnitude and enforceability of International Law.

Hence, the closer point International Law has come into using language similar, synonymous or equivalent, referring to unlawful acts, of state terrorism, is to be found under the International Conventions, dealing with state-supported terrorism.

State terrorism, has not enjoyed the required academic & legal attention. Nevertheless, for scholars defining the term 'state terrorism', is as difficult as defining any other key terms.⁵⁹

On Regional Treaties, National Legislation, and rather south-eastern than the European Union and the other super powers empowered with international lawmaking powers, a researcher is bound to discover the opposite.

What I mean is that in the Arab Convention on the Suppression of Terrorism, in the Convention of the Organization of the Islamic Conference on Combating International Terrorism, or the Organization of African Union Convention on the Prevention and Combating of Terrorism, there are clear prohibitions imposed on the contracting states not to commit acts of terrorism. The language used in these Conventions, is clearer and bolder, than the one used in the United Nations, legislative attempts dealing with terrorism and state terrorism.

Hence, the need for mobilizing Comparative Law, and work by using the tools, that this area of the legal science is providing is necessary.

For example, in the **Arab Convention on the Suppression of Terrorism**⁶⁰, it is clearly stated in Article 3: 'Contracting States undertake not to organize, finance or commit terrorist acts or to be accessories thereto in any manner whatsoever.' It could not be more straightforward, than 'states undertake... not to commit terrorist acts...' there is no need for further argumentation; the law clearly prohibits the acts of

⁵⁹ See: Duvall and Stohl 1983; Stohl 1983; Schmid and Jongman 1988.

⁶⁰ Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998. (Deposited with the Secretary-General of the League of Arab States).

terrorism when these are to be committed by the state. The Treaty places an obligation and receives an implied promise from the contracting state, not to commit state terrorism. Automatically, the states are recognising the possibility, of committing terrorism; and accept the prohibition of state terrorism.

In the **Organization of African Union Convention on the Prevention and Combating of Terrorism**⁶¹, Part II, Article 4 (1) it is explicitly stated: 'State Parties undertake to refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.' In this Convention there is not a significant change of language or approach to the prohibited unlawful acts. What can be observed is a very similar approach in these two different Conventions.

In this Convention, Terrorism is defined in Article 1 (3): "Terrorist act" means:

(a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

- (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
- (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- (iii) create general insurrection in a State.'

And last but not least, in the **Convention of the Organization of the Islamic Conference on Combating International Terrorism**⁶², Article 3, I, it is rigorously stated: 'The Contracting States are committed not to execute, initiate or participate in

⁶¹ Organization of African Union Convention on the Prevention and Combating of Terrorism (Algiers July 1999).

⁶² Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999. (Deposited with the Secretary-General of the Organization of the Islamic Conference).

any form in organizing or financing or committing or instigating or supporting terrorist acts whether directly or indirectly.'

Finally, in this Convention we can witness the obvious, that is to say, as I have underlined above, the words used do not leave space for doubt, since the Convention rigorously puts a commitment on the Contracting State 'not to execute,...or commit terrorist acts whether directly or indirectly.' According to this Convention, Part I, Article 1 (2): "'Terrorism" means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.'

I have underlined in the above Conventions the language used, which is similar if not synonymous. All three Conventions proceed into explicitly forbidding the signatory state from committing terrorism. Arguably, the above language constitutes and refers to 'state terrorism'.

In this point it is necessary to highlight the fact that according to International Law there is no legal definition of state terrorism. Ofcourse the above Conventions are creatures of International Law; but what we lack is International Consensus on a single definition. In order to achieve universal jurisdiction and confidence on International Law.

A condemnation and explicit prohibition of state terrorism can be found in all three above mentioned Conventions, but unfortunately not in the European Convention on the Suppression of Terrorism⁶³ or the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

Why is that possible, is a very good legal question. It is ironic to realise that the countries that are more likely to be accused and a noticeable number of them already has been accused, for state terrorism and state-supported terrorism, reach a consensus and agree into using such rigorous wording in Conventions that impose

⁶³ European Convention on the Suppression of Terrorism concluded at Strasbourg on 27 January 1977. (Deposited with the Secretary-General of the Council of Europe).

obligations for further criminalisation of the acts of state terrorism. A further criminalisation that can be turned back as boomerang on their governments and states.

In the writings of Judge Rosalyn Higgins, the first female judge elected to the International Court of Justice: Terrorism is a term without any legal significance. It is merely a convenient way of alluding to activities, whether of States or of individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both.⁶⁴

i. Legal definition and the ICC

One 1988 study identified a total of 109 different definitions, and the number would be far higher today. Despite decades of effort, with even greater focus after September 11, attempts to develop a generally accepted legal definition of Terrorism have failed.

The same applies for state terrorism.

To date, terrorist attacks have been characterised as serious offences, of criminal nature.

The Preamble of the Rome Statute recognises that the Court itself is a last resort for bringing justice to the victims of genocide, war crimes, and crimes against humanity. It therefore calls upon all States to take measures at the national level and enhance international co-operation to put an end to impunity, and reminds States of their duty to exercise criminal jurisdiction over those responsible for such crimes. Thus, the Rome Statute assigns the Court a role that is complementary to national systems.

States are under an obligation to cooperate fully with the ICC according to Article 86, but there is no mechanism to secure swift compliance.

The Complementarity principle obligates the Prosecutor to defer to national legal systems, under Articles 18-19. Unless the state is unwilling to investigate and prosecute according to Article 17(2); or the state is unable to investigate and prosecute, (Article 17(3)).

This is in contrast with the ICTY and the ICTR, which have primacy over national jurisdictions.

⁶⁴ Rosalyn Higgins, 'The General International Law of Terrorism' in Rosalyn Higgins and Maurice Flory(eds), *Terrorism and International Law* (1997) 14, 28.

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Some scholars argue that trans-national, state-sponsored and state terrorism amounts to an international crime, and is already contemplated and prohibited by international customary law as a distinct category of such crimes.

Algeria, India, Sri Lanka and Turkey, proposed that terrorism be considered as one of the international crimes to be subjected to the jurisdiction of the International Criminal Court (ICC), namely as a crime against humanity,⁶⁵ many States including the US opposed such proposal essentially on four grounds: (i) the offence was not well defined; (ii) in their view the inclusion of this crime would politicise the Court; (iii) some acts of terrorism were not sufficiently serious to warrant prosecution by an international tribunal; (iv) generally speaking, prosecution and punishment by national courts were considered more efficient than by international tribunals.

Many developing countries also opposed the proposal advocating, that the Statute should distinguish between terrorism and the struggle of peoples under foreign or colonial domination for self-determination and independence. As a result, both that proposal and a later one by India, Sri Lanka and Turkey,⁶⁶ were rejected. Recent cases are in line with this cautious attitude.

In 1984, in *Tel Oren v. Libyan Arab Republic*, the Court of Appeals of the District of Columbia held⁶⁷ that since there is no agreement on the definition of terrorism as an international crime under customary international law, this offence does not attract universal jurisdiction.

Recently, on 13 March 2001, in a serious case of terrorism allegedly involving Ghaddafi, the French Court of Cassation held that terrorism was not an international crime entailing the lifting of immunity for heads of State; it therefore quashed proceedings initiated against the Libyan leader.⁶⁸

The terrorist attack of 11 September has been defined a crime against humanity by a prominent French jurist and former Minister of Justice, Robert Badinter, by the UN Secretary-General Kofi Annan, as well as by the UN High Commissioner for Human Rights, Mary Robinson.⁶⁹ Distinguished international

⁶⁵ See A/CONF.183/C.1/L.27.

⁶⁶ See A/CONF.183/C.1/L.27/Rev.1.

⁶⁷ 726 F.2d 774 (D.C. Cir. 1984).

⁶⁸ See the text of the decision in *Bulletin des arrêts de la Cour de Cassation, Chambre criminelle*, March 2001, no. 64, at 218-9. See thereon the comments by S. Zappalà, in 12 EJIL (2001), 595-612 and by F. Boitard in 105 RGDIP (2001), at 474-91.

⁶⁹ Badinter and Annan have made statements to the French radio and CNN respectively. For the statement of M. Robinson see *UN Daily Highlights*, 25 September 2001. <http://www.un.org/News/dh/20010925.htm> (Consulted at 23 March 2007).

lawyers have taken the same view.⁷⁰ It is an undeniable fact, that this barbarous action reflects all the elements of crimes against humanity: the magnitude and extreme gravity of the attack as well as the fact that it has targeted civilians, is an injury inflicted to the whole humanity, and part of a widespread or systematic practice.

It may happen that States gradually come to share this characterization and consider serious crimes of terrorism as falling under crimes against humanity, in particular, under the subcategories of 'murder' or 'extermination' or 'other inhumane acts' included in Art. 7 of the ICC Statute. If this occurs, the notion of crimes against humanity would be broadened.

However, the problems that would then arise will be of, which will be the specific conditions under which terrorist attacks fall under this notion, and of, whether the future ICC would be authorized also to adjudicate serious cases of terrorism.

ii. Methods of state-terrorism

The methods that may be used in order for state terrorism to be achieved vary considerably. It is not different to the problematics of terrorism itself.

Kangaroo courts, torture, terror bombing, kidnapping, and extrajudicial execution are said to be common practices of state terrorism, often used to terrorize domestic and foreign populations by sovereign or proxy regimes.

Citizens of Western nations are generally protected from unfair trial by constitutional or legislative safeguards and the requirements of due process. Undeveloped nations may have weaker institutions and unstable political climates that allow governments to have greater influence over the judiciary than in wealthier nations, allowing dissenters to be victimized as criminals.

According to Amnesty International (1997)⁷¹, in 1996, out of 150 countries surveyed, 82 had participated in torture.

Classical examples of "state terror" are the "death squads" that operated at various times in some South American countries.

There are numerous of examples that may illustrate what can be classified as methods of state terrorism.

