

Title of Thesis

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# **TI ESTI STATE-TERRORISM**

Critical Terrorism Studies and Human Rights

*Philosophy and Law*

By

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Cyclo XXV

Rome

March 2013

Thesis submitted to the Faculty of Political Science, PhD Program in Political Theory,  
in total fulfillment of the requirements for the Doctoral degree in Philosophy.

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15 κατὰ τοὺς λόγους τῆς ἐπιστήμης τῆς τοιαύτης κατὰ  
μέρος ἄρχων καὶ ἀρχόμενος, πολιτικόν· ταῦτα δ' οὐκ  
ἔστιν ἀληθῆ). δῆλον δ' ἔσται τὸ λεγόμενον ἐπισκοποῦσι  
κατὰ τὴν ὑφηγημένην μέθοδον. ὥσπερ γὰρ ἐν τοῖς ἄλλοις  
τὸ σύνθετον μέχρι τῶν ἀσυνθέτων ἀνάγκη διαιρεῖν  
20 (ταῦτα γὰρ ἐλάχιστα μόρια τοῦ παντός), οὕτω καὶ  
πόλιν ἐξ ὧν σύγκειται σκοποῦντες ὁφόμεθα καὶ περὶ  
τούτων μᾶλλον, τί τε διαφέρουσιν ἀλλήλων καὶ εἴ τι  
τεχνικὸν ἐνδέχεται λαβεῖν περὶ ἕκαστον τῶν ῥηθέντων.

ΑΡΙΣΤΟΤΕΛΗΣ, Ἄπαντα, Τόμος 1, Πολιτικά 1,  
ΑΡΧΑΙΑ ΕΛΛΗΝΙΚΗ ΓΡΑΜΜΑΤΕΙΑ, 'ΟΙ ΕΛΛΗΝΕΣ', (190),  
Εκδότης: Οδυσσέας Χατζόπουλος, 2008, (Σελ. 33-36).

\*\*\*\*\*

-Translation-

As in other departments of science, so in politics, the compound should always be resolved into the simple elements or least parts of the whole. We must therefore look at the elements of which the State is composed, in order that we may see in what the different kinds of rule differ from one another, and whether any scientific result can be attained about each one of them.

Aristotle, Politics, Book 1, Part 1.  
Written 350 B.C.E,  
Translated by Benjamin Jowett,  
Batoche Books, Kitchener, 1999. p. 3.

## ABSTRACT

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Three main parts comprise this dissertation:

Chapter II is an attempt to illuminate the general understanding of the phenomenon of State-terrorism, through a review of literature and available descriptions.

Chapter III is built on a philosophical aporetic path, and an enquiry on the concept of State-terrorism, while attempting to uncover its essence.

Chapter IV is a legal analysis of the implications surrounding the practice of State-terrorism, and an assessment of its prospect to become a subject of criminal law, built upon the recognition that State-terrorism is a form of terrorism; and since the latter is a punishable crime, I make the case that State-terrorism also requires to be treated, prohibited and punished by law with equal zeal.

This study is an attempt to answer the raw philosophical question ‘*ti esti* State-terrorism.’ Is a critical philosophical analysis of the concept of State-terrorism based upon an epistemological discussion, in an effort to re-formulate the question of terrorism, by making the case that State-terrorism is the mother phenomenon and root of all forms of terrorism.

My ambition is to contribute in our understanding of terrorism by revealing that, in ancient (and modern) Greek, which is the language of concepts and philosophy, the term terrorism literary means State-terrorism, and it belongs to the same family of words as democracy, aristocracy, autocracy and so on and so forth, since they share their second synthetic and suffix –cracy. An acknowledgment that may have the power to unlock a radically fresh comprehension of the term and subsequently the phenomenon of terrorism, if not re-define the whole concept by describing it according to the term’s original meaning. Under this logic, terrorism would refer to a form of government and a political system. A hypothesis that my thesis introduces into the philosophical dialogues on terrorism, since it has never before been discussed within these terms. State-terrorism is a forbidden term according to legal experts, however, cannot and should not be treated as a sterile term by political theorists and critical thinkers.

This thesis is a product of a philosopho-legal human rights based research, and is ultimately intended to become a contribution to the understanding of the phenomenon of globalized terrorism and the United Nations definitional struggles.

**Keywords:** State-terrorism, critical terrorism studies, philosophy, law, human rights.

## ACKNOWLEDGEMENTS

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This dissertation owes its existence to a number of people and institutions, all around the world. Firstly and mostly to my dear professor Sebastiano Maffettone, , and Director of my PhD program in Political Theory in LUISS University in Rome, for being such a great role-model and inspiration, for his priceless input in the expansion of my philosophical thought by introducing me to Rawls, as well for his support and benevolent help. I express my gratitude, for the chance the committee of admissions offered me with, through my placement within the PhD program, an opportunity that I wouldn't be able to find in the Greek academia due to political reasons.

Likewise, I thank all my colleagues in my PhD program in Rome, for allowing me to become a part of this stimulating intellectual environment.

I deeply thank my thesis supervisor Dr. Francesco Cherubini of the Law Faculty in LUISS, who has always been there, with a benevolence that only great tutors possess.

I owe a lot to Judith Lichtenberg of Georgetown University's Philosophy Department in Washington D.C., for supporting my visiting scholar's appointment, which has meant a great deal for me and the progress of this thesis. My gratitude goes to Giovanna Borradori from the Vassar College in New York, for her insightful suggestions in the beginning of my research; to Professor Noam Chomsky of the MIT in USA, for his counsel and for the inspiration his work has been to me; to Costas Douzinas of the Birbeck College in London, UK, for the great input his critical legal studies work has had in my research; to Vasilis Politis Director of the Plato Center at Trinity College Dublin, for his generous contribution into my comprehension of Plato and Aristotle, as well as my understanding of the *ti esti* question besides the Socratic *aporia*; and to my dearest professor Anja Mihr of the University of Utrecht, who has been an enormous inspiration and help in proceeding with my PhD studies.

A big thank you is in order for my comrades and friends in Greece, for helping into expanding my understanding of the ancient Greek philosophy, and to all my colleagues that has had an input to my work, through their comments in conferences and symposia, all around the world. To 'The Crit, A Critical Legal Studies Journal' in USA, and the 'Bajo Palabra Journal of Philosophy' in Spain, that have published earlier versions of my research's findings, and their editors that have assisted me into improving my work. The University Autonomous of Madrid and the Bajo Palabra Revista, that offered me space to discuss my ideas, within their philosophy conference, and for awarding me the 1<sup>st</sup> Prize for Young Philosophy Researchers in 2012, for an early version of an essay that came to shape Chapter III of this dissertation, and that has meant for me a great deal as far as motivation is concerned.

But most essentially, I must express my gratitude, from the bottom of my heart, to Xanthi and Savva Aliozi, my parents, for their unconditional love and support since the beginning of my academic journey, because without them nothing would have been possible; and to my older sisters Louiza and Eleni, for their emotional and financial support, and for the inspiration their mere existence constantly offers me.

Rome, March 2013  
Zoi Aliozi

For  
Xanthoúla Aliózi,  
my heroic mother.

## PREFACE

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As a young international criminal and human rights lawyer, long before the initiation of my PhD research, I came across the legal paradox of having to deal with a harmful act, which fulfilled all the requirements for being classified as a crime, yet it wasn't one, and I was directed by a number of celebrated legal experts, to consider as a legal orthodoxy the turning of a blind eye to this criminally harmful act, that was going unpunished due to a number of unjustifiable reasons. I was trained to work with criminal and wrongful inflicted harms on humans, that were by definition and according to basic penal legal theory punishable by law in any known penal system, and I knew from experience and practice of criminal law, that in cases that law has been unable to deal with a special instance falling within a category of criminal harms, there will always be another way to bring the case in front of a Judge, who by principle has a law-making mandate and is empowered to administer justice even where the law has been silent. Well, that is not the case with State-terrorism. I came across well-built walls, blocking every legal or philosophical justification I was trying to discuss with legal experts, practitioners or academics, walls that did not allow for any new, yet reasonable viewing of this phenomenon. I soon realized that this orthodox understanding of the concept of State-terrorism, was everything but orthodox (since the word means the correct way of thinking, from Greek 'orthos': right and 'doxa': belief) and has been cultivated through centuries of misdirected jurisprudence, therefore I was unable to get convinced for the rightfulness of such an "orthodox" approach the legal world was determined by. In other words, when I was putting on the "examination table" the crime of terrorism, which has been a well-established subject of criminal law, filling all the requirements by basic legal theory for the constitution of a crime, (like the actus reus and the mens rea) I observed that in cases where the perpetrator was to be found within the broader structure of an organized State, as if by magic the crime seized to exist.

My motivation was fuelled by this legal paradox, parallel to a philosophical understanding of the political implications inherent to this term, that came to add force to my drive, while my desire for further engagement with this research translated into my decision to pursue a doctorate in philosophy, and make a slight disciplinary maneuver in my engagement with this area of study, while, maintain a multidisciplinary approach and methodology throughout my work.

In ancient (and modern) Greek, the term terrorism means literary State-terrorism, etymologically, and by definition. In the language of political thought, through which all western political structures have based their constitutions and formed their polities, States, political parties, or ideologies, and that has been the medium for the structure of ideas into terms such as democracy, anarchy, politics and so on and so forth, in this language, the term terrorism always refers to State-terrorism.

This realization came to add into my determination to demonstrate that State-terrorism is not a fictional concept, or an empty term, but rather a real current danger that requires the attention of law, and the recognition of philosophy as a valid idea, and which is as deep-rooted and long-standing as the idea of the political State.

All the above reasons have inspired my desire to discover strong normative justifications that would convince my readers for what is obvious to me, and advocate for the urgent necessity for further scholarly engagement with this area of study, through the employment of both law and philosophy.

Throughout the following pages, I ask questions such as: What is State-terrorism? In one instance with philosophy as the protagonist, and in the other having law as the main source of analysis. Has international law (IL) become obsolete when it comes to terrorism and State-terrorism? Can State-terrorism become the subject of law? And in my struggle to comprehend State-terrorism, I ask: what is its essence?

In that sense, I proceed in an Aristotelian resolving of the basic elements that the subject of my research is comprised by, while in a way I deconstruct the language construction in order to see what, this terminological construction by the ancient Greeks, refers to. Because, I am visiting the ancient Greeks, in order to discover whether they had described this concept, or whether there was a term in existence, describing what today we call State-terrorism. Allow me to anticipate, that the ancient Greeks did have a term describing State-terrorism, and based on that discovery I proceed into an examination of that term that describes and refers to the idea, and concept of State-terrorism, in order to see whether it is possible to recover its original meaning, and discover its essence. I am asking ‘Ti esti’, because this question triggers a raw philosophical syllogism, that discusses the essence of the idea in question and is bound with questions of ‘horismos’ (definitions). Is deeper than a ‘what is’ enquiry, however in chapter II I am asking ‘what is’, in order to cover initially all the basic literature, and information that comprises our modern knowledge of the concept.

I have started working on the formation of this doctoral thesis on 2009. Undeniably, international law has failed to-date, to deal with this concept. Recently though, a turn of attitude took place, and gradually yet with determination, the UN through the negotiations of the *Draft Comprehensive Convention on International Terrorism*, began using bolder language when discussing State terror, and calling it by its name, using the so-far outlawed term: State-terrorism.

Allow me to point out that before this Ad Hoc committee, would be impossible to meet this term within the workings of international law, or even if it was mentioned, it would automatically be rejected as irrelevant, nonexistent, empty and legally absurd.

This new law into-making, according to the drafters, aspires into having extra legal weight, and of creating a definition of terrorism that would enjoy universal consensus and applicability, while is the first time that the law-makers have explicitly expressed an intention of including State-terrorism in the definition of terrorism, as another form of terrorism, which means that the prospect of becoming a codified international crime has become a realistic expectation, whilst its practice will be rendered punishable in a court of law, and also bearing the significance that a recognized political concept will be upgraded next to terrorism, as one of the most serious crimes, and threats to humankind, for the future generations and our civilization.

This is exactly, what I am striving into contributing to, and the point of my thesis. My true intentions are to provide strong justifications that will demolish the knowledge that is based on a neologism, and is constantly discarding any argument for the existence of State-terrorism as a valid concept, and ultimately to witness the international law's recognition, of what has been so clearly obvious to me through the initiation of my research. However, there is an implied priority of discovery, directing my scholarly engagement with this concept, which is manifested through my claim that State-terrorism needs to be firstly treated by philosophers for the discovery of its essence, while adding into its definitional process, and then to become a subject of law, since the harm involved requires so, just as in the case of terrorism. As far as the firm denial of experts, to legally deal with this idea due to the alleged impossibility of defining it, allow me to say that State-terrorism might be hard to define, but "we know it when we see it."\*

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\* As Justice Stewart held about definitional difficulties, in *Jacobellis vs Ohio*, 378 U.S. 184 (1964).



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## **List of Acronyms**

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<b>CL</b>	Customary Law
<b>CSRT</b>	Combatant Status Review Tribunals (CSRT)
<b>CTED</b>	Counter-Terrorism Committee Executive Directorate
<b>Dec</b>	Decision
<b>ETA</b>	Euskadi Ta Askatasuna ("Basque Homeland and Freedom")
<b>GA</b>	General Assembly
<b>IL</b>	International Law
<b>IHL</b>	International Humanitarian Law
<b>ICC</b>	International Criminal Court
<b>ICJ</b>	International Court of Justice
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>IRA</b>	Irish Republican Army
<b>OIC</b>	Organization of the Islamic Conference
<b>Res</b>	Resolution
<b>SC</b>	Security Council
<b>SG</b>	Secretary-General
<b>SCSL</b>	Special Court for Sierra Leone
<b>UN</b>	United Nations
<b>UNDHR</b>	Universal Declaration on Human Rights (UN)
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>VS</b>	Versus

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## CHAPTER I

### INTRODUCTION

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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 lists of emergency challenges in every governmental agenda, and has been characterized as an emerging vital philosophical debate, amongst other things. As far as the legal debates are concerned, I will be bold yet honest and 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. Lawmakers and academics have repeatedly failed to efficiently deal with the criminal analysis of the act itself. Therefore, 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 jurisdiction.<sup>1</sup>

The Preamble of the Universal Declaration of Human Rights, the most important and cited human rights treaty ever to come into existence, it clearly and prudently states, that the highest aspiration of the people is to have "freedom from fear..." and I quote:

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.<sup>2</sup>

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<sup>1</sup> See: [www.un.org/law/icc/statute/iccqanda.htm](http://www.un.org/law/icc/statute/iccqanda.htm) [Retrieved on 6 March 2011].

<sup>2</sup> Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

In terrorism, fear is the tool used for the realization of the desired political goals, and at the same time, fear is the harmful result of the criminal terroristic actus reus.

Yet, irrespectively of means and perpetrators, we are facing at an interference with the individuals enjoyment of fundamental rights necessary for the fulfillment of the persons natural desire for freedom and individuality, privacy and all the space and conditions that may render achievable her autonomy and dignity.

Professor Raz, in his significant theorizing in the 'Morality of Freedom'<sup>3</sup> discusses that in order for an individual to reach full enjoyment of her natural rights, and in order for a society to get real equality for the people, then the State should provide the same opportunities for all, and all the basis and ground for her to make the choices she wants at the different stages of her life. While it seems to me that if one considers the traditional role of the liberal State to ensure Justice, would be rational to conclude that a terrorist State is in breach of its entire expected purpose as a political structure.

The State in the case of State-terrorism, belongs to the opposite reality than the one proposed by the liberal ideals, and has abandoned its obligation and duty to protect. Likewise, the human rights theory in the times of globalized terrorism has been in certain aspects more damaged by its self-proclaimed protectors, than from terrorism itself, whilst has been the object of a systematic attack by scholars, as for instance certain pro-torture advocates, who by using the alibi of national security, strive to establish the view that wants human rights to be non-applicable utopic ideals, which under no circumstances could trump the necessity for national security. But scholars in the other side of the spectrum claim that: "human rights will come to an end, if we do not re-invent their utopian ideals."<sup>4</sup>

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<sup>3</sup> Raz, Joseph, 'The Morality of Freedom', University of Oxford, 1988.

<sup>4</sup> Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000. In the book-cover.

Conversely, this dissertation is about protecting and ensuring human rights for the future generations, it is a human rights inspired research, based on the ideals that the cultivation of a human rights culture has to offer justice-wise. As it has been asserted, 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."<sup>5</sup> In this sense, it is vital and essential to address the practice of State-terrorism as the roots and cause of systematic human rights violations.

However, it is not in my intentions to deepen my discourse on human rights theory if it is not related to the central topic of my dissertation, which is State-terrorism. Yet, the mutilation that human rights are suffering due to the practice of State-terrorism, makes it impossible not to address their fundamental role in my research, and motivation which underlies my work.

Furthermore, international consensus on a legal definition of terrorism, or of State-terrorism, State-supported terrorism<sup>6</sup> or any form of terrorism for that matter, still has not been attained. There has been an overabundance of political and legislative instruments dealing with terrorism and counter-terrorism, in a domestic and an international level, but very little ink on State-terrorism, except in cases of State-supported terrorism, or State terror. Now, what is the difference between State-supported and State-sponsored terrorism, or State terror with State-terrorism might be a useful way to start reflecting on our examination of the implications surrounding the concept of State-terrorism. According to my thesis, the main difference is in the details, and in the milder nature or less negative charged terms, which all the surrounding State-terrorism language constructions bare. To proceed in a recognition

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<sup>5</sup> Nowak, Manfred, 'Introduction to the Human Rights Regime', The Raoul Wallenberg Institute For Human Rights Library, Martinus Nijhoff Publishers, Leiden/Boston, 2003, p. 341.

<sup>6</sup> See: [www.icc-cpi.int/home.html?landl=en](http://www.icc-cpi.int/home.html?landl=en) [Retrieved on 19 October 2012].

of State-terrorism through its codification in international law, would automatically render possible for a State to be accused as a terrorist. The effect on the development of international law, in such a case, could be negative amongst other things, since it could be translated into the unwillingness of the States to give consensus on agreements, or in more practical terms proceed with this new counter-terrorism international cooperation flourishing regime, bearing the harshest and most severe punishments, and para-legal procedures for the terrorists. However, in all other cases, like State-supported terrorism there is an implied indirect connection of the State with terrorism.

A bright and noteworthy exception to the above-mentioned legal reality, is the Arab Convention on Terrorism, which by Article 3, forbids the State from committing acts of terrorism.<sup>7</sup> While similar treatment of the concept by law, can be found in the Organization of African Union's Convention on the Prevention and Combating of Terrorism,<sup>8</sup> two regional treaties that assume the responsibility and duty upon the lawmakers to prohibit State-terrorism by law.

The crime of State-terrorism, exists in national and regional legislation, but does not enjoy a universal consensus in international law, and especially in the Western legal systems. While it may seem impossible for a State, that has criminalized State-terrorism to actually move proceedings against its own officials and government, the existence of an active law, may prove for the opposite. It should be highlighted that the regional laws have in some sense the same function as international law, since is law applicable over a group of States in a geographic Region, and accordingly, one

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<sup>7</sup> 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.

<sup>8</sup> Organization of African Union Convention on the Prevention and Combating of Terrorism (Algiers July 1999).

State could initiate judicial proceedings against another and put forward a claim, which ideally shortly, will be the case in the international legal arena as well.

Nonetheless, its existence in a legally binding document, as the Conventions mentioned above, prove its actual existence in some penal systems, as a crime. Hence, this is to be dealt with later in my dissertation, in Chapter IV and in relation to the key legal issues.

Allow me to clarify that the present thesis, parallel to a critical philosophical elaboration of the concept of State-terrorism as a political system, 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, yet it is my solid belief that the challenges surrounding its shadowed and un-clarified areas, impose a duty upon academia to address the idea of State-terrorism, and hopefully be of assistance to the forthcoming birth of a complete convention on international terrorism by the United Nations, whilst actively to quash the silent approval of the international practices so far, that are eclectically criminalizing 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 an appropriate tribunal, as if it has been committed by a private individual or a group of individuals.

In my view, the absence of the crime of State-terrorism from 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. The burden as I see it, is 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, and this is where my research aspires into becoming a small contribution.

This dissertation's main mission is to form a critical analysis of the concept of State-terrorism, to outline the challenges that carries from origin, as well the ones emerged by its new globalized form, and always in relation with terrorism as a criminal act, to analytically examine its status within the criminal law's terrain. It is inevitable, any project 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 and insufficient. 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 problematics and dilemmas that a law expert is bound to face, when working with these multidimensional and polymorphic, politically infused crimes.