⁷⁰ See for instance Alain Pellet, in *Le Monde*, 21 September 2001, at 12. Also the British lawyer G. Robertson, Q.C. had suggested this definition (see *The Times*, 18 September 2001, at 18).
⁷¹ (<http://www.amnesty.org/>) (Consulted at 26 April 2007).

An illustrating example can form the fact that, the Cuban government officials have accused the United States Government of being an accomplice and protector of terrorism against Cuba on many occasions. According to Ricardo Alarcón, President of Cuba's national assembly "Terrorism and violence, crimes against Cuba, have been part and parcel of U.S. policy for almost half a century." The claims formed part of Cuba's \$181.1 billion lawsuit⁷² in 1999 against the United States on behalf of the Cuban people which alleged that for over 40 years, "terrorism has been permanently used by the U.S. as an instrument of its foreign policy against Cuba," and it "became more systematic as a result of the covert action program." The lawsuit detailed a history of terrorism allegedly supported by the United States. The United States has long denied any involvement in the acts named in the lawsuit.

In the same continent, following the rise to power of the left-wing Sandinista government in Nicaragua, the Reagan administration ordered the CIA to organize and train the right wing guerrilla group "Contras". Florida State University professor, Frederick H. Gareau, has written⁷³ that the Contras "attacked bridges, electric generators, but also state-owned agricultural cooperatives, rural health clinics, villages and non-combatants." US agents were directly involved in the fighting. "CIA commandos launched a series of sabotage raids on Nicaraguan port facilities. They mined the country's major ports and set fire to its largest oil storage facilities." In 1984 the US Congress ordered this intervention to be stopped, however it was later shown that the CIA illegally continued⁷⁴. Professor Gareau has characterised these acts as "wholesale terrorism" by the United States.

In 1984 a CIA manual for training the Nicaraguan contras in psychological operations was discovered, entitled "Psychological Operations in Guerrilla War".⁷⁵

The manual recommended "selective use of violence for propagandistic effects" and to "neutralize" government officials. Nicaraguan Contras were taught to lead:

"...selective use of armed force for PSYOP [psychological operations]

⁷² <http://edition.cnn.com/WORLD/americas/9906/02/cuba.billions/> (Consulted at 06 April 2007).

⁷³ Gareau, Frederick H., *State Terrorism and the United States*, London: Zed Books, 16 & 166, 2004.

⁷⁴ See Iran-Contra Affair. See: Louis Fisher (October 1989). "How Tightly Can Congress Draw the Purse Strings?", *American Journal of International Law* 83 (4): 758-766.

⁷⁵ Declassified Army and CIA Manuals. *Latin American Working Group*. Retrieved on 2006-07-30. See at <http://www.lawg.org/misc/Publications-manuals.htm> (Consulted at 06 April 2007).

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effect... Carefully selected, planned targets — judges, police officials, tax collectors, etc. — may be removed for PSYOP effect in a UWOA [unconventional warfare operations area], but extensive precautions must insure that the people "concur" in such an act by thorough explanatory canvassing among the affected populace before and after conduct of the mission."

The Guardian newspaper quoted a survivor of a Contra attack on Jinotega Province:

"Rosa had her breasts cut off. Then they cut into her chest and took out her heart. The men had their arms broken, their testicles cut off, and their eyes poked out. They were killed by slitting their throats and pulling the tongue out through the slit."⁷⁶

The Republic of Nicaragua vs. The United States of America⁷⁷ was a case heard in 1986 by the International Court of Justice which found that the United States had violated international law by supporting Contra guerrillas in their war against the Nicaraguan government and by mining Nicaragua's harbours. The Court ruled in Nicaragua's favour, but the United States refused to abide by the Court's decision, on the basis that the court erred in finding that it had jurisdiction to hear the case.⁷⁸ The court stated that the United States had been involved in the "unlawful use of force"⁷⁹ Author Noam Chomsky describes that in:

⁷⁶ The Guardian, 15 November 1984.

⁷⁷ Official name: *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Jurisdiction and Admissibility, 1984 ICJ REP. 392 June 27, 1986.

⁷⁸ Morrison, Fred L. (January 1987). "Legal Issues in The Nicaragua Opinion". *American Journal of International Law* 81: 160-166. "Appraisals of the ICJ's Decision. Nicaragua vs United State (Merits)". International Court of Justice Year 1986, 27 June 1986, General list No. 70, paragraphs 251, 252, 157, 158, 233. www.icj.org (Consulted at 30 July 2006).

⁷⁹ On the War in Afghanistan Noam Chomsky interviewed by Pervez Hoodbhoy. *chomsky.info*. Retrieved on 2006-07-30.

The World Court considered their case, accepted it, and presented a long judgment, several hundred pages of careful legal and factual analysis that condemned the United States for what it called "unlawful use of force"--which is the judicial way of saying "international terrorism"--ordered the United States to terminate the crime and to pay substantial reparations, many billions of dollars, to the victim.⁸⁰

The ICJ used the Psychological Operations in Guerrilla Warfare CIA manual as evidence in the case.

Professor Noam Chomsky of the Institute for Policy Studies has referred to the tactics used by agents of the US government and their proxies in their execution of US foreign policy in such countries as Nicaragua, Chile, Costa Rica, Honduras, Argentina, Colombia, Turkey, Vietnam, Laos and Cambodia as a of terrorism from which the term "American terrorism" has been drawn Chomsky has also described the US as "a leading terrorist state." After President Bush began using the term "War on Terrorism," Chomsky stated:

The U.S. is officially committed to what is called "low-intensity warfare." [...] If you read the definition of low-intensity conflict in army manuals and compare it with official definitions of "terrorism" in army manuals, or the U.S. Code, you find they're almost the same.⁸¹



⁸⁰ Barsamian, David. "The United States is a Leading Terrorist State An Interview with Noam Chomsky". *Monthly Review*. (2001).

iii. Acts labelled as state terrorism

There are many countries in the world that has been accused of acts of state terrorism.

Burma for example, is reportedly one of the few countries that are listed as practicing state terrorism by many UN bodies including hiring child soldiers and killing unarmed democracy protestors in 1988.

In Cambodia, during the rule of the Pol Pot, about 1.7 million people were killed, or one-fifth of the country's population of the time. The Killing Fields and the Tuol Sleng prison, also known as S-21, shocked the entire world as the government committed brutal auto-genocide.

In China, The current regime of People's Republic of China is also often denounced as perpetrator of state terrorism in its repression of pro-democracy activities and its persecution of Falun Gong.

In Indonesia, the most notable crime of the Suharto regime (1966-1998) was its occupation of East Timor, with its military arm committing countless acts of terrorism against the population for nearly a quarter century (1975-1999). It is noteworthy that the crimes of the Suharto regime ended only after the United States ended its 30-year policy of substantial military aid to Indonesia.

Furthermore, Israel is one of the most frequently accused nations in the world of committing State Terrorism, mainly because of its tendency to bomb and open fire in the middle of civilian neighbourhoods. Israel bombings of civilian areas in Lebanon in the war with Hezbollah in 2006 were considered to be state terrorism, notably the air strike on Qana that left 36 children dead as well as the bombing of a UN observation post in Lebanon during the war. In April 2002 the Organization of the Islamic Conference (OIC) denounced Israel's actions during the al-Aqsa Intifada as state terrorism,⁸² as did CNN founder Ted Turner in June of that year⁸³ In 2004 Turkish prime minister Recep Tayyip Erdoğan made similar accusations,⁸⁴ and in 2006 Turkish OIC Secretary-General Ekmeleddin İhsanoğlu condemned Israel's actions during the 2006 Israel-Gaza conflict and 2006 Israel-Lebanon conflicts as state terrorism.

⁸² <http://www.tribuneindia.com/2002/20020402/world.htm> (Consulted at 22 March 2007).

⁸³ CNN chief accuses Israel of terror by Oliver Burkeman in New York and Peter Beaumont in Jerusalem June 18, 2002 for The Guardian.

⁸⁴ http://news.bbc.co.uk/2/hi/middle_east/3772609.stm (Consulted at 18 April 2007).

North Korea has sponsored numerous acts of terror against South Korea since its founding.⁸⁵

In the 1980s North Korea was linked to two international terrorist attacks. In the Rangoon bombing of October 1983, North Korean agents were responsible for an attempt on the life of South Korean President Chun Doo Hwan at Burma's National Cemetery in Rangoon, Burma which killed 17 South Korean officials including the South Korean foreign minister and ambassador to Burma as well as four Burmese. President Chun arrived at the cemetery behind schedule and was unharmed. The Burmese government later apprehended the North Korean agents responsible, who confessed. On November 29, 1987, Korean Airlines Flight 858 exploded in midair between Abu Dhabi and Bangkok while on its way to Seoul. Almost all of the 115 people who died were South Koreans. On January 15, 1988, a female North Korean agent confessed to planting a bomb on the plane in an attempt to disrupt the 1988 Olympics. That attack is thought to have been devised to scare tourists away from visiting the 1988 Summer Olympics in Seoul after North Korea was not asked to co-host the events.⁸⁶

In Syria, numerous assassinations of opponents of Syria and the Syrian government have been alleged to involve the Syrian government. No substantial evidence has been produced to prove these allegations; however, the United Nations appointed first Detlev Mehlis and then Serge Brammertz, former Deputy Prosecutor with the International Criminal Court ICC, to serve as the Commissioner of the UN International Independent Investigation Commission (IIIC) into the Valentine's Day bombing that killed former prime minister, Rafic Hariri.⁸⁷ The International Independent Investigation Commission has reported "credible reliable evidence" implicating Lebanese and Syrian intelligence services in the assassination of Hariri.⁸⁸ The UN Security Council authorized the commission to expand its investigation to include all the assassinations and terrorist attacks on prominent anti-Syrian politicians and journalists beginning with the attempted murder of Marwan Hamade in October

⁸⁵ <http://www.bangladeshobserveronline.com/new/2005/12/30/editorial.htm> (Consulted at 12 April 2007).

⁸⁶ <http://www.thedailystar.net/magazine/2005/12/03/remembrance.htm> (Consulted at 12 April 2007).