It is imperative to note that, terrorism as a phenomenon of the globalized 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, and the miscomprehension of their dissimilar routes, and allow me to anticipate: not so different roots.

It is a quest, this research, a journey through theory and practice, utopic ideals and undeniable barbaric realities, through the spectrum of the different but interlinked disciplines of Law and Philosophy. Philosophy of Law, International Criminal Law, International Human Rights Law and Humanitarian Law, are the tools and at the same time guiding instruments for the realization 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 inter-subjectively constituted."<sup>9</sup> 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, as fear is an emotion, 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 phenomenon of terrorism. As it has been argued, psychoanalysis and specifically its Lacanian revision are firmly becoming the newest great frontier for jurisprudence.<sup>10</sup> Hence, this is to be dealt with efficiently within philosophical terms in chapter III.

From a human rights perspective, it is arguable that we are witnessing the diminishment of the value and prominence of human rights. Humanity made big steps towards the realization of a universal system of values and rights, rights that every human being is entitled by birth, and minimum standards and procedures for their universal and regional protection, undeniably, values that can lead humanity to a better future. It seems to me that empowerment and the dignity of the individual is the very essence of human rights, and participation, non-discrimination and accountability, arguably, its 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' for instance, and the flourishing global counter-terrorism policies, one cannot omit to admit, that the States are pushed from protection of rights, towards suppression of rights agenda.

After the 11 September 2001 terrorist attacks in New York, the United Nations Security Council unanimously adopted resolution 1373, which included obligations

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<sup>9</sup> Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000, p. 297.

<sup>10</sup> Idem.

imposed on all States to criminalize assistance to terrorists, deny financial support and safe haven to terrorists and share intelligence about possible terrorist incidents. Res 1373, compels all States to outlaw help to terrorists, but it is common knowledge and a "public secret" that there are so many States that provide assistance to terrorist organizations, including some of the great powers of the so-called developed world.

Allow me to anticipate, that considering the available information on State-terrorism, one can innocently come to the conclusion, that the establishment of a proven act of terrorism, committed by the State, constitutes State-terrorism, and as such requires to be prohibited and punishable by law, however, it is not as simple as that, and a discussion based on the above assumption will form a large part of my dissertation.

In the pages to follow, I proceed into a philosopho-legal examination of our modern knowledge of the concept of State-terrorism, and throughout Chapter II in a review of literature and available descriptions of this phenomenon. I am attempting to distil the common paramount in all definitional attempts of this idea, with the intention to construct a working definition of State-terrorism, which could serve as the preliminary comprehension of its functions, characteristics and basic elements.

This pre-meditated method intends to provide the bridge for proceeding in Chapter's III philosophical embark and a quest for considering whether State-terrorism could be viewed through an Aristotelian spectrum, directed into discovering its essence or substance, and these elements that without which would cease to be what it is.

By expressing the question 'ti esti State-terrorism', I try to initiate a fresh understanding of its definitional structure and reflect on the issues from an "horismos" point of view, while utilizing the state of aporia and the Platonic guidance, that is generously given through his dialogues. I am not so ambitious as to say in my introduction that I have discovered all the truth of State-terrorism by the utilization of

the ancient Greek teachings, however, I am attempting to line up certain syllogisms that have been inspired by the Ancient Greek fathers of philosophy, and this should be acknowledged at this early stage in my text, since their teachings and methodological processes of analytical examination of knowledge underlies my whole work.

Moreover, I proceed in Chapter IV in placing law as the protagonist, and afterward the previous chapters which deals with State-terrorism from a definition point of view through explanatory, epistemological and comprehensive attempts, I progress into a legal discourse, which consists by a series of interchanging maneuvers from the theoretical into the practical elucidations of the legal issues that seem crucial to my elaboration.

As I said earlier in my preface, if terrorism is a prohibited and punishable crime, then one deems necessary to make the exact same case for State-terrorism, which is terrorism in another form, since in reality the only factor that is different if we compare the two harmful acts, is the perpetrator.

## CHAPTER II

### WHAT IS STATE-TERRORISM

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#### 2.1. REVIEW OF DEFINITIONS

This part of my dissertation aims into forming an introductory review of the concept of State-terrorism. It is an attempt to list the main issues around this phenomenon, and by examining the "mainstream" descriptions, definitions and available information, to prepare the soil for our comprehension of the idea of State-terrorism. It is formed by a review of literature, parallel to an elaboration of the most relevant to my argumentation issues rising from the existing knowledge, information and relevant data. This is a multidisciplinary chapter, with philosophy and law to hold the protagonist roles in my discourse's syllogistic methodology, while sociology and international relations to also be evident as methodological utensils.

In that sense, I proceed into an elaboration and review of a number of up-to-date descriptions of State-terrorism.

For instance:

Establishment terrorism, often called State or State-sponsored terrorism, is employed by governments—or more often by factions within governments—against that government's citizens, against factions within the government, or against foreign governments or groups. This type of terrorism is very common but difficult to identify.<sup>11</sup>

In this description, State-terrorism is described as the type of terrorism that is employed by governments. The problem though is that neither terrorism enjoys a

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<sup>11</sup> See: [www.britannica.com/EBchecked/topic/736034/establishment-terrorism](http://www.britannica.com/EBchecked/topic/736034/establishment-terrorism) [Retrieved on 4 December 2012].

definitional consensus, which makes our understanding as anemic as before. However, the basic elements of terrorism have been very well identified, and codified through law, which makes it a matter of time for an international consensus on a single legal definition to come into existence. So, if we take for granted that terrorism is the instrumentalization of terror for achieving further political goals, then State-terrorism encompasses the same elements with the difference that is being initiated and perpetrated by State-actors. This description recognizes that this is another type of terrorism, which is very common, however it is difficult to identify. Undeniably, it is terrorism that we are dealing with, yet in another form, or as the definition cited states: another type, however, the difficulty to identify it, is the crucial point that needs to be highlighted. The identification of State-terrorism is an impossible task giving the current international legal regime. It seems to me that identifying the practice, or *actus reus*, could be as problematic as identifying the *mens rea*, and irrefutably the perpetrator.

Moreover, State-terrorism has been described as terrorism from above, in contrast with the traditional understanding of terrorism that is described as terrorism from below, and I quote:

Scholar Gus Martin describes State-terrorism as terrorism ‘committed by governments and quasi-governmental agencies and personnel against perceived threats’, which can be directed against both domestic and foreign targets. The original general meaning of terrorism was of terrorism by the State, as reflected in the 1798 supplement of the Dictionnaire of the Académie française, which described terrorism as *systeme, regime de la terreur*. Similarly, a terrorist in the late 18th century was considered any person ‘who attempted to further his views by a system of coercive intimidation.’ The terms ‘establishment terrorism’, ‘terrorism from above’ (as opposed to ‘terrorism from below’, terrorism by non-State groups), and ‘structural terrorism’ are sometimes used to denote State-terrorism.<sup>12</sup>

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<sup>12</sup> See: [www.princeton.edu/~achaney/tmve/wiki100k/docs/State\\_terrorism.html](http://www.princeton.edu/~achaney/tmve/wiki100k/docs/State_terrorism.html) [Retrieved on 30 July 2012].

This descriptive attempt, also takes for granted that State-terrorism is a form of terrorism, that it is being committed by the government or its agencies, and which as such could be directed against either domestic or foreign targets. As it is emphasized by Gus Martin, the original meaning of terrorism was State-terrorism, allow me to anticipate that I proceed into a detailed discussion of that fact in chapter II which addresses the original meaning of the term, while going further back than the French enlightenment, and into the ancient Greek construction of the term terrorism, which signified State-terrorism etymologically and by definition.

Whereas, a description of State-terrorism from the Judge's Ernesto Garzón legal perspective, refers to State-terrorism as a political system, which abstracts the administration of justice by unconstitutional alterations of its judicial activities:

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. State-terrorism obstructs or annuls judicial activity and transforms the government into an active agent in the struggle for power.<sup>13</sup>

The emphasis in this illuminating description of State-terrorism, is placed on the annulment of the judicial activity, which undeniably is a symptom of a diseased polity. The government of the day is transformed into an active agent in the struggle of power, through the application of unconstitutional and illegal coercive means, which are being applied indiscriminately to innocent citizens. It seems to me that the deformation of the judicial system and the elimination of the rule of law is the crucial points that needs to be emphasized in interpreting this portrayal of State-terrorism.

Nevertheless, the above descriptions have not been chosen randomly, they are meant to create the soil where my dissertation's understanding of the concept of State-

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<sup>13</sup> See: [www.derechoschile.com/basicos/definiciones/BasicdefStateterrorism.htm](http://www.derechoschile.com/basicos/definiciones/BasicdefStateterrorism.htm) [Retrieved on 03 September 2012].

terrorism will try to flourish, and parallel to that, to demonstrate the mainstream information on the narratives of the phenomenon of State-terrorism through diverse disciplinary viewing. It is noteworthy, that in all mentioned portrayals, the main elements of the idea of State-terrorism or its core characteristics remain the same, and that is summarized in the phrase: terrorism committed by the State. Correspondingly, in my view, all the current understanding, information, legal analysis and scholarly work on terrorism can be utilized in the quest of comprehending State-terrorism. Since it is terrorism that we are dealing with, with the main difference and special unique characteristic, which has the crucial role of causing its differentiation through other forms of terrorism, to be allocated in the identification of the perpetrator.

Yet, this easy access to a plethora of information about State-terrorism, demonstrates that this is not an unheard or unknown idea, contrary to the "orthodox" legal scholarship, which classifies State-terrorism as a nonexistent and meaningless concept.

Before proceeding, it should be stressed that these descriptive endeavors cited above, have no legal status or applicability in a court of law, but it seems to me that can assist us, in illuminating our understanding of the notion itself.

In my view, the term State-terrorism is probably more political than legal, yet according to my thesis, terrorism as well is a more political than legal term, without this acknowledgment to diminish in any way its value as a subject of criminal law, since the crime of terrorism is an undeniably important and in an unprecedented manner trigger in Justice's processes.

Nonetheless, for the purposes of my overall thesis, my elaboration needs to be restricted to events and situations of the sort, that raise relevant philosophical and

political questions, complementary to a consideration of the key legal matters that have come before tribunals, domestic and international.

Allow me to anticipate, that in the chapters to follow, I intent to examine the concept through a philosophical dialogical discourse, as well as devote a chapter into a legal treatment of its manifestation as a crime. A crime which should be noted that, ideally all it requires is to occur just once in order to move proceedings for its investigation, and prosecution of the fault-bearers. This is a well-established case with terrorism in any penal system, while in the paradigm of State-terrorism, there is an implied pre-requisite that if this crime is to be recognized in law, must be manifested as a systematic or repeated practice of the State-actors, and as an official public policy. To prove that certain methods are part of an official policy is not without its difficulties, considering that in most cases it is functions within a clandestine net of State backed-up institutions and groups of State-actors. What should be highlighted though, is that this legal paradox, is contrary to the basic theory of law, and imposes upon this possible crime a problematic allocation of the burden of proof.

The conception of 'systematic' was described by the International Criminal Tribunal for Rwanda as: "thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources."<sup>14</sup> 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."<sup>15</sup> Such a policy can be presumed from the fashion in which an act happens. Nonetheless, it suffices that a single act, committed within the framework of a systematic attack, has the potential to demonstrate such a policy.<sup>16</sup>

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<sup>14</sup> See: Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T para. 580.

<sup>15</sup> 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., 51<sup>st</sup> Sess., Supp. No. 10, 30, U.N. Doc. A/51/10.

<sup>16</sup> See: Prosecutor vs Dusko Tadic.



Whereas, if a multiplicity of victims are targeted, we talk about a widespread attack.<sup>17</sup>

It is notable that 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. Consider for instance, the September 11<sup>th</sup> 2001 attack in New York, or the paradigm of an atomic bomb, such as the bombings of the cities of Hiroshima and Nagasaki in Japan.

Furthermore, it is interesting and useful to have a read of the sociological<sup>18</sup> definition of the concept, which asserts 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 behavior 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-terrorism.<sup>19</sup>

This definition, acknowledges the damage that human rights are being subjected to, in States that employ governmental policies that could be classified as State-terrorism, and explicitly highlights the impossibility for such a State to assume its role as a protector of its citizens, in accordance to a natural social contract, which is expected and implied in the modern liberal, citizen-State relationship. While is significant that it advances into a detailed description of what the methods of State-terrorism usually are, such as violent policies prescribed to spread terror and intimidation throughout

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<sup>17</sup> I.L.C. Draft Code of Crimes Against the Peace and Security of Mankind. See: [untreaty.un.org/ilc/texts/7\\_4.htm](http://untreaty.un.org/ilc/texts/7_4.htm) [Retrieved on 22 May 2012].

<sup>18</sup> Asafa Jalata, 'State-terrorism and Globalization: The Cases of Ethiopia and Sudan', *International Journal of Comparative Sociology* 2005; 46; 79. See: [cos.sagepub.com/cgi/content/abstract/46/1-2/79](http://cos.sagepub.com/cgi/content/abstract/46/1-2/79) [Retrieved on 21 November 2012].

<sup>19</sup> Oliverio, A. 'The State of Injustice: The Politics of Terrorism and the Production of Order', *International Journal of Comparative Sociology* 38(1-2): 48-63. 1997.

the population, or specific groups within the population, even by the display of corpses in the streets. The last point is one of the most fruitful depictions of State-terroristic methodology. While it is interesting to consider that, a murder is a well-recognized crime, which is codified and punishable by criminal law, so one could argue that we do not need to re-describe what an intentional killing requires for becoming punishable in an appropriate court. Which is the main argument against the codification of State-terrorism through criminal law. Since it is argued in exactly the same manner, that criminal law has all the tools and means to deal with these harmful acts, irrespectively of what they are called or named in the judicial procedure. In simple terms, the Judge does not need a law on State-terrorism to put the ones responsible for atrocities behind the bars.

However, in my understanding, when a murder, or unlawful intentional deprivation of an innocent life, is being committed first and undeniably, with the mens rea of causing death which is required for the constitution of murder, but also with the ultimate mens rea (guilty intention) to intimidate and spread terror within a population, and then the same criminal behavior, or crime is being utilized in such a way, as to deliver further political objectives, and realize additional political goals through the manipulation of the peoples by the inspiration of anxiety, fear and consequently by establishing a state of terror, then the judicial process is being misdirected if its practitioners insist in calling it a simple murder, and are satisfied by prosecuting the perpetrators as common murderers.

It is an obstruction of Justice to refuse to call State-terrorism by its name in such a case, and all the relevant cases falling within this category. It is most of all not fair, and fails the purposes of Justice, and will in a way, normalize these behaviors since law continues to perpetually allowing them to go unpunished. I should also mention at

this point the satisfaction of victims, their families, their communities and the general public, which requires the naming and shaming in certain cases of the perpetrators and of their methods, as part of the Justice's journey to fulfillment of her purpose. A detailed discussion of the legal issues is to follow in chapter IV, yet, I must note that terrorism carries heavier sentences than murder, which is another reason justifying my claim for the need to introduce State-terrorism in the administration of Justice.

It should be obvious by now, that my research's intentions, go beyond a sole theoretical comprehension, and into contributing to the evolvement of the legal regime covering this area of study. In that sense, legal issues and relevant case-law can be retrieved from the proceedings of the Nuremburg and Tokyo trials, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, or for Rwanda, and other courts mandated with investigating and moving legal procedures against perpetrators of the most serious crimes, in occasions the UN, as well as enforced disappearances, extra-judicial killings, torture and rape, are all constituting relevant case-law. Various demonstrations of controlled governmental practices to terrify, either by way of retaliation or to defend national interests have generated numerous examples of the methodical use of terror, or the toleration of terror by State actors, or of one ethnic group against another. Genocide is just one example.

A very interesting discourse has been articulated by Grossman, who argues that the implications of State terror go beyond the directly foreseeable harms:

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.<sup>20</sup>

The undisturbed perpetual practice of this criminal behavior has so many side-effects, that any attempt to list them would be in vain, however, an academic commitment for further scholarly engagement with this area of study is necessary and essential, since this practice should be prohibited by law, and punished accordingly. The time of the immunity of the perpetrators due to their high ranked offices is coming to an end, and it should be acknowledged that, the human rights regime has contributed greatly to that legal improvement. International law is developing and evolving in an unprecedented rate, yet, just as terrorism has been described as one of the most serious crimes and threats to our civilization, State-terrorism as well deserves a place in the same list. It seems to me that the constant amendment of our legal thought on terrorism, in absence of the term State-terrorism, is creating an even cloudier landscape, for both terms, which is blocking our conception of their means and ends. Some scholars 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 lead to the further delay of an international consensus; "...a comprehensive convention should not engender another form of terrorism: State-terrorism."<sup>21</sup> Still, even these criticisms are indirectly recognizing that State-terrorism is another form of terrorism, and therefore contribute to the acknowledgment of the necessity for further study and scholarly elaboration.

It is asserted that, governmental or State terror, is what sometimes is referred to as terror from above, namely where a government terrorizes its own population to

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<sup>20</sup> Grossman, Andrew, 'A Research Guide to Cases and Materials on Terrorism', Hauser Global Law School Program, New York University School of Law, May 2006. See: [www.nyulawglobal.org/globalex/Terrorism.htm](http://www.nyulawglobal.org/globalex/Terrorism.htm) [Retrieved on 28 June 2011].

<sup>21</sup> Saleh Elmarghani (Libya), Ad Hoc Committee on Assembly, Resolution 51/210, 38<sup>th</sup> Meeting (AM).

control or repress them.<sup>22</sup> These actions usually constitute an approved policy by the government of the day, and make use of official institutions such as the judiciary, police, military, or other government agencies and institutions. It has been observed that in most cases, the government, which also controls the judiciary, makes changes to legal codes that permit or encourage torture, killing, or property destruction in pursuit of governmental policies.<sup>23</sup>

Consider for instance the Nazi Germany era, which next to Stalin's Russia and/or the Israeli government, could provide a "handbook" of methods, tools and practices that constitute State-terrorism. After the Nazi assumed power, their official Nazi policy was aimed at the deliberate destruction of "State enemies" and the subsequent intimidation and terrorization of the rest of the population. In the same line of reasoning, Stalin's "eradications" of the 1930's, are examples of using the machinery of the State to terrorize a population. The methods his administration 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 in most part, with Ariel Heryando'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.

Namely:

- i. the fear is derived from severely violent actions conducted by State agents or their proxies;
- ii. these actions are directed against selected individual citizens (primary victims);
- iii. these individuals are selected as representatives of one or more social groups (target population) which are often publicly identified;

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<sup>22</sup> See: [www.terrorism-research.com/State/](http://www.terrorism-research.com/State/) [Retrieved on 14 July 2011].

<sup>23</sup> See: Prosecutor vs Dusko Tadic, Case No. IT-94-1-AR72 para. 654 (current customary International law takes also into account, forces that are not part of a legitimate government, but nonetheless have de facto control over defined territory).

- iv. the victimization of the selected individuals, their representative status and the motives for the violence are publicly exposed in order to spread fear and uncertainty among the wider target group against whom similar violence can take place in an unpredictable future;
- v. consequently the general population reproduces and elaborates the image of violence and intense fear among themselves.<sup>24</sup>

Whilst, it seems to me that since State-terrorism is a multidimensional, polymorphic and constantly developing phenomenon, any attempt to construct a list categorizing the basic elements of the methods and tools of its manifestation, would be more successful if it referred to specific case studies, like Heryando referred to Indonesia, in other words it seems to me that an attempt of that nature should not and cannot aspire into referring in the concept in its totality.

In that sense, a legal consideration of that sort of a definitional attempt would be bound to fail, since law is by essence striving into describing an unlawful act by anatomizing its core elements, that may be common to all its further different forms or manifestations. For instance, to talk about terrorism in a legal language, we would say, that terrorism is any act that by employing terror has the intention of achieving a political goal. So, these core elements, namely (a) the terror and (b) the political goal, are the core or basic elements that all terroristic acts share.

Trailing this logic, one could argue that the same applies to State-terrorism, although the differentiation of the perpetrator is necessary and important, so in the case of terrorism the perpetrator can be found within a group of non-State actors, while in State-terrorism the perpetrator can be found within a group of State-actors. It seems plausible to argue that, other than the perpetrator factor, we are talking about the same core elements or basic essentials in both concepts, while allow me to anticipate that a thorough consideration of these matters is located in chapter III.

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<sup>24</sup> See: Heryanto, Ariel, 'State-terrorism and Political Identity in Indonesia Fatally Belonging (Politics in Asia Series)', Routledge; 1<sup>st</sup> edition, December 16, 2005. p. 19.