⁸⁷ <http://www.un.org/apps/news/story.asp?NewsID=17129&Cr=middle&Cr1=leban> (Consulted at 12 April 2007).

⁸⁸ <http://usinfo.state.gov/xarchives/display.html?p=washfileenglish&y=2006&m=November&x=2006121170305idybeckm0.8181879> (Consulted at 21 April 2007).

of 2004 and including all the assassination of anti-Syrian journalists and lawmakers and all the bombings in the anti-Syrian neighbourhoods of Beirut⁸⁹.

The United Nations has also established an international tribunal to try those found responsible for the February 2005 killing of former Lebanese Prime Minister Rafic Hariri and 22 others as well as all the assassination that occurred since the Hariri murder.⁹⁰ It is believed that Syrian officials are primary suspects in the 2005 assassination of Hariri, and Damascus has opposed an international tribunal because it is believed that should senior Syrian officials be implicated, it would undermine the Baathist regime.⁹¹ On May 9, 2007, President Bashar Assad announced that his government would not recognize the U.N.-mandated international tribunal on the assassination of Rafic Hariri even though the U.N. probe has implicated Syrian security officials in the 2005 assassination of the Lebanese prime minister.⁹²

Another vivid example can be drawn by Argentina. In Argentina, the "Dirty War" in the 1970s is a classic example of the use of terror tactics employed by a state against its own people. In 1976, the Argentine military overthrew the government of Isabel Peron and undertook a campaign against all people labelled as subversives, who were thought to form the social base for a violent leftist insurgency. Estimates of the number of people "disappeared" and presumed dead range from 10,000 to over 30,000. A 1984 official report following the return to democracy put the total at near 11,000. Tactics included death squads, forced disappearance, torture, child stealing, concentration camps, rapes and ideological persecution.⁹³

The United States government has been accused by various countries, NGOs and independent researchers of perpetrating organized state terrorism. USA is also the only country found guilty of state terrorism by the International Court of Justice; in the Nicaragua case.

There are numerous examples, that proves the point of this paper, what should also be mentioned is, the western super power's colonial spread of terror, including countries such as the United kingdom, France, Spain, etc.

⁸⁹ Idem.

⁹⁰ <http://www.un.org/News/Press/docs/2006/sc8677.doc.htm> (Consulte at 26 March 2007).

⁹¹ http://news.yahoo.com/s/usatoday/20070524/cm_usatoday/therealbattleforlebanonwilltakeplaceattheu (Consulted at 16 March 2007).

⁹² http://news.yahoo.com/s/ap/20070510/ap_on_re_mi_ea/syria_assad (Consulted at 04 May 2007).

⁹³ www.nuncamas.org (Consulted at 19 March 2007).

iv. Impunity and Perpetrators

Nevertheless, a subject that is of a great importance is the question of which categories of perpetrators should be the object of investigations and prosecution, for the crime of state terrorism. The latest legal debates concerning these key legal issues, can be found in relation to the International Criminal Court.

The ICC in asking the same question, but in relation to the general jurisdictional powers of the Court over perpetrators; published the Policy Paper, which, asserts that; 'The global character of the ICC, its statutory provisions and logistical constraints support a preliminary recommendation that, as a general rule, the Office of the Prosecutor should focus its investigative and prosecutorial efforts and resources on those who bear the greatest responsibility, such as the leaders of the State or organisation allegedly responsible for those crimes.'⁹⁴

Article 27 of the Rome Statute provides that the ICC has jurisdiction over all persons regardless of their official status and that any immunity or special procedural rules that they may enjoy because of this official status will not bar the ICC from exercising its jurisdiction over that person. This is one of the most important provisions in the Rome Statute and should be incorporated in any legislative action towards implementation to the national legal systems of the obligations placed by the Statute upon the signatory States.

The focus of the Office on investigating and prosecuting those bearing the greatest responsibility, while appropriate, has raised concerns of a so-called "impunity gap" which may be created if the Office is seen to limit its action to key leaders and major situations. The term 'those who bear the greatest responsibility', comes from the statute for the Special Court for Sierra Leone⁹⁵ which faced a very different reality as a temporary court with a three-year mandate. It's worth noting that the term "those who bear the greatest responsibility" is not mandated by the Rome Statute.

Furthermore, it is important to highlight complementarity which can play a part in preventing impunity. 'If the ICC has successfully prosecuted the leaders of a State or organisation, the situation in the country concerned might then be such as to inspire confidence in the national jurisdiction. The reinvigorated national authorities

⁹⁴ Paper on some policy issues before the Office of the Prosecutor, of September 2003. II, 2.1.
⁹⁵ Statute of the Special Court for Sierra Leone (SCSL Statute), January 16, 2002.

might then be able to deal with the other cases. In other instances, the international community might be ready to combine national and international efforts.⁹⁶

The truth is that, the ICC relies on the cooperation of the States. The States should give and reach consensus in order to the ICC to expand its powers or even retain them. If the States refuse cooperation the whole building might fall down. Some scholars argue, that this very fact renders difficult for the States to agree on something that might be turned back at them as boomerang.

The State is a political structure, governed by politicians, which means that the ideals of the International Criminal Justice are not always in the top of the considerations of a state when deciding on matters related to the ICC; hence there is the danger, for more complicated and clandestine interests to gain a place at the further development and evolution of International Criminal Law.

v. Key legal issues

An outline of the main key legal issues that we are facing today, in relation to the crime of state terrorism, will follow. Key legal issues in relation to the international criminal nature of the act itself; the 'legitimate monopoly of violence' implications in relation to the practice of unlawful use of violence; the crime of aggression; international customary law, its principles, and general international law's principles such as *ius ad bellum*, *ius in bello* in relation to terrorism.

The mixing of law and politics is inevitable in the full function of the international lawmaking mechanisms. International relations have a new empowered role to play in this redecorated theatre, of law birth scenery.

There has been advocates of the two ways of dealing with the definitional difficulties; that is to say, the general or the specific approach; each of them provides with pros and cons, but Nicholas Howen, the Regional Director for Asia-Pacific of the Office of the UN High Commissioner on Human Rights, in a paper for the International Council on Human Rights Policy in January 2002, says that "The problem in the UN is that states focus too much on who could be labelled a terrorist rather than what a terrorist act looks like. States could perhaps agree on a definition of terrorism if they limited it to attacks, aimed at civilians, which spread terror. This would in effect apply to peacetime the existing prohibitions in international

⁹⁶ Paper on some policy issues before the Office of the Prosecutor, of September 2003. II, 2.1.

humanitarian law of attacks on civilians during armed conflicts." The elements of targeting civilians as well as spreading terror are what are missing in the Arend and Beck⁹⁷ definition of terrorism.

The idea that International Humanitarian Law (IHL) "can provide guidance to the legal approach to terrorism in peacetime" was first broached by the long-time editor of the *International Review of the Red Cross* Hans, Peter Gasser, as early as 1985 in a paper entitled "Prohibition of terrorist acts in international humanitarian law." And then Schmid in his 1992 report to the UN Crime Prevention Office suggested considering an act of terrorism as "peacetime equivalent of a war crime."

And so, UN Secretary-General Kofi Annan, in his addresses to the General Assembly on 01 October 2001 and to the Security Council on 12 November 2001, while acknowledging the definition of terrorism as one of the most difficult issues before the UN, nevertheless referred to IHL according to which "even in situations of armed conflict, the targeting of innocent civilians is illegal."

The Austrian Professor Hans Koechler, in his Fourteenth Centenary Lecture at the Philippine Supreme Court on 12 March 2002, refers to this allusion to IHL as "a useful hint as to how to bridge the gap between the opposing schools of thought concerning the definition of terrorism as a crime."

Koechler then proposes what he calls a comprehensive or unified approach: In a universal and at the same time unified system of norms ideally to be created as an extension of existing legal instruments, there should be corresponding sets of rules;

1. Penalizing deliberate acts on civilians or civilian infrastructure in wartime (as covered by the Geneva Conventions), and
2. Penalizing deliberate acts on civilians in peacetime (covered by the 12 so far anti-terrorist conventions).

He says, "Such a harmonization of the basic legal rules related to politically motivated violent acts against civilians would make it legally consistent also to include the term 'state terrorism' in the general definition of terrorism."

⁹⁷ Arend, Anthony Clark, and Beck, Robert J., *International Law and the Use of Force: Beyond the UN Charter Paradigm*, Routledge, 1993.

vi. Conclusion

The Human Rights Regime faces challenges deriving from two main sources; that is to say, from the theory & the practice. The utopic & idealistic ideas, to become reality, to be put into practice, to implement & enforce them, is an undeniable fact that is not without its difficulties.

After the 11th of September 2001, the International Community's agenda has been violently altered, passed into an emergency state of being, of decision-making and has been mainly concerned with the suppression of terrorism, and the unending debates around the phenomenon of international terrorism.

International terrorism, which is an open wound for the human rights regime, and constitutes the most inhuman means of depriving the enjoyment of the most fundamental and inderogable rights and freedoms that every individual is entitled to enjoy by birth.

To date there has not been met a consensus on a single universal definition under International Law.

A simple definition of terrorism can be found in the United States Department of State, which states: 'premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine state agents, usually intended to influence an audience'.⁹⁸

The definition includes terror by the State, but the wording directs only in so far as it involves 'clandestine state agents'.

Van Krieken writes, 'it is exactly the discussion on State Terrorism which prevented and still prevents the international community from embarking on a common search for a definition which would be acceptable by all, the developed world, the developing world, the de-facto world powers and the self-conceived oppressed'.⁹⁹

Arguably, there might not be a great need for new terms and further codification of allegedly new crimes, since most of the acts that constitute terrorism are existing codified crimes, in the majority of the countries involved. Yet, state

⁹⁸ US Department of State, *Patterns of Global Terrorism*, 1988, (1989), p. v.