Nonetheless, by reflecting on the legal issues of this concept, is agreeable, that to be found liable of criminal responsibility, of a crime as multidimensional as terrorism, would 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 of murder, 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 burden of proof is on the prosecutor, who is required to prove that the accused plaintiff had in mind the intention to kill.

State-terrorism should follow the paradigm of the crime of terrorism, which 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 political goal, to act accordingly.

The real problematic of actually discussing terrorism, State-terrorism, and State-supported terrorism, and attempting to adequately define these politically infused 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.

It is noteworthy though, that a codification would require a listing with the absolute word of law dictating, when and how crimes that fall within that category should be prosecuted and punished. While that could also have an adverse effect on the administration of justice, since it is the job of the lawyers to manipulate these lists and find justifications for excluding their clients from prosecution, like in the case of powerful politicians with the ability to contract good and high-priced lawyers.

It might be better in the case of terrorism and State-terrorism, for the law to stay flexible and emotional, while working within the purposes and guiding tools that the legal precedent has to offer, which requires for the consideration of past case-law and judicial decisions that may have faced similar legal questions in a court of law.

In that way, one could argue that when you see a crime of State-terrorism you could identify it as being one, you do not need a full description of every detail, but mainly of the basic elements that this crime could carry in order to be characterized as being State-terroristic.

The same would apply for terrorism, since the international community has been unable to date, to reach consensus on a single definition of terrorism, or even treat State-terrorism as a valid concept and crime, mainly because they focus on issues that makes an agreement between the signatory States impossible. Like who could be labeled as a terrorist or whether State's activities employing violent methods would classify as tools of State-terrorism and so on and so forth.

Imagine if legal practitioners had the same debate over who could be accused as a murderer, that seems an absurd example, since anyone that could commit murder in times of peace, with the intention to kill can be an accused murderer. Though, the same absurd case is a reality with the debate over terrorism and State-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 constitution and 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 criminalization 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.

The limited production of knowledge, regarding the concept of State-terrorism, is a critical issue. Certainly, the main theme of this thesis is State-terrorism, but I am also considering terrorism in many parts of my argumentation, since is an integral part of the term State-terrorism.

While as it has been demonstrated in all the definitional attempts cited and discussed above, State-terrorism is in reality another form or type of terrorism. It is the terrorism committed by the State. So, although it was not in my original intentions to occupy too much space in my dissertation on discussing terrorism, it is impossible to ignore the critical role that the information on terrorism hold in my elaboration.

At this point, it is thought-provoking to employ a useful tool illustrating in the graphs found on the following page, the great and unjustified gap in the production of knowledge on the areas of study of terrorism in contrast to State-terrorism, a claim that can be proved with the assistance of the N-gram Viewer.<sup>25</sup>

For example, by conducting two separate searches, one for State-terrorism and terrorism, and one just for State-terrorism, through over 5.2 million books, I came across data demonstrating in the first graph found bellow the different amounts of ink used in dealing with the two terms, while in the second graph the noteworthy increase in publications on State-terrorism just a decade after the Second World War.

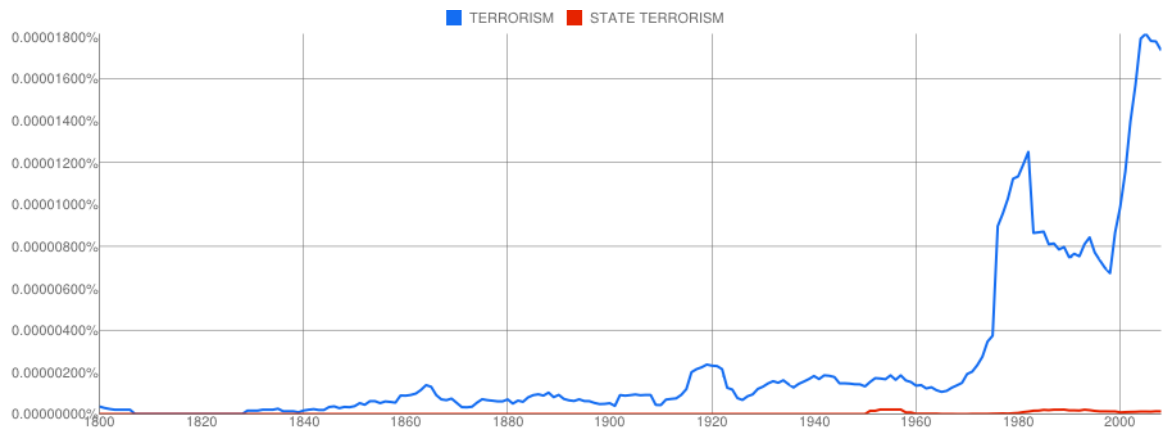
State-terrorism appeared in text, and met a great rise in published works after World War II, and the Nazi's State-terrorism.

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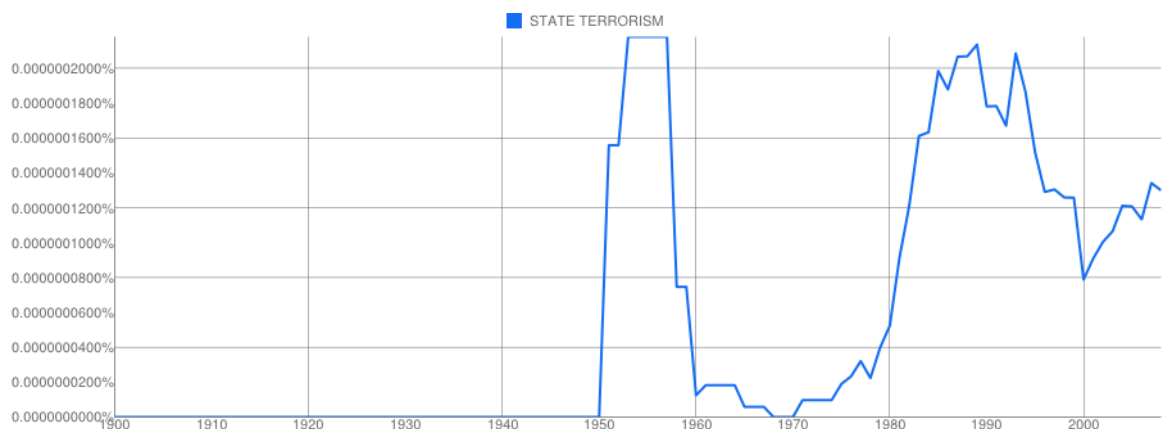
<sup>25</sup> 'The Google Labs N-gram Viewer is the first tool of its kind, capable of precisely and rapidly quantifying cultural trends based on massive quantities of data. It is a gateway to culturomics! The browser is designed to enable you to examine the frequency of words (In our case, of terrorism, and State-terrorism), or phrases, in books over time'. [Excerpt taken from: [www.culturomics.org/Resources/A-users-guide-to-culturomics](http://www.culturomics.org/Resources/A-users-guide-to-culturomics). (Retrieved on 15 July 2012)].

The graphs<sup>26</sup> below, demonstrate that there is a great gap in the production of knowledge between the two fields of studies, which is another reason justifying my insistence on the need for scholarly engagement.

**Graph A: Bibliography on state-terrorism and terrorism contrasted:**



**Graph B: State-terrorism had a great rise in bibliography after 1950's and the WW II.**



<sup>26</sup> Graphs created through: [books.google.com/ngrams/](https://books.google.com/ngrams/) [Retrieved on 15/Dec/2011].

Graph A, can be found by following the link below:

[books.google.com/ngrams/graph?content=TERRORISM%2C+STATE+TERRORISM&year\\_start=1800&year\\_end=2008&corpus=0&smoothing=3](https://books.google.com/ngrams/graph?content=TERRORISM%2C+STATE+TERRORISM&year_start=1800&year_end=2008&corpus=0&smoothing=3)

Graph B, can be found at:

[books.google.com/ngrams/graph?content=STATE+TERRORISM&year\\_start=1900&year\\_end=2008&corpus=0&smoothing=3](https://books.google.com/ngrams/graph?content=STATE+TERRORISM&year_start=1900&year_end=2008&corpus=0&smoothing=3)

## 2.2. TERRORISM

To understand State-terrorism, it would be beneficial 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 up-to-date. Since as it has been demonstrated in the foreword of this chapter, State-terrorism is the terrorism of the State.

In Schmid's new book<sup>27</sup> one can come across 260 different definitions of terrorism. However, the detailed description of the negotiations and the analytical methodology used by the academics, other specialists and terrorist experts, into their attempts to provide a definition is rather exhausting. Terrorism is a disputed phenomenon, as it has been repeatedly stressed throughout my dissertation, although there are many national and regional definitions of the concept and in cases crime of terrorism, still there is no universal legal definition approved by the General Assembly of the United Nations.

The United Nations Office on Drugs and Crime website<sup>28</sup> dated, Wednesday, 04 February 2013, explicitly puts forward the fact that there is no international consensus on a single definition of terrorism, which is resulting to the absence of an international legally binding instrument covering this blurred area of international law. In simple words, international law has been unable to date, to provide a comprehensive definition of the crime of terrorism and to cover terrorism as an international crime, while it directs the focus to the national and domestic legal systems for the prosecution of that crime. Yet lawyers, we are commonly called to work on abstract definitions of legal concepts, and to "improvise" in our struggle to serve justice, by

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<sup>27</sup> Schmid, Alex P., 'The Routledge Handbook of Terrorism Research', Taylor & Francis, 2011, pp. 99-200.

<sup>28</sup> See: [www.unidoc.org](http://www.unidoc.org) [Retrieved on 04 April 2011].

any means available according to the case and the crime in question, thus it is an undeniable fact that terrorism in recent decades, is enjoying an added legal weight and value by its criminalization and its classification as a special subject of law, through subsidiary legal instruments, tools and mechanisms indirectly dealing with the description and definition of terrorism.

It should be mentioned, that in 1994 the General Assembly, in the Declaration on Measures to Eliminate International Terrorism,<sup>29</sup> indicated that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.

While in 2004, the Security Council in its resolution 1566, identified features of a description of terrorism, as suggesting to:

...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or abstain from doing any act.<sup>30</sup>

Yet, even this definitional proposal, is unfortunately non-binding and consequently is lacking legal authority in international law. However, the role of the political pressure in governmental decisions, by the provocation of terror in the public or group of people, with even, the possibility for the terror to be directed against particular persons, is being identified. Although terrorism as a tool is traditionally understood as having a general target audience, principally groups of people, and thus larger parts of the population, in that definition, terrorism utilization may be targeting specific

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<sup>29</sup> General Assembly resolution 49/60. Measures to eliminate international terrorism. See: [www.un.org/documents/ga/res/49/a49r060.htm](http://www.un.org/documents/ga/res/49/a49r060.htm) [Retrieved on 11 January 2012].