⁹⁹ Van Krieken, Peter J., (ed.), 'Terrorism and the International Legal Order', 'With Special Reference to the UN, the EU and Cross-Border Aspects', T M C- Asser Press, The Hague, 2002. p. 15-16.

terrorism is not a new crime, this paper argues that it has a new hypostasis, under its new acknowledged international form, but it is not a new criminal activity.

By using the term terrorism, 'not only emotional, but also legal doors will be opened which would otherwise have remained closed.'¹⁰⁰ 'By labelling a crime as a terrorist act enables and obliges the various actors to apply a different range of instruments and means. It also results in increasing both the minimum and the maximum penalties. It is therefore in the interest of the individual offender, the victim and the international regime to know exactly when a certain act amounts to terrorism and when it does not.

Nevertheless, IHL itself uses the term "terrorism," "acts of terrorism," "measures of terrorism," and "terror." So there should not be any shying away from these terms. Rather, IHL may yet help establish a precise and legally sound definition of terrorism to obviate its being used as a political weapon by vested powers. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, Article 33 makes reference to "measures of terrorism."¹⁰¹ The 1977 Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts, Article 4, and paragraph 2(d) makes reference to "acts of terrorism."¹⁰²

Nevertheless, the involvement of politics & international relations within the law-making processes engenders new dangers and risks for more shadows to cover the International Law's credibility.

¹⁰⁰ Van Krieken, Peter J., (ed.), 'Terrorism and the International Legal Order', 'With Special Reference to the UN, the EU and Cross-Border Aspects', T M C- Asser Press, The Hague, 2002.

¹⁰¹ www.unhchr.ch/html/menu3/b/92.htm - 174k - (Consulted at 13 April 2007).

¹⁰² www.unhchr.ch/html/menu3/b/94.htm - 33k - (Consulted at 13 April 2007).

4. PHILOSOPHICAL APPROACH

The term¹⁰³ philosophy derives from a combination of the Greek words 'philos' meaning love, or friend and sophia meaning wisdom. What philosophy is, or should be, is itself a philosophical question that philosophers have understood and used differently through the ages. 'It is the duty of philosophy to destroy the myths which had their origin in misconceptions, whatever darling hopes and valued illusions may be ruined by its explanations.'¹⁰⁴

Chapter is dealing with the problematics of state terrorism via the paths of philosophy.

It is rather inevitable to work in this line of reasoning, using the tools and arguments that philosophy has to offer. Philosophy's main duty or usefulness, has been argued, is to clarify and throw light in the dark aspects of any given phenomenon. In our case though, the mobilization of philosophy may help us in order to understand and if possible define in philosophical terms the phenomenon of state terrorism.

In the introduction of 'Philosophy in a time of terror'¹⁰⁵, Borradori claims that philosophy has a crucial contribution to make to the understanding of "terrorism", highlighting a certain "responsibility" of philosophy in evaluating the significance of a present event.

There are many that have accepted a broad definition according to which terrorism is simply politically or ideologically motivated violence, which is directed against civilians or non-combatants. In fact, this broad definition has become sufficiently widespread that Jeff McMahan refers to it as the "orthodox definition"¹⁰⁶.

The phenomenon of terrorism has caused a lot of debates and controversial definitions without concluding to a solid, concrete and complete explanatory codified definition. What is terrorism is a question that even today has not met a satisfying answer. Or to put it better, there has not been published a concrete and complete definition of terrorism, that would enjoy universal, international consensus of the

¹⁰³ Love of wisdom (Plato).

¹⁰⁴ Immanuel Kant, Critique of Pure Reason, 1781.

¹⁰⁵ Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

¹⁰⁶ See Jeff McMahan, "The Ethics of Killing in War," Ethics 114(2004): 693-733, apt. 729.

short that would render this definition applicable to an international court for instance, according to international law's rules and procedures.

'Terrorism has been described variously as both a tactic and a strategy, a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination'¹⁰⁷. The problem still remains with defining such acts as terrorism in order to prosecute certain heinous crimes. "Whether terrorism should be treated primarily as an international crime or should be viewed mainly as a political problem [which may have international criminal elements] has been debated by the international legal community for years."¹⁰⁸

There is the argument which says that "one man's terrorist is another man's freedom fighter", as Derrida points out¹⁰⁹, that for instance, the French "resistants" were labelled "terrorists" by the Germans during World War Two. The common sense and logic reasoning lead us to the obvious conviction of all violent acts that consequent to the harming of human beings as being *prima facie* evil and unjustified. Nevertheless, every accusation has the natural legal right to provide with defense, a right that has been denied to the majority of the accused suspected terrorists¹¹⁰, although it is clearly ensured under the title of the right to a fair trial¹¹¹. Those to be charged and tried must be charged with a recognizable crime under law and tried before an independent and impartial tribunal, such as a US federal court, in full accordance with international standards of fair trial.

From Kant's liberal perspective, war is to be avoided, although it is a necessary component in the development of history. Kant says that "Nature has chosen war as a means" of attaining its ends.¹¹² These ends include driving human beings apart so that they might diversify and expand and also pushing us together to form nations and states. This eventually leads to the development of republicanism and the drive toward perpetual peace. Kant thus enumerates articles of perpetual peace, which include the basic idea of restraint and justice in war. Notable is his 6th

¹⁰⁷ International Terrorism and Security Research, <http://www.terrorism-research.com/>

¹⁰⁸ Rosalyn Higgins, *The General International Law of Terrorism*, Terrorism and International Law, eds. Rosalyn Higgins and Maurice Flory, London: Routledge, 1997, 21.

¹⁰⁹ Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

¹¹⁰ See Guantanamo. (FBI Memorandum Details Guantánamo Commander's Repeated Refusal to Abandon Illegal and Ineffective Interrogation Techniques, ACLU). <http://www.aclu.org/intlhumanrights/gen/24249prs20060223.html>

¹¹¹ Article Ten of the Universal Declaration of Human Rights, the Sixth Amendment of the US Constitution, and Article Six of the European Convention of Human Rights

¹¹² Kant, *Perpetual Peace in Kant: Political Writings*, 96.

article, which states that acts of "hostility" such as the use of assassins and poisoners should be prohibited because they undermine the mutual confidence necessary for future peace. "It must remain possible, even in wartime, to have some sort of trust in the attitude of the enemy..."¹¹³ This indicates that terrorism would be prohibited as well as what Kant calls a "war of extermination" which could only conclude in "the vast graveyard of the human race."¹¹⁴ Kant's philosophy of history and his political philosophy thus point beyond war and condemn those activities such as terrorism and genocide, which make a livable peace impossible.

Furthermore, to come back to the present and use a current example; in the name of public safety for instance, governments tend to legitimise the use of torture as a method to extract information from suspected terrorists. A method which has made a 'flag' the argument which states that in order to save thousands of civilian lives from a terroristic attack, you are entitled to use all means of interrogation that are known to be effective, including the use of methods that are prohibited and are in breach of international legal binding documents, such as the prohibition of torture, which is an inderogable right; the right not to be tortured. In other words one life is less important than the public safety. So these governments sacrifice the human rights of one, two or ten human beings, under the necessity to protect thousands of human rights of thousands of human beings. It would sound good, if mathematics is what we are interested in. If the numbers make a difference, but in the human rights theory the individual can not be measured or priced under these terms. That is a grey area in the theory of human rights, which is in desperate need to meet clarification and to be put under light. I will elaborate on that argument later on in this paper. To proceed step by step I will continue by focusing on terrorism which in its modern forms, that is to say, in its international dimension, is a globalised phenomenon, and should be evaluated under this light. As Habermas views the issue, is that he sees the 'outbreak of terrorism mainly as a failure of communications'¹¹⁵, Habermas 'links this rejection of modernity and defect of communication not to a cultural problem but to an economic

¹¹³ Idem.

¹¹⁴ Hegel, *Philosophy of Right* (Cambridge: Cambridge University Press, 1992), § 338.

¹¹⁵ ...of dialogue: the relation between fundamentalism and terrorism is mediated by violence, which Habermas understands as a communicative pathology: the spiral of violence begins as a spiral of distorted communication that leads through the spiral of uncontrolled reciprocal mistrust, to the breakdown of communication.

factor: globalization, which, as well for Derrida, plays an important role in the outburst of terrorist attacks'¹¹⁶.

In my view, the media play an important role in our understanding of the phenomenon as well, the new science of public information management and the propaganda that the public opinion is condemned to be formed under should also be taken under consideration in any relevant evaluation of the phenomenon.

¹¹⁶ Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

i. Reigns of Terror

Reign of Terror¹¹⁷, 1793–94, was a period of the French Revolution characterized by a wave of executions of presumed enemies of the state. Directed by the Committee of Public Safety, the Revolutionary government's Terror was essentially a war dictatorship, instituted to rule the country in a national emergency.

When French military success began in June, 1794, popular discontent with the brutal measures at home grew evident. By this time the members of the committee were at odds with one another and with the Committee of General Security. The members of the National Convention, fearing that the new purge would be turned against them, joined forces with Robespierre's enemies on the committees and overthrew Robespierre on 9 Thermidor (July 27, 1794).

The Reign of Terror was followed by the Thermidorian reaction under a reconstituted Committee of Public Safety and by the White Terror, in which many former terrorists were executed. While the Reign of Terror answered the need for a strong executive and saved France from anarchy and military defeat, its effect upon public opinion, especially foreign opinion, was extremely harmful to the Revolutionary cause.

The repression also brought thousands of victims before the Paris Revolutionary Tribunal, whose work was expedited by the draconian Law of 22 Prairial¹¹⁸ which had led to the Terror. As a result of Robespierre's insistence on associating Terror with Virtue, his efforts to make the republic a morally united patriotic community became equated with the endless bloodshed. Finally, after 26 June's decisive military victory over the Austrians at the Battle of Fleurus, Robespierre was overthrown by a conspiracy of certain members of the Convention on 9 Thermidor. Following their failed attempt to raze Paris, the Robespierrists and most members of the Commune were guillotined. This led to the Thermidorian reaction, which was characterized by a much lesser known White Terror. This reaction killed hundreds of Jacobins. This continued intermittently for some years afterward in the form of unchecked violence by gangs of Muscadins as well as rigged trials by the authorities.

¹¹⁷ www.Britannica.com (Consulted at 24 March 2007).

¹¹⁸ 10 June 1794.

In relation, Marchak's 'Reigns of Terror'¹¹⁹ is a study of states that have committed gross human rights crimes against their own citizens. The author in this study, seeks to discover whether these states have anything in common; whether there are preconditions that can be identified as leading to crimes against humanity, so that the world community could take preventive action in similar situations elsewhere. She provides short histories of nine culturally and historically diverse societies where such crimes occurred during the twentieth century, including the Ottoman Empire in Armenia, the USSR in the Eastern Ukraine, Nazi Germany, Cambodia under Pol Pot, Burundi, Rwanda, Argentina, Chile, and Yugoslavia.

Marchak departs significantly from mainstream explanations of genocide, rejecting racism as a fundamental cause and disputing a wide range of other explanations that cite racist and religious ideologies, perception of threat, authoritarianism, and unique historical circumstances as primary causes. She argues that while these variables may be contributing factors, states move toward human rights crimes because their governments can no longer sustain a particular social hierarchy. Reasons for their paralysis may be economic, environmental, demographic, or purely political. In an attempt to re-establish the former status quo, they turn against groups low on the hierarchical scale, some of which may be defined in ethnic terms. If governments come into power as revolutionary forces, they may commit such crimes in order to establish a new social hierarchy. Other necessary but insufficient conditions for state crimes include the military capacity for committing mass murder, the creation of ideology that justifies such action, and the failure of independent institutions such as the mass media and universities to counter ideological and military forces.

There are numerous examples that may be found falling under the same heading of 'Reigns of terror'. For instance, there are arguments expressed by top academics¹²⁰, saying that NATO has installed a 'Reigns of Terror', in Kosovo. 'NATO ostensibly denies Kosovo's Liberation Army (KLA) involvement. These so-called "unmotivated acts of violence and retaliation" are not categorised as "war crimes" and are therefore not included in the mandate of the numerous FBI and Interpol police investigators dispatched to Kosovo under the auspices of the Hague

¹¹⁹ Marchak, Patricia, *Reigns of Terror*, Montreal, Canada: McGill-Queen's University Press, 2003.

¹²⁰ <http://www.nadir.org/nadir/initiativ/agp/free/chossudovsky/reign.htm> . (Consulted on 17 April 2007).

War Crime's Tribunal (ICTY). Moreover, whereas NATO has tacitly endorsed the self-proclaimed KLA provisional government, KFOR the international security force in Kosovo has provided protection to the KLA military commanders responsible for the atrocities. In so doing both NATO and the UN Mission have acquiesced to the massacres of civilians.¹²¹

The United Nations High Commissioner for Refugees (UNHCR), confirms in this regard that:

"more than 164,000 Serbs have left Kosovo during the seven weeks since... the NATOled Kosovo Force (KFOR) entered the province... A wave of arson and looting of Serb and Roma homes throughout Kosovo has ensued. Serbs and Roma remaining in Kosovo have been subject to repeated incidents of harassment and intimidation, including severe beatings. Most seriously, there has been a spate of murders and abductions of Serbs since mid June, including the late July massacre of Serb farmers".¹²²

The paradox, is that Human Rights were and are the motivating power for NATO's involvement and invasion in Kosovo. All the bombardments and the killings of civilians occurred within these terms, in order to protect human rights. The double standards though, is a topic for discussion that creates a shade in the credibility of NATO and the United Nations purposes and effectiveness, as well as the whole human rights world.

¹²¹ Idem.

¹²² Human Rights Watch, 3 August 1999.

ii. Democracy vs Terrorcracy

*Wherever genuine philosophizing begins mere reportage
comes to an end.*

—Jürgen Habermas

The word democracy derives from the ancient Greek word, '*democratia*' (*δημοκρατία*), formed from the roots *demos* (*δῆμος*), "people," "the mob, the many" and '*kratos*' (*κράτος*) "rule" the holder of power.

There is a plethora of definitions of the term democracy. It is said to be for instance, 'the political orientation of those who favour government by the people or by their elected representatives; a political system in which the supreme power lies in a body of citizens who can elect people to represent their majority rule, and the doctrine that the numerical majority of an organized group can make decisions binding on the whole group.'¹²³

The term democracy¹²⁴ indicates a form of government where all the state's decisions are exercised directly or indirectly by a majority of its citizenry through a fair elective process. When these factors are met, a government can be classified as such. This can apply to a multitude of government systems as these concepts transcend and often occur concomitantly with other types.

A system by which social equality is favoured; Democracy means "rule of the people". Democracy¹²⁵ includes open discussion, direct voting on significant issues, policy formation in all realms of social life; economics, education, religion and public life.

Democracy, has been synonymous, with the real ruling of the people for the people. It has been an idealistic idea, that throughout the centuries different interpretations of its meaning has led political scientists to create different terms to cover the variety of different forms of democracy, for instance 'direct democracy', 'liberal democracy', socialist democracy', and so on and so forth.

In this part of my paper I attempt to draw an analogy, of the relationship of democracy and state terrorism.

I am highlighting the possibility of a democratic state to end up using terror as means and form of government.

¹²³ wordnet.princeton.edu/perl/webwn (Consulted at 09 May 2007).

¹²⁴ en.wikipedia.org/wiki/Democracy (Consulted at 09 May 2007).

¹²⁵ www.cupe.sk.ca/terminology.htm (Consulted at 09 May 2007).



In reality, state terrorism, can take the form of a political system, or a form of government.

What follows is a conceptualisation and a philosophical hypothesis driven by language, that I am taking a risk in presenting it in this paper.

In the Greek language for example where the term democracy was born from, the word democracy and the word terrorism have the same root or belong to the same family of words; and both terms share the second synthetic 'kratos', which can be translated as power, holder of power or state.

'Δημοκρατία - τρομοκρατία', (**Democratia** – **Tromocratia**), 'dimocratia' is in the English language the term democracy, and 'tromocratia' is the word terrorism. Tromocratia, (terrorism), then etymologically means the 'tromo-cratia', or 'Terrorcracy', the holder of power, 'kratos' by terror. The people are no more the holders of power, of the government, but terror is. The difference in the two terms, can be found in the first part of the word, the 'demos', (people), in the word demo-cratia, and the 'tromo' (terror) in the term tromo-cratia. The second part is the same, the power and control, and the holder of power, or state, then the first part of the terms constitutes who is the holder, and in the case of democracy is the people, 'demos, in the case of terrorism, 'tromocratia', or Terrorcracy the holder of power is the terror.

'Terrorcracy', then could become a new term, which could serve in philosophy, political or legal, as a vehicle for our better understanding of the phenomenon of terrorism and state terrorism in particular.

Jacques Derrida¹²⁶, a great philosopher, refers to the power of language, in the term of "Logocentrism".

Logocentrism is the attitude that logos, which is the Greek term for speech, thought, law, or reason, is the central principle of language and philosophy.¹²⁷ Logocentrism is the view that speech, and not writing, is central to language. Thus, "grammatology" (a term that Derrida uses to refer to the science of writing) can liberate our ideas of writing from being subordinated to our ideas of speech. Grammatology is a method of investigating the origin of language which enables our concepts of writing to become as comprehensive as our concepts of speech. Grammatology, also derives from the Greek language and consists of two words.

¹²⁶ Derrida, Jacques, 'Of Grammatology', (G. Spivak trans.), Baltimore, The John Hopkins University Press, 1974.

¹²⁷ Powell, Jim, 'Derrida for Beginners', (New York: Writers and Readers Publishing, 1997), p.33.

'Gramma', which means letter, or writing, and 'logos', which means speech, though, law or reason, as it has been stated before.

According to logocentrist theory, speech is the original signifier of meaning, and the written word is derived from the spoken word. The written word is thus a representation of the spoken word. Logocentrism asserts that language originates as a process of thought that produces speech, and it asserts that speech produces writing.

Logocentrism is promoted by the theory that a linguistic sign consists of a signifier which derives its meaning from a signified idea or concept. Logocentrism asserts the exteriority of the signifier to the signified. Writing is conceptualized as exterior to speech, and speech is conceptualized as exterior to thought. However, if writing is only a representation of speech, then writing is only a 'signifier of a signifier.' Thus, according to logocentrist theory, writing is merely a derivative form of language which draws its meaning from speech. The importance of speech as central to the development of language is emphasized by logocentrist theory, but the importance of writing is marginalized.

This conceptualisation might be taking a bit too far my argumentation, but I believe that it makes absolutely sense. For example, terrorism, or Terrorcracy (tromokratia) as it is in the Greek language, means the state of terror, the same state that is supposed to protect the citizens from terror and terrorism, mobilises its utilities, and usefulness as it can be argued, in order to assume the legitimisation and the full compliance, if not obedience of its people to the laws or political decisions and strategies that the state in question prefers. The state in this analogy is always referring to the government of the day, elected by democratically processes or not.

What is happening then when in a democratic state, the citizens are more terrified by the counter-terrorism measures than the terrorism itself; is a good question that requires reflection, if not clarification.

Inarguably, the argument that wants the states that are allies in the so called 'war on terror' to be heading towards an absolute police state, is a very strong one. The relationship of a police state, with the ideals of democracy, is undoubtedly a paradoxical one.

Democracy's ideals and cornerstone, is the protection of the individual, the ideals of freedom and human rights are Siamese twins with the idea of democracy.

There are a grand number of academics arguing for the necessity to stop creating new terms in relation to terrorism, since the danger of creating a

terminological chaos is obvious. Nevertheless, democracy and Terrorcracy are two terms that I believe should not be missing from my argumentation, and from this paper.