<sup>30</sup> Security Council Res 1566 (2004), Threats to international peace and security caused by terrorist acts, Para. 3. See: [www.un.org/docs/sc/unsc\\_resolutions04.html](http://www.un.org/docs/sc/unsc_resolutions04.html) [Retrieved on 9 May 2012].

persons, such as persons holding high decision-making offices of international organization, and so on and so forth. So, terrorism, in that sense is a political tool, which by employing terror and the threat of violence, exercises political pressure in possible decision making processes.

Conversely, in line with my view about the real practice of legal practitioners with this area of law, and according to the UNODC:

...the lack of a broad definition of terrorism does not present a legal challenge to practitioners. Since 1963, the international community has elaborated a comprehensive set of universal legal instruments to prevent terrorist acts. They consist of more than a dozen conventions and protocols covering almost every conceivable kind of terrorist act. Those legal instruments (16 in total as of 2008), together with several Security Council resolutions relating to terrorism (most notably, resolutions 1267 (1999), 1373 (2001) and 1540 (2004)), make up what is commonly referred to as the universal legal regime against terrorism.<sup>31</sup>

These 16 instruments, or the otherwise called: "universal legal regime against terrorism", are covering the following unlawful terrorist acts:

- Acts of aircraft hijacking;
- Acts of aviation sabotage;
- Acts of violence at airports;
- Acts against the safety of maritime navigation;
- Acts against the safety of fixed platforms located on the continental shelf;
- Crime against internationally protected persons (as kidnapping of diplomats);
- Acts of unlawful taking and possession of nuclear material;
- Acts of hostage-taking;
- Acts of terrorist bombings;
- Acts of funding of the commission of terrorist acts and terrorist organizations;
- Nuclear terrorism by individuals and groups.<sup>32</sup>

It should be noted though, that these global tools do not define terrorist crimes, as crimes under international law. They basically generate a duty on States to criminalize these offences within their national legislative framework, while consequently to

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<sup>31</sup> United Nations Office on Drugs and Crime, 'Handbook on Criminal Justice Responses to Terrorism', Criminal Justice Handbook Series, United Nations, New York, 2009. p. 10.

<sup>32</sup> Idem. p.11.

actuate jurisdiction on those criminals, and offer their services for an international cooperation apparatuses, that would furthermore facilitate and support the State's efforts to create the compulsory legal regime for successfully prosecuting or extraditing the alleged wrongdoer.

It should be highlighted that the Ad Hoc Committee on Terrorism of the 6<sup>th</sup> Committee of the General Assembly, has been struggling to create a legal definition since 1972, which means that the United Nations are working on these matters for almost half a century, while in the lack of a legal definition attempts have been made since the 1980's to reach agreement on an academic consensus definition.

It is rather fruitful to consider the so-called, Academic Consensus Definition, which conditions 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), (imperiled) 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.<sup>33</sup>

In the above definition we can observe that terrorism is described as a method, which aims into inspiring anxiety, and turning its audience into a target of terror, while it is employed amongst other groups, and even from actors of the State.

The State-terrorism which is being included in the academic consensus definition, is the terror employed by States. This is in line with my dissertation's angle of viewing

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<sup>33</sup> See: Schmid, Alex P., and Jongman, Albert J., 'Political Terrorism: A New Guide to Actors, Authors, Concepts, Databases, Theories, and Literature', Amsterdam: North Holland, Transaction Books, 1988, p.28.

the topic of State-terrorism, in my quest to provide a comprehensive theorizing of its conceptual being. In this line of reasoning, terrorism is a tool and method that could be employed from different perpetrators, including the State.

However, the element of the communication is very important, and it seems to me that it has not been emphasized enough through literature. The above definition emphasizes on the 'message generators' element that the targets of State-terrorism are being utilized as. Without the element of communicating the terror-inspiring act, terrorism might cease to be. The example of murder discussed earlier, could serve for clarifying the point of the message generating element, murder which can also become a method of terrorism, when for instance the bodies are being exhibited in public view, like in the past has occurred by locating the victims of State-terrorism in central squares for the further inspiration of terror to a wider target population, mainly in cases that the governmental power was under threat by its own people.

In the same terrain, one can find the product of three series of conferences between academics and other specialists, which is actually the revised and updated definition discussed earlier by Schmid.<sup>34</sup> It seems to me, that we will similarly profit by considering the Revised Academic Consensus Definition of 2011, which explains that:

1. Terrorism refers on the one hand to a doctrine about the presumed effectiveness of a special form or tactic of fear-generating, coercive political violence and, on the other hand, to a conspiratorial practice of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and non-combatants, performed for its propagandistic and psychological effects on various audiences and conflict parties.
2. Terrorism as a tactic is employed in three main contexts: (i) illegal state repression, (ii) propagandistic agitation of non-state actors in times of peace or outside zones of conflict and; (iii) is an illicit tactic of irregular warfare employed by state and non-state-actors.

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<sup>34</sup> Schmid, Alex P., 'The Routledge Handbook of Terrorism Research', Taylor & Francis, 2011, p. 86.

Even in this freshly born revised academic consensus definition of terrorism, the role of the State as the committer of terrorism is explicitly included and highlighted. There is no space for doubt or nothing to be implied. State-terrorism is a matter of fact, a recognized form of terrorism, while it is the State that is being identified as the perpetrator of the terroristic act, and employer of the method or tactic with the purpose of intimidating or spreading terror, for propagandistic or other political goals. Terrorism can be manifested in three main contexts according to this scholarly construction, while it is notable that from these three main contexts, the State as the employer of terrorism, can be found in two out of the three. Allow me to stress that these findings are part of the latest and most valid academic work in existence.

Moreover, many scholars 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 resulted into becoming accepted as a norm or orthodox definition of terrorism, just like Jeff McMahan refers to the process of the development of orthodoxies in understanding concepts.<sup>35</sup>

However, terrorism has long proceeded from being solely a political stigmatization, and has been upgraded into one of the most serious crimes in existence, while in many cases it could even possess the necessary elements for constituting a crime against humanity, an assertion which is rather dubious due to the unwillingness of the International Criminal Court to include terrorism in its jurisdiction.

"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."<sup>36</sup>

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<sup>35</sup> See: McMahan, Jeff, 'The Ethics of Killing in War,' *Ethics* 114(2004): 693-733, apt. 729.

<sup>36</sup> See: [www.terrorism-research.com/](http://www.terrorism-research.com/) [Retrieved on 3 July 2012].



The difficulty though is always present in any attempt to define these acts as terrorism, in order to prosecute them as definite heinous crimes. This violent threatening political tool, has an unbreakable bond with the political, which undeniably is making its legal treatment problematic.

In Rosalyn Higgins own words:

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.<sup>37</sup>

Additionally, there is the famous argument, which says that "one man's terrorist is another man's freedom fighter." As Derrida<sup>38</sup> points out for instance, the Germans labeled the French resistants, 'terrorists' during World War Two. Undeniably, the right of self-determination, and of resistance to foreign occupation, is enjoying a great support in the negotiations of the definition of terrorism, an issue that requires special mentioning.

In that sense, the people acting under these special circumstances, could, should and ought not to be labeled as terrorists, so any definition of terrorism ought not to include this category of perpetrators under its umbrella. Take for instance the case of Algeria, when under the French occupation, and the deadly bombing attacks, the actors in the part of the independence of Algeria were characterized for years as terrorists, because they were employing apparently terroristic methods, such as bombing cafeterias and so on and so forth. Yet, given the appropriate consideration, they have come to be declared as heroes of the independence of Algeria, acting contra to the French

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<sup>37</sup> Higgins, Rosalyn, 'The General International Law of Terrorism, Terrorism and International Law', eds. Rosalyn Higgins and Maurice Flory, London: Routledge, 1997, p. 21.

<sup>38</sup> Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004, p.109.

occupational State-terroristic regime. Who could deny that, as Derrida asserts in the dialogues with Borradori:

No one can deny that there was State-terrorism during the French repression in Algeria from 1954 to 1962. The terrorism carried out by the Algerian rebellion was long considered a domestic phenomenon insofar as Algeria was supposed to be an integral part of French national territory, and the French terrorism of the time (carried out by the State) was presented as a police operation for internal security. It was only in the 1990s, decades later, that the French Parliament retrospectively conferred the status of 'war'...Armed repression, an internal police operation, and State-terrorism thus all of a sudden became a 'war'. On the other side, the terrorists were considered and from now on are considered in much of the world as freedom fighters and heroes of national independence. As for the terrorism of the armed groups that helped force the foundation and recognition of the State of Israel, was that national or international? And what about the different groups of Palestinian terrorists today? And the Irish? And the Afghans who fought against the Soviet Union? And the Chechnyans? At what point does one terrorism stop being denounced as such to be hailed as the only recourse left in a legitimate fight? And what about the inverse?<sup>39</sup>

Derrida's dialectic, is more than illuminating and relevant to my hypothesizing direction. The reasoning he is outlining, followed by his 'right to the point' questioning rhythm, it seems to me that apart from sharing valuable knowledge on the historical development of the understanding of terrorism, it also emphasizes on its different terminological treatment by the international community, depending on the stronger political interests. It is true that the manipulation of influential as terrorism terms, by the holders of power, apart from contributing in the production of knowledge, it has an effect on the historical memory, while it depends on various of factors, such as the historical point the case occurs, the geographical terrain, the political infrastructure and further political interests. While, what I wish to distil from the above dialogue, for the purposes of my discourse, is that an injustice do not have an expiring date, and by that I mean, that the calling for the restoration of justice never really seizes to sound. So in my view, even if retrospectively State-terrorism

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<sup>39</sup> Idem, p. 104.

were to be used, for the repair of justice and the people affected, it would still serve fairness.

Furthermore, a reasonable woman would condemn all violent acts that result to the harming of human beings, as being *prima facie* evil and immoral, however, whether they could be found illegal and unjustified, is a different matter all together.

Every accusation is accompanied by the natural legal right to provide with defense, and a due process of law, a right that for instance has been denied to the majority of the accused suspected terrorists<sup>40</sup> all around the world, although it is clearly ensured under the legal principle of the right to a fair trial.<sup>41</sup> Basic legal theory prescribes, that 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.