Douzinas¹²⁸ takes Logocentrism deconstructive term, into law's Logonomocentrism¹²⁹. In the metaphor of Logonomocentrism, "the claim of the unity of self and others in absolute reason of the law" is made. Under the light that Logonomocentrism as a theory provides, the 'logos' (words) is again the protagonist, the written words, terms are what is important, and in relation to law (Greek for law, 'nomo'), the necessity to have completed meaningful words and terms that reflect the whole spectrum of any given phenomenon in need of a legal regulation. The central power is invested in 'logos', in language, and this could become a vehicle for our further development of the laws on Terrorism and state terrorism. So the central protagonist of the law is the terms, the terms, the words, and the language.

iii. Psychoanalysis and the law

A "philosopher" would be one who seeks a new criteriology to distinguish between "comprehending" and "justifying."

—Jacques Derrida

'Psychoanalysis endeavours to provide a systematic theory of human behaviour. Law, both as a body of substantive decisions and as a process for decision making, has been created by man to regulate the behaviour of man. Psychoanalysis seeks to understand the workings of the mind. Law is mind-of-man-made. There is in law, as psychoanalysis teaches that there is in individual man, a rich residue which each generation preserves from the past, modifies for the present, and leaves for the future. An initial, though tentative assumption that one discipline is relevant to the other seems therefore warranted. The congruence of their concern for man, his mind, his behaviour, and his environment may justify this assertion of mutual relevance. But

¹²⁸ Douzinas, Costas, Warrington, Ronnie, McVeigh, Shaun, *Postmodern Jurisprudence: the law of texts in the texts of the law*, (London: Routledge, 1991), p. 91.

¹²⁹ (Logo- speech), (nomo-law), (centrism- central).

it does nothing to demarcate the potential limits of psychoanalysis as an aid to understanding the meaning and function of law.¹³⁰

Psychoanalysis provides a method of symptomatic reconstruction of biographical and historical clues. It treats the individual subject as a text to be interpreted and reconstructed according to an unconscious biographical structure which is manifest only in repetitions, slips, and other apparently accidental figures or clues. Psychoanalysis then arguably provides a powerful method of analysis of texts and of psyche and culture as texts.¹³¹ This hermeneutics at a minimum provides an alternative technique for interpreting law. Whether analyzed in terms of a judicial subject or author, or in terms of an institutional or cultural subject that can be treated as if it were an author, psychoanalysis offers a method for reading legal texts in the symptomatic terms of their latent meanings.

Following the line of reasoning provided by Douzinas¹³², as far as psychoanalysis as a legal tool is concerned, a discussion on that matter will follow.

It is not in my intentions to present all the psychoanalytical theories available, since this would fall outside the purpose of this paper, nevertheless, the Lacanian theory of psychoanalysis and the law, is the one that is more interesting and useful for my argumentation.

Lacan's *désir* (desire) follows Freud's *wunsch* and its concept is central to his thought. For the aim of the talking cure, psychoanalysis is precisely to lead the analysed to recognize the truth about her desire, yet this is only possible when it is articulated in discourse. Thus, "It is only once it is formulated, named in the presence of the other, that desire appears in the full sense of the term"; "...what is important is to teach the subject to name, to articulate, to bring desire into existence", and "That the subject should come to recognize and to name her desire, that is the efficacious action of analysis. But it is not a question of recognizing something which would be entirely given. In naming it, the subject creates, brings forth, a new presence in the world."¹³³ Hence, the truth about desire is somehow present in discourse, discourse

¹³⁰ Joseph Goldstein, 'Psychoanalysis and Jurisprudence—*On the Relevance of Psychoanalytic Theory to Law*', 1968. To be found at Psychoanalytic Electronic Publishing, <http://www.pep-web.org/document.php?id=psc.023.0459a> consulted at 10 May 2007.

¹³¹ Lacan, Jacques, 'The Function and Field of Speech and Language in Psychoanalysis', Routledge & Kegan Paul, London, 1977.

¹³² Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000.

¹³³ Lacan, Jacques, 'The Function and Field of Speech and Language in Psychoanalysis', Routledge & Kegan Paul, London, 1977. p. 64.

can never articulate the whole truth about desire: whenever discourse attempts to articulate desire, there is always a leftover, a surplus; a concluding realisation that can be equally applied in to Law.

For Lacan, desire is neither the appetite for satisfaction nor the demand for love, but the difference that results from the subtraction of the first from the second. Desire then is the surplus produced by the articulation of need in demand. Lacan adds that "desire begins to take shape in the margin in which demand becomes separated from need. Hence desire can never be satisfied, or as Slavoj Zizek¹³⁴ puts it, desire's *raison d'être* is not to realize its goal, to find full satisfaction, but to reproduce itself as desire.

For desire is not a relation to an object but a relation to a lack (*manque*). Then desire appears as a personal construct since it is always constituted in a dialectical relationship.¹³⁵

Furthermore, we know that Human rights are a product of the human being's desire. The human being desires something, and then the law comes to grant her with the right to enjoy it. There are numerous of theories covering this argument, others say that it was first the law and then the desire, since the law prohibits something, which results for this something to become desirable by humans since it is in the human nature to desire what she can not have.

So if human rights is a product of the human's desire, and if desire is never clear and stable, but is in a keep on process of reconstruction by the individual subject, then how can the law-maker regulate by laws the human being's desire, is a very interesting question.

Since the desire is not a solid, stable, unchangeable entity, then you can not treat it as being one.

In this line of reasoning, I will go a bit further and I will say, that the same logic is applicable to the general Human Rights Theory, what I mean is, that we have human rights laws that protect and provide for the human beings the rights to enjoy certain fundamental natural desires and needs. But, since the individual, the human being is an intersubjectively constructed and reconstructed entity, and is through her life in a process of continuous change, as far as personality and behaviour is

¹³⁴ Zizek, Slavoj, *Everything You Always Wanted to Know About Lacan... But Were Afraid to Ask Hitchcock*, London: Verso, 1993.

¹³⁵ http://en.wikipedia.org/wiki/Jacques_Lacan#Desire (consulted at 23 February 2007).

concerned, and arguably desires. So, you can not treat an individual as if it is an unchangeable entity. Psychoanalysis provides that the individual is in a keep on going process of continuous change through her life, so how can we make laws that despite the fact that it is supposed to be applicable to everyone, everywhere, and forever; is also considering the individual in 'mathematic terms' of supposedly accuracy, is a subject in need of clarification.

If treat the individual in this sense, then arguably she loses a part of her individuality and uniqueness. To tackle those risks, I believe that law ought to be flexible when dealing with human rights enjoyment. Our quest though for the real establishment in a universal sphere of the Human Rights enjoyment, monopolises the human rights regime's people and activists interest.

I believe that there is always space for improvement and evolution.

Psychoanalysis, can serve as a helping tool for the further development of the Human Rights Law Theory. Human rights are aimed to the individual, and as such should treat individual in her whole hypostasis, that is to say, her physical and mental or psychological-psychosynthetical hypostasis.

iv. 'War on Terror'

Michael Walzer and Elizabeth Anscombe both agree that non-combatants, those not engaged in waging war, have serious rights not to be deliberately attacked by combatants in war. They disagree as to whether or not these rights may ever be overridden by competing moral considerations. Walzer's view on this issue is contained in his doctrine of "supreme emergency".¹³⁶

Michael Walzer's claim that the deliberate targeting of non-combatants may be justifiable during 'supreme emergencies', a view that has received some support but that has elicited little debate. It argues that the supreme emergencies exception to the prohibition on targeting non-combatants is problematic for at least four reasons. First, its utilitarianism contradicts Walzer's wider ethics of war based on a conception of human rights. Second, the exception may undermine the principle of non-combatant immunity. Third, it is based on a historical fallacy. Finally, it is predicated on a strategic fallacy—the idea that killing non-combatants can win wars. The case for rejecting the exception, however, has been opposed by those who persuasively argue that it is wrong to tie leaders' hands when they confront supreme emergencies. The final part of this thesis addresses this question and suggests that the principle of proportionality may give political leaders room for manoeuvres in supreme emergencies without permitting them deliberately to target non-combatants.

"The constitution of UNESCO tells us that 'wars begin in the minds of men,'¹³⁷

Undoubtedly, since 9\11 the world has changed. The public announcement of the war on terror has led us to a path that has not been well reflected on beforehand. The arguments in this particular area are un-ended. There are ofcourse the ones that argue that the best way to battle terrorism is by 'hunting down the enemy and bringing him to justice'¹³⁸, but there are others like Noam Chomsky, that argue that

¹³⁶ Walzer, Michael, 'Arguing About War', Yale University Press, 2004.

¹³⁷ U.S. President George W. Bush, referring to the passenger revolt on hijacked Flight 93 on Sept. 11, 2001, he said, "I believe that it was the first counter-attack to World War III." ¹³⁷ And the Israeli ambassador to the United Nations, Dan Gillerman, told the Security Council on May 30 2006: "Today we must sadly and emphatically state that terrorism is indeed the third world war."

¹³⁸ In G.W. Bush own words. 'And we'll get him, we'll bring him to justice. ... of the military in Afghanistan would be hunting down these groups wherever they are..' www.whitehouse.gov/news/ (Consulted at 08 March 2007).

the only way to eliminate terrorism or at least reduce the outburst of terroristic attacks throughout the whole planet is to 'stop participating in it'¹³⁹.

In my own humble view, I believe that if you cultivate a culture of violence then in harvest is more violence that you should expect to get. A Greek traditional saying, states that violence gives birth to more violence.

A very interesting if not strong argument is the one that says that by declaring war on terrorism then in a way you tend to legitimise the use of terrorism. Since it is a natural consequential rightful reply to a declaration of war to any opponent to answer by all means to the provocation and attack in terms of firing back.