However, it is very important to distinguish acts of terrorism from acts of resistance, since international law grants a people fighting an illegal occupation the right to use "all necessary means at their disposal" to end their occupation.<sup>42</sup> What is also relevant and requires to be highlighted is the element of intention, in criminal law's language *mens rea*. In constituting a crime, a lawyer looks in both, the committing of the act but also to the guilty intent to complete this act.

In the case of freedom fighters the intention becomes a different proposition than the predictable intention of terrorists. Since the purpose that drives them is one of a noble cause, and that is the freedom of their motherlands, or the protection of their honor, amongst other things.

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<sup>40</sup> See: Guantanamo. (FBI Memorandum Details Guantánamo Commander's Repeated Refusal to Abandon Illegal and Ineffective Interrogation Techniques, ACLU).

<sup>41</sup> See: Article 10 of the Universal Declaration of Human Rights, the Sixth Amendment of the US Constitution, and Article 6 of the European Convention of Human Rights.

<sup>42</sup> The right to self-determination by armed struggle is permissible under the United Nations Charter's Article 51, concerning self-defence.

The element of intention, or mens rea, is the one that poses the greatest complications in any examination of the concept of terrorism, since the plethora of intentions, from the first link to the last in a terrorist organization, makes it impossible to find any sort of homogeneity. One could argue, that this is not the case with freedom fighters, which have a clear intention of protecting their motherland, and as it is being asserted they are fighting a just cause, which gives them the right to use any means available. Nonetheless, while a consensus on the definition of terrorism is under negotiations, many scholars claim that in the meantime, some terrorist acts could be prosecuted as crimes against humanity. But there are a lot that argue, that this is just a favorable 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."

But, as described by the Netherlands Hoge Raad in Public Prosecutor vs Menten<sup>43</sup>:

The concept of 'crimes against humanity' also requires - that the crimes in question form a part of a system based on terror or constitute a link in a consciously pursued policy directed against particular groups of people.

These requirements afforded to the 'crimes against humanity' expressed in the ruling of the above case, it seems to me that are a better fit to the practice of State-terrorism. Since in the majority of cases that State-terrorism is at stake, these elements are present and the crimes committed within such a terrain are by definition "part of a system based on terror", while they "constitute a link in a consciously pursued policy directed against particular groups of people." Still, in my view, the burden of proof of such an allegation is unbearably heavy and on the shoulders of the prosecutor.

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<sup>43</sup> Full legal citation: 75 I.L.R. 362-63 (1987).

It could well be argued that pre-requisite in State-terrorism, is the existence of an organized system of terror that functions principally through the State's institutions or actors, as an official State policy, or, if by a clandestine group, the State does nothing to punish or prosecute the perpetrators, which allows for the normalization of such practices, and the general acceptance that these State's actors act in impunity, which may be sustained in cases, through the silent approval of these methods by the government.

### 2.3. STATE-TERRORISM

State-terrorism is the terrorism committed by State-actors, the terrorism committed by the State. It is the most immoral and dangerous form of terrorism, and has evolved into a human rights assassin. However, as it has been repeatedly stressed already, it does not exist according to the international community, and this term does not refer to anything in the eyes of the law, while even if a legal practitioner chooses to use it as a term in accusing a State for terrorism, the outcome according to the current legal regime would not be the desired one. Hence, it should be highlighted that customary international law has criminalized acts of terror violence just as a war crime.<sup>44</sup>

This is the reality, but it does not mean that the lack of an international recognition of the term can render this thesis void; on the contrary. It is plausible to say, that law's duty is to evolve according to the new conditions that every era engenders. Law, in that line of reasoning, is a living organism, and 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 threat, and lawmakers are inevitably bound to deal with it.

However, State-terrorism, is not a new concept, or practice. According to my thesis it is as old as the political State, and the birth of our political thought. An issue that I deal with in detail in the next chapter. Still, according to my thesis, State-terrorism is a definite fact today, which requires 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 partly, what this dissertation's discussion is based on.

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<sup>44</sup> See: Zimmermann, Andreas, Preliminary Remarks on Par. 2(c)-(f) and Par. 3: War Crimes Committed in Armed Conflicts not of an International Character, in Triffterer, Otto (ed), 'Commentary on the Rome Statute of the International Criminal Court: Observers Notes, Article by Article', Baden-Baden: Nomos Verlagsgesellschaft, 1999.

In the Ad Hoc Committee on Assembly<sup>45</sup>, 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 participation in terror, include activities where government people conduct functions by employing methods and tools of terror. The activities I am referring to, could be targeting the citizens or population of their own country, or another country's, groups of people or even individuals viewed as dangerous to the State, or in cases a foreign government. In certain instances, these activities are terrorism under formal governmental authorization, although such authorization is rarely acknowledged openly, in our days. Historic paradigms could be observed in the Soviet and Iranian assassination campaigns against nonconformists who had escaped the regimes overseas, as well as the Libyan and North Korean intelligence operatives high-jacking international flights.

In addition, quoting a letter from representatives of the Libyan Government, in Smith vs Socialist People's Libyan Arab Jamahiriya<sup>46</sup>:

[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.

This reveals that State-terrorism is a name used even inside legal proceedings, yet is notable, that the term is more likely to be employed by the less developed States.

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<sup>45</sup> See: Ad Hoc Committee on Assembly, Resolution 51/210, 38<sup>th</sup> Meeting (AM), 05 February 2007.

<sup>46</sup> Full legal citation: 886 F.Supp. 306, 314 (E.D.N.Y. 1995).

State-terrorism does not exist in international law, as I pointed out above, but it does exist in Regional laws, international relations and philosophy. While it is entering the world of international law, slowly but steadily, through the currently negotiating draft convention on international terrorism, that is under construction in New York and the United Nations.

Nonetheless, the first form and manifestation of terrorism, according to my hypothesis, 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 population. Later in my thesis I will proceed into a more detailed examination of that argument.

For the time being, it is significant that 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."<sup>47</sup>

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 entity legally entitled to use violence. According to the Weberian idea of the 'legitimate monopoly of violence', however, Freud insisted, "all law and right, come from violence."<sup>48</sup> While from a critical legal studies standpoint it is asserted that: "Law is the replacement of individual violence by the organized violence of the community, and is directed against those who resist it."<sup>49</sup> In my view, it is one thing to talk about violence, and another about terror, while it is true that the latter flourishes better through the former.

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<sup>47</sup> *Idem supra* note 16.

<sup>48</sup> Freud, Sigmund, 'Why War in Civilisation, Society and Religion', James Strachey ed. and trans., Penguin, 1985. pp. 341-359.

<sup>49</sup> Douzinas, Costas, 'the end of human rights', Hart publishing, Oxford, 2000, p. 300.



There is another theoretical approach favoring the usage of different words and terms less negatively charged, in order to gain more support and people to listen to their theories. In this line of reasoning, there have been scholars that have suggested to me while I was conducting my research and interviewing them, that the replacement of the term State-terrorism with terms such as State brutality, or human rights violations, or State terror would be more possible to gain acceptance as credible academic work, with possibility to contribute in the universal debates over these matters.

A standpoint, that I do not share, since I believe that things should be called as they are, and State-terrorism is an existing concept, practice, phenomenon and soon to be a recognized, codified, prohibited and punishable crime. As the representative of the United Kingdom to the United Nations said: "what looks, smells and kills like terrorism is terrorism"<sup>50</sup> and in my view the same is applicable to State-terrorism.

Nonetheless, one of the definitions, which largely covers the question, is the one given by M.C. Boire 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 behavior 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.<sup>51</sup>

Martin Boire in this article suggested that in order to comprehend terrorism, we first need to define it, and proceeds in an attempt to do so, by defining three types of terrorism, namely: (1) the individual terrorism, (2) the State-terrorism, and (3) the

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<sup>50</sup> Statement by the Permanent Representative of the UK to the United Nations on the General Assembly Debate on Terrorism, 1 October 2001.

<sup>51</sup> Boire, M.C., '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.

community terrorism. Still the author reaches the conclusion, that community terrorism as exhibited in Northern Ireland and the Israeli-Lebanon conflict, varies from revolutionary terrorism by a small group, and is acceptable as an approach or method of social amendment, change or maintenance because, "...it embraces a majority supported response to an illegitimate regime or unacceptably oppressive government conduct." So the case of the freedom fighter which holds an important role in the negotiations of terrorism definitions is evident in the above discourse, and should be noted that is in line with this dissertation's agreement, as far as the crucial relevant elements for a possible definition of terrorism is concerned.

Furthermore, after having defined the substantial components of terrorism, certain scholars<sup>52</sup> suggest that we could divide them into two distinct main categories.

Firstly, the individual, which is engaged by particular groups aiming to accomplish a political goal, which enthuses only small crowds, or otherwise called terrorist-ideology driven groups, such as the Brigade Rosse in Italy, the 17<sup>th</sup> of November in Greece, or the Bader-Meinhof in Germany. While Separatist terrorist groups such as the IRA and ETA are contained in the same category no matter the differentiating element that their brutalities were directed towards small groups of the population.

Secondly is State-terrorism, which occurs when the State aims at extinguishing the resistance of a political opponent in the struggle for power. In that second case, which is most attractive for my research, the terrorism originates from the top and uses State and/or para-State mechanisms of oppression, as in the paradigm of Pol Pot in Cambodia.

Conversely, in most autocracies or totalitarian regimes, the struggle for the control of power could be found under the umbrella of State-terrorism, specifically in phases of

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<sup>52</sup> See: [www.epp-ed.eu/Press/pfocus/docs/terrorism\\_en.doc](http://www.epp-ed.eu/Press/pfocus/docs/terrorism_en.doc). [Retrieved on 19 August 2011].

political or social unsteadiness. Under this logic State-terrorism can take two forms, that of the repressive or of preventive State-terrorism. Repressive refers to methods that aim to repress, while, preventative State-terrorism is employed by States in conditions of social and political unrest and intents to prevent such circumstances, for example, by arresting members of a politically opposing or revolutionary group, before planned demonstrations in order to prevent them and their followers from actually proceeding with the demonstrations or future plans; while one could argue that a recent paradigm is the established police brutality in democratic demonstrations around Greece.

Hence, State-terrorism, today, under the veil of globalization, has taken a 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 threat of a global attack, which might even touch upon the actual threat of human kind's extinction.<sup>53</sup> Hiroshima and Nagasaki, for example, has been a uniquely worst terror attack in history. The holocaust, was undoubtedly the cruelest form of State-terrorism ever been witnessed by humanity, but Hiroshima and Nagasaki has brought every human being facing and reflecting on the possibility of her extinction, since is possible 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 and weaponry industry that researches, invents, and manufactures weapons of unprecedented power and magnitude. Although the holocaust is so greatly condemned, that does not even occur to us that may be repeated in our lifetimes.