This unknown enemy that the allies of the war on terror, are fighting against, is a very dangerous outcome. Is leading states globally to a vicious circle of paranoia and to consider every human being as suspicious and capable of entering in this alleged new religion of political sinister activism¹⁴⁰, In the leftist philosopher's, Jean Baudrillard, own words "There is no longer a front, no demarcation line, the enemy sits in the heart of the culture that fights it," "That is, if you like, the fourth world war: no longer between peoples, states, systems and ideologies, but, rather, of the human species against itself."¹⁴¹

In my view, it is important to highlight the role of language; language that is limiting humanity's efforts to struggle with this globalised threatening method against its own existence. Language that might show us a new way to confront the new challenges that law experts in the area and philosophers are bound to inevitably deal with. Re-invention of terminology might be a possible and effective way to philosophically reflect and clarify as well as re-determine these challenges imposed on us by the phenomenon, that is to say, and although in risk of sounding radical, this is what are philosophers are entitled rightfully to engage at, since, this is what they have been doing from the birth of philosophy, in ancient Greece. Reflecting on unanswered philosophical questions and coming up with explanations, terms and meanings.

As Derrida has stated beautifully, 'The expression "war on terrorism" thus being one of the most confused, and we must analyze this confusion and the interests

¹³⁹ 'An Evening With Noam Chomsky', 'The New War Against Terror', October 18, 2001 - Transcribed from audio recorded at The Technology & Culture Forum at MIT.

¹⁴⁰ [another way to describe terroristic activities].

¹⁴¹ 'This is the Fourth World War: The Der Spiegel Interview With Jean Baudrillard', terview Translated by Dr. Samir Gandesha (Simon Fraser University), Volume 1, Number 1 (January 2004), ISSN: 1705-6411.

such an abuse of rhetoric actually serve'¹⁴². By using so negatively charged terms as the 'war', as 'terror', one can only be expected to lose the real essence of the goal and of the reason for engaging in particular tactics, methods, and policies. Terrorism is a method, and war¹⁴³ is conducted against an enemy; a lot argue. An enemy which is identified and identifiable; which is obviously not the case in this alleged war on terror.

As Ignatieff better states it: *'When democracies fight terrorism, they are defending the proposition that their political life should be free of violence. But defeating terror requires violence. It may also require coercion, deception, secrecy, and violation of rights.'*¹⁴⁴

Kant's perpetual peace¹⁴⁵ seems more utopic than ever under these new challenges that terrorism and the 'war on terror' is imposing as shadows upon human rights activists, but nonetheless, the reality is that even the human rights experts has failed to adequately deal with terrorism, state terrorism, the war on terror and the new modernised effects that this phenomena gave birth to.

The human rights community has repeatedly pointed out that it is difficult to conduct a war in defense of the rule of law when you are shredding that rule yourself.

It is paradox by its nature to allege that you are conducting a war to protect security, when in the own essence of war it is enshrined the harming of security. When undoubtedly by using force you are killing innocent civilians, and destroy the security of another part of the planet as well as imposing your own territory and citizen to open and more direct and by some argued justified threat. It is by common sense paradox to condemn practices as inhuman, illegal, barbaric and unjustifiable and then engage yourself in similar if not the same practices you earlier condemned.¹⁴⁶

For the purpose of this thesis I will examine all the issues as assuming that the governments engaged in the 'war on terror' have good intentions, that is to say, I will argue having good faith to the states and governmental practices.

¹⁴² Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

¹⁴³ B. E. Schmitt, *The Coming of the War, 1914* (1930, repr. 1966).

¹⁴⁴ Ignatieff Michael, 'The Lesser Evil: Political Ethics in an Age of Terror', Princeton: Princeton University Press, 2004.

¹⁴⁵ See: 'Perpetual Peace: A Philosophical Sketch' by Immanuel Kant, 1795.

¹⁴⁶ 'You cannot prevent and prepare for war at the same time' ~Albert Einstein.

As Ignatieff points out¹⁴⁷: *'Necessity may require us to take actions in the defence of democracy which will stray from democracy's own foundational commitments to dignity. While we cannot avoid this, the best way to minimize harms is to maintain a clear distinction in our minds between what necessity can justify and what the morality of dignity can justify, and never allow the justifications of necessity—risk, threat, imminent danger—to dissolve the morally problematic character of necessary measures.'*

In this point I will go back on the argument of the ticking bomb as it has been named by Dershowitz¹⁴⁸, who is arguing that, *it is surely better to inflict non-lethal pain on one guilty terrorist who is illegally withholding information needed to prevent an act of terrorism than to permit a large number of innocent victims to die. Pain is a lesser and more remediable harm than death; and the lives of a thousand innocent people should be valued more than the bodily integrity of one guilty person. A statement that contradicts fully the human rights theoretical basic ground and principles.*

To date, the only country in the world to publicly¹⁴⁹ acknowledge the use of coercive techniques against suspected terrorists is, not surprisingly, the state of Israel, which has not only been a target of terrorist attacks since its foundation, but is also the only functional democracy in its neighbourhood. As a consequence, the citizens of the Jewish state had an opportunity to thresh out some of the dilemmas that such attacks pose for a democratic polity.

Arguably, there are a lot of factors that one is bound to consider when dealing philosophically with the above issues; undoubtedly, a part of this paper should also consider the arguments that render the war on terror to be in reality a law enforcement

¹⁴⁷ Ignatieff, Michael, *'The Lesser Evil: Political Ethics in an Age of Terror'*, Princeton University Press, 2004.

¹⁴⁸ Dershowitz, Alan M., *'Why Terrorism Works: Understanding the Threat, Responding to the Challenge'*, New Haven: Yale University Press, 2002.

¹⁴⁹ In 1987, following two well-publicized cases of alleged torture—including that of an Israeli army lieutenant accused of treason and espionage—a commission headed by retired Israeli Supreme Court Justice Moshe Landau articulated a series of guidelines for the use of "moderate physical pressure" and "non-violent psychological pressure" in the interrogation of prisoners withholding information about impending acts of terrorism, when the knowledge obtained could save lives (see Gross 2002: 1173-1174).

policy. As it has been argued by many, 'This is fundamentally an intelligence operation and the law enforcement operation and a diplomatic operation.'¹⁵⁰

"War on Terror is far less of a military operation and far more of an intelligence-gathering, law-enforcement operation."¹⁵¹

Despite its importance for our due process rights, governments have avoided drawing the line between war and law enforcement. As the leader of the campaign against terrorism, argues, 'Washington has no incentive to articulate the legal limits to its actions'.¹⁵²

In the name of war on terror governments are exceeding their powers over its own citizens; they are acting in breach of international treaties and legal binding documents. The intelligence agencies gained more powers¹⁵³ as far as interference with the private lives of citizens is concerned and a lot argue that there is a great and urgent need to draw a line and re-evaluate practices and methods which has emerged through the new challenges of the phenomenon of terrorism and the unprecedented consequences of the 'war on terror'.

¹⁵⁰ Wednesday, October 04, 2006 AMERICA WEAKLY: A Law Enforcement Operation? FLASHBACK: During 2004 Campaign, Sen. John Kerry (D-MA) Repeatedly Called War On Terror A Law Enforcement Operation.

¹⁵¹ (Sen. John Kerry, Democratic Presidential Candidate Debate, MI, 10/26/03).

¹⁵² Human Rights Watch -<http://hrw.org/english/docs/2003/01/06/usint12470.htm> (Consulted at 21 January 2007).

¹⁵³ Through the Patriot Act in the USA and the Anti-Terrorist legislations throughout the globe.

v. Conclusion

There is a duty upon all academics to address the issues in question that is rising from the area of the war on terror, because in my view the Orwellian world-order fictional theory is almost a reality; and if not this is where we are heading to through all this panic that the phenomenon of terrorism has imposed upon us. The media and the propaganda has created another form of terrorism in my view, a form of terrorism that is more powerful than ever before, cause it is aiming at the psychological factor of terror and not only to the physical harming of human beings, while its target population can be argued to be the whole planet's population with access to mass media communication tools, such as television, newspapers, internet.

This is another question that is in need to reflect on, arguably because the power of media has expanded dangerously throughout the 21st century, in a way that society and humanity never has met before and never had to deal with. In a sense that, the target population of a terrorist assault can not be identified adequately, since it can be targeting to the whole global human population, or at least to the ones having access to a TV or a radio, or newspapers; and so on and so forth.

In my view, it is not correct to argue that defeating terror requires violence. In that case, you produce more terror. I believe that in reality the war on terror produces more terror than it eliminates. If security means freedom from harm and fear, then this tactic has failed to meet its goal, That is to say, that it failed to provide freedom neither from harm, nor from fear.

Nevertheless, Philosophy has a crucial and of irreplaceable importance role to play in our understanding of terrorism and state terrorism in particular.

The paths that philosophy offers can not be found in any other science. Philosophy includes all sciences, has no limits or narrow-minded rules regulating her practice.

The conceptualisation tools that philosophy has to offer form a unique net of paths of reasoning. In this chapter I proceed into examining and analysing language in terms of exploring the possibility of discovering some truth through language that we were missing in our understanding of terrorism, and state terrorism. This led me to the conclusion that state terrorism can be synonymous to 'Terrorcracy'. A term that is the product of my critical examination of language.

Nevertheless, psychoanalysis as a legal tool should also be highlighted, since its importance is being shouted louder day by day by leading academics and

philosophers. Notwithstanding, human rights is about human beings, and human beings behaviour is the subject of psychoanalysis; hence the combination of the two can open new doors for the further development of the Human Rights Theory and Regime.

Finally, it was inevitable a paper about state terrorism, to include a chapter on the 'war on terror'. A net of practices that has engendered so many problematic questions and practices, that I have chosen to deal with it last but under the philosophical umbrella of my thesis. Ofcourse the legal questions rising from the phenomenon are equally important.

Since the declaration of the 'war on terror' by the rising of the necessity for governments and allies of this alleged war, to protect the public safety and the lives of its own citizens and the globe in general of this sinister and undoubtedly unjustified by no means threat to humanity, there has been more loses of human lives than in the 9\11 which has triggered the 'war on terror'. Instead of humanity to make steps to evolve and improve, to learn by past mistakes we tend to make steps back.

Since the Second World War which was a big lesson for the whole humanity and the Cold War, which signalled the beginning of Humanitarian Law and Human Rights Law in the universal form that we are trying since then to establish and implement in every corner of the globe, a lot of years and generations have passed, resulting to forget the atrocities and barbaric acts that human are capable of committing. It seems like humanity has forgotten what are the results of war, especially under its globalised form. In Einstein's own words, and I quote: "I know not with what weapons World War III will be fought, but World War IV will be fought with sticks and stones."

5. CONCLUSIONS

Terrorism, was always present, even in 1948, when the Universal Declaration of Human Rights was being published, terrorism, and state terrorism, were both present and in existence, having still fresh wounds all around Europe inflicted by the Nazi's State-terrorism.

The rule of law commands, 'no one is above the law', which means that we are all accountable under the eyes of justice. Terrorism is a crime, where different links at the same machine must act in order to fulfil the *actus reus*, in other words responsible is not only the one that pull the trigger, but all the supporting services concluding to that shooting. The *mens rea* of the crime is and oughts to be flexible, since the plethora of intentions involved would not allow for different codification of the *mens rea*; hence, the perpetrator does not need to have a concrete idea of the consequences of his acts.¹⁵⁴

Terrorism's essence is fear, the feeling of fear, and its usage as a tool for achieving a goal. No matter how many forms has engendered, or changes, transformations, and metamorfosis have occurred, the essence of terrorism is the same through centuries, that is to say, although everything surrounding the phenomenon are changing and overextending the net of the elements comprising the concept, in reality the essence of it, is the same; and is summarised in the phrase: 'fear as a tool for achieving a goal.'

Van Krieken writes, 'it is exactly the discussion on State Terrorism which prevented and still prevents the international community from embarking on a common search for a definition which would be acceptable by all, the developed world, the developing world, the de-facto world powers and the self-conceived oppressed.'¹⁵⁵

By using the term terrorism, 'not only emotional, but also legal doors will be opened which would otherwise have remained closed.'¹⁵⁶ 'By labelling a crime as a terrorist act enables and obliges the various actors to apply a different range of instruments and means. It also results in increasing both the minimum and the

¹⁵⁴ Prosecutor v. Dusko Tadic, para. 657.

¹⁵⁵ Van Krieken, Peter J., (ed.), 'Terrorism and the International Legal Order', 'With Special Reference to the UN, the EU and Cross-Border Aspects', T M C- Asser Press, The Hague, 2002. p. 15-16.

¹⁵⁶ Van Krieken, Peter J., (ed.), 'Terrorism and the International Legal Order', 'With Special Reference to the UN, the EU and Cross-Border Aspects', T M C- Asser Press, The Hague, 2002.

maximum penalties. It is therefore in the interest of the individual offender, the victim and the international regime to know exactly when a certain act amounts to terrorism and when it does not.

Nevertheless, IHL itself uses the term "terrorism," "acts of terrorism," "measures of terrorism," and "terror." So there should not be any shying away from these terms. Rather, IHL may yet help establish a precise and legally sound definition of terrorism to obviate its being used as a political weapon by vested powers.

Hence, the involvement of politics & international relations within the law-making processes engenders new dangers and risks for more shadows to cover the International Law's credibility.

By proceeding, it is arguable that, the paths that philosophy offers can not be found in any other science. Philosophy includes all sciences, has no limits or narrow-minded rules regulating her practice, and its importance can not be highlighted enough.

The conceptualisation tools that philosophy has to offer form a unique net of paths of reasoning. In this thesis, I proceeded into examining and critically analysing language in terms of exploring the possibility of discovering some truth through language that we were missing in our understanding of terrorism, and state terrorism. This led me to the conclusion that state terrorism can be synonymous to 'Terrorcracy'. A term that is the product of my critical examination of language.

Furthermore, the usefulness of psychoanalysis as a legal tool should also be highlighted, since its importance is being shouted louder day by day by leading academics and philosophers. Notwithstanding, human rights is about human beings, and human beings behaviour is the subject of psychoanalysis; hence the combination of the two can open new doors for the further development of the Human Rights Theory and Regime.

Finally, it was inevitable a paper about state terrorism, to include a chapter on the 'war on terror'. A net of practices that has engendered so many problematic questions and practices, that I have chosen to deal with it last but under the philosophical umbrella of my thesis.

Since the declaration of the 'war on terror' by the rising of the necessity for governments and allies of this alleged war, to protect the public safety and the lives of its own citizens and the globe in general of this sinister and undoubtedly unjustified by no means threat to humanity, there has been more loses of human lives than in the

9\11 which has triggered the 'war on terror'. Instead of humanity to make steps to evolve and improve, to learn by past mistakes we tend to make steps back.

This thesis constitutes an attempt to examine the phenomenon of state terrorism; through a human rights sensitive perspective. This topic has been chosen due to the realization that state terrorism, is the worst form of terrorism, and formulates a canker and a fountain or spring of mass human rights violations. My intentions can be summarised in the principle of the human rights theory arguing that, prevention of human rights violations is a useful instrument for their protection and enjoyment. Prevention which means to address the root causes of human rights violations, as state terrorism.

I have attempted to discover what state terrorism is, and whether a legal definition is in existence. By concluding I should point out, that there is not a legal definition in existence, but there are tools or arguments provided by International Customary Law, which can prove the opposite, as I have argued earlier in this paper.

Nonetheless, this is a very risky area of International Law, and there are a lot of different factors that a researcher is bound to consider in order to be as objective and inclusive in her work and argumentation.

By using the different but inter-linked sciences of Law and Philosophy, Psychology, Sociology and Political Science.

State terrorism is a very risky and dangerous term by itself and the bibliography covering the subject and phenomenon is rather limited, hence, I hope my intentions to meet their goals; that is to say, this thesis, to become a little contribution for the further and future understanding of the phenomenon of state terrorism.

Thank you

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- ACLU "Civil Liberties Report" (PDF 20 Kb.)
- ABA Standing Committee on Law and National Security (PDF 148 Kb.)
 - Global Policy Forum on an international tribunal for Cambodia.



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- www.unhchr.ch/html/menu3/b/92.htm - 174k -
- <http://www.pep-web.org/document.php?id=psc.023.0459a>

Online Sources

- United Nations Treaty Collection subscription database - GULC only
- TIARA subscription database - GULC only
- Westlaw (US TREATIES database)
- Lexis - US Treaties on Lexis (Legal > Area of Law - By Topic > International Law > Treaties & International Agreements)
- The Human Rights Library (University of Minnesota) offers a list of conventions on war crimes, crimes against humanity and genocide and a list of law of armed conflict conventions.
- EISIL (American Society of International Law) also has a list of conventions.
- International Humanitarian Law Database (International Committee of the Red Cross)
- The Laws of War (Avalon Project at Yale Law School)

Links

- International Criminal Tribunal for Rwanda (ICTR)
- International Criminal Tribunal for the former Yugoslavia (ICTY)
- International Criminal Court (ICC)
- Special Court for Sierra Leone
- International Court of Justice (ICJ)
- Nuremberg War Crimes Trials (Avalon Project - Yale Law School)

HUMAN RIGHTS LINKS

- Concise Guide to Human Rights on the Internet
<http://www.derechos.org/human-rights/manual.htm>
- Derechos: This Week In Human Rights
<http://www.derechos.org/human-rights/briefs/>
- Human Rights: American Society of International Law
<http://www.asil.org/resource/humrts1.htm>
- Human Rights General: U of Western Australia
http://www.law.uwa.edu.au/intlaw/human_rights-general.htm
- Human Rights Interactive Network
<http://www.webcom.com/hrin/welcome.html>
- Human Rights Library: University of Minnesota
<http://www.unige.ch/humanrts/>
- Human Rights Organizations and Resources
<http://www.hrweb.org/resource.html>
- Human Rights Watch
<http://www.hrw.org/home.html>
- Human Rights - Web Resources: U of Pennsylvania Library
<http://www.library.upenn.edu/resources/subject/socail/political/humpfram.html>
- International Human Rights and Humanitarian Intervention
<http://www.webcom.com/hrin/welcome.html>

NGO'S

- International Committee of the Red Cross (<http://www.icrc.org/eng>)
- Human Rights Watch (<http://www.hrw.org/>)
- Amnesty International (<http://www.amnesty.org/>)
- Human Rights Internet (<http://www.hri.ca/index.aspx>)
- UNESCO (www.unesco.org/human_rights)
- Human rights first (<http://www.humanrightsfirst.org/>)
- International Humanitarian Law (<http://www.icrc.org/eng/ihl>)

UNITED NATIONS RESOLUTIONS

- AD HOC COMMITTEE NEGOTIATING COMPREHENSIVE ANTI-TERRORISM, Ad Hoc Committee on Assembly, **Resolution 51/210**, 38th Meeting (AM), 05 February 2007.
- Security Council adopted **Resolution 1535**, creating the Counter-Terrorism Committee Executive Directorate (CTED) to provide the CTC with expert advice on all areas covered by **Resolution 1373**. CTED was established also with the aim of facilitating technical assistance to countries, as well as promoting closer cooperation and coordination both within the UN system of organizations and among regional and intergovernmental bodies.
- During the September 2005 World Summit at the United Nations, the Security Council – meeting at the level of Heads of States or Government for just the third time in its history – adopted **Resolution 1624** concerning incitement to commit acts of terrorism. The resolution also stressed the obligations of countries to comply with international human rights laws.
- In 1992 the United Nations Security Council condemned Libyan involvement in international terrorism (**Resolutions 731 and 748**).
- The issue of human rights and terrorism is also addressed in General Assembly **Resolution 58/174** (2003) and Commission on Human Rights **Resolution 2003/37** ("Human rights and terrorism").
- OHCHR action on the issue of human rights and terrorism is guided in part by General Assembly **Resolution 58/187** (2003) and Commission on Human Rights **Resolution 2003/68** ("Protection of human rights and fundamental freedoms while countering terrorism").
- In **Resolution 1456** (2003), the Security Council declared that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law".