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<sup>53</sup> '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...'. See: [www.tamilnation.org](http://www.tamilnation.org) [Retrieved on 24 May 2011].

A noteworthy idea comes from Michael Stohl<sup>54</sup> and George A. Lopez, which argue that, terrorism carried out by a State, can take an institutionalized form, which has been developed as a product of changes that appeared after World War II. In this line of reasoning, State-terrorism takes the form of foreign policy, shaped by the presence and use of weapons of mass destruction. The normalization of such violent behavior led to an increased international toleration and silent legitimation, as long it was employed by States. We are talking about a "legalization" of harm, violence and acts, which had earlier been labeled terroristic and criminal.

In the case of North Korea for instance, one could effortlessly identify methods of State-terrorism, in their domestic policies, but most importantly in the foreign policies. Take for instance the constant threats against South Korea, and the utilization of terror for the intimidation of the population or the government.

State-terrorism which is also observable in the most recent event of the threats against the USA, by the use of nuclear weapons against them, even if they do not hold the means and power for such an attack, since according to the international community such an attack exceeds their weaponry capacities. So, if the North Korean government consciously expresses this sort of threats, with the pre-given that they are unable to deliver and hence impossible to be executed, whilst it should be noted that their severity is unique, given that it is the most serious threat to be unleashed against another State, then one could argue that such a threat satisfy the requirements of State-terrorism, since such an act is a threat by using terror and the fear of a possible catastrophic attack. It could well be argued that this is a manifestation of a method and form of the modern State-terrorism when it is used as a foreign policy, which has an official character and is targeting mainly in the instrumentalization of terror for the

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<sup>54</sup> Stohl, Michael and Lopez, George A., 'Terrible beyond Endurance? : The Foreign Policy of State-terrorism', Greenwood Press, 1988.

achievement of further political goals. Such in our case, to exercise political pressure in the international community of States, and the United Nations, in order to minimize the sanctions imposed on North Korea, following North Korea's underground test of a nuclear weapon in early 2013. It could well be argued, that in cases where threats of attack from one State to another is at stake, what is on the table, is actually the traditional threat of war. Yet, this is not the declaring of a war we are dealing with. The sizes of the States in question, makes it impossible to really pose a threat of attack in a NATO member State, and that is a fact, while in the case of the USA, it is a common secret that is globally the leading super power both economically and militarily. North Korea is exhibiting a method of State-terrorism, in the form of a foreign official public policy, which is exercising repeatedly, usually against South Korea and other neighboring countries. As James Clapper, the US director of national intelligence said: "The intelligence community has long assessed that, in Pyongyang's view, its nuclear capabilities are intended for deterrence, international prestige and coercive diplomacy."<sup>55</sup>

This is an undeniable and with the international community's stamps fact, of the instrumentalization of terror for the achievement of further political goals and as such should be named and recognized as terrorism committed by this State. However, it is not classified as such, since State-terrorism is not an option in the current international law's or politics vocabulary. State-terrorism has not yet been included in the forms of terrorism that are prohibited and punishable by international law. If this would be a probability though, this State's government would have to be tried in an

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<sup>55</sup> McGreal, Chris, "US deems North Korea nuclear strike unlikely without threat to dynasty' Intelligence report comes as North Korea state press say people ready to 'rain bullets on the enemy' amid increasing tensions", 12 March 2013, [guardian.co.uk](http://guardian.co.uk), See: [www.guardian.co.uk/world/2013/mar/12/us-north-korea-nuclear-strike-unlikely](http://www.guardian.co.uk/world/2013/mar/12/us-north-korea-nuclear-strike-unlikely) [Retrieved on 13 March 2013].

appropriate international tribunal, and if found guilty, to be punished according to the Criminal Justice's system commands.

The world would be a better proposition if this possibility was enjoying existence, and in my view global justice would have passed from theory, into practice and establishment, while the utopic ideals of justice would move towards realistic demands of global justice, in the best and most efficient way.

However, in association with the main hypothesis of my dissertation, 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.<sup>56</sup>

Conversely, it is not just my thesis that has perceived this critical role the discussion on State-terrorism holds, while it must be acknowledged that my dissertation indirectly strive to expose this unjustifiable denial by the international legal community to deal, and treat, the phenomenon of State-terrorism as another form and type of terrorism. Scholars such Van Krieken have also stressed this incomprehensible political and legal reality.

However, in my view, a recognition of that nature, may have the power to open the path for a changed and new viewing of the utility of a discussion on State-terrorism and its usefulness in also understanding and defining terrorism, which irrefutably enjoys a better-recognized urgent necessity, that is translated by the crucially pressing duty on international law-making organs to reach a universal consensus definition on terrorism.

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<sup>56</sup> 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.

## 2.4. STATE-SUPPORTED TERRORISM

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. Res 1373, obliges all States to criminalize assistance for terrorist activities, but there are so many States that provide assistance to terrorist organizations, including some of the great powers of the so-called first world countries, western State's activities which would easily fall under the prohibited acts of terrorism, under the European's Arrest Warrant<sup>57</sup> list of terrorist acts, the Academic Definition of Terrorism, or the International Convention for the Suppression of the Financing of Terrorism.<sup>58</sup>

There are scholars<sup>59</sup> which argue that we must distinguish State-terrorism, whose victims are generally the State's own citizens, from State-supported terrorism which takes two shapes: Firstly, it is used overseas versus the State's enemies, and secondly, where a State assists and supports actions of international terrorist organizations which have several targets abroad.

Yet, in my view, State-supported terrorism is State-terrorism milder put. A term, that engendered a legal regime, in order to classify certain acts of terrorism as prohibited, in an international legal environment not mature enough to accept a term as State-terrorism. Imagine, if for instance, in a terrorist case, a court of law, do not punish all the actors of a terrorist organization, since their role was supportive and not all of them pressed the button for a bomb to explode. Although, this example might seem

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<sup>57</sup> See: [www.europa.eu/scadplus/leg/en/lvb/l33167.htm](http://www.europa.eu/scadplus/leg/en/lvb/l33167.htm) [Retrieved on 4 July 2012].

<sup>58</sup> International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

<sup>59</sup> See: [www.epp-ed.eu/Press/pfocus/docs/terrorism\\_en.doc](http://www.epp-ed.eu/Press/pfocus/docs/terrorism_en.doc) [Retrieved on 16 August 2012].

hyperbolic, this is exactly what the State-supported terrorism terminological construction brings in practical terms.

It is notable, that liberation movements against colonial regimes or of rebel groups against dictatorships raise several problems. These activities, under certain conditions, reach the limits of terrorism; but one may argue that it is not a terrorist act when being used against military targets, or against foreign occupation, according to the right for self-determination.

State-sponsored terrorism 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, this 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, with lesser criminal responsibility, while the controversy largely arises in the definition of State-terrorism as regards sponsorship, asymmetric warfare (clandestine warfare) and international character. In Western politics, 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. Still, one should not neglect to consider also the United States activities in Latin America, the Nicaragua case, and many other foreign public policies that could assist us in comprehending this conception. The intentions of this



form of terrorism are alleged to be the deterioration of a target State, the formation of global perceptibility for a persistent problem, or acts of reprisal against a target State, and efforts to foster a State's interests.

There are a lot of examples of State supported terrorism, and today is recognized 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, which always share one characteristic, the imposing of fear and anxiety on human beings for the achievement of a political goal.

According to Terrorism Research<sup>60</sup> 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.

For example, a type of these activities is the 'death squads'. State sponsorship of terrorism, also known as State supported terrorism, occurs when governments provide materials, schooling, training, resources and other forms of support to non-State terrorist organizations or to State-actors. One of the most common types of this help and support, is the providing of safe haven or physical basing for the terrorist groups. An additional vital facility a State sponsor can deliver, is made-up certification like passports, identification documents etc., but also help with financial transactions and weapons acquisitions. Other methods of support are by offering training services and know-how, which would otherwise not have been easily obtainable to groups without far-reaching means. Ultimately, diplomatic securities and assistances, such as immunity from extradition, diplomatic passports, and use of embassies and other

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<sup>60</sup> See: [www.terrorism-research.com/State/](http://www.terrorism-research.com/State/) [Retrieved on 07 September 2011].

protected grounds, and diplomatic bags to passage firearms or munitions have been critical 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 lesser, more modest gradation, 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. Some scholars, argue that the Cyprus Problem, is still unsolved, due to the Turkish State-sponsored terrorism against Cyprus, and subsequently the Turkish continuous violations of numerous articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>61</sup>

In my view, State-supported or State-sponsored terrorism, could be parallelized with the legal regime dealing with accomplices of a crime. An accomplice, is treated as the principal accused is. My point might be better explained if one considers the United States Code (U.S.C.), section two of title 18:

- a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
- b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.<sup>62</sup>

Whilst one could claim that this is a gentler way of holding States liable of State-terrorism, through an 'indirect' way, still the denial of the international legal-making bodies to recognize and employ the term State-terrorism, seems incomprehensible.

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<sup>61</sup> 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 vs Turkey (Article 50)* (1998) 26 E.H.R.R. ECHR.

<sup>62</sup> See: [www.law.cornell.edu/uscode/text/18/2](http://www.law.cornell.edu/uscode/text/18/2) [Retrieved on 30 March 2011].

## 2.5. METHODS OF STATE-TERRORISM

The methods that may be used in order for State-terrorism to be achieved vary considerably. It is not very dissimilar to the problematic of terrorism itself.

These may include torture, terrorizing indiscriminate violence, kidnapping, and extrajudicial execution, persecution, totalitarian practices, authoritarian techniques, and even sexual related assaults, always having as common paramount the further spread of terror to a larger part of the population; all the above and many more, are said to be common practices of State-terrorism, often used to terrorize domestic and foreign populations by sovereign or proxy regimes.

It is to an extent true, that citizens of western nations are in generally protected from unfair trial by constitutional or legislative safeguards, and the requirements of due process. Undeveloped nations though, may have weaker institutional foundations and unbalanced administrative environments, that allow governments to have greater influence over the judiciary than in developed countries, allowing for instance nonconformists or opposers of the government to be victimized as criminals. The common theme that underlies any elaboration on the methods of State-terrorism, is always to be found in relation to freedom fighters and the right to self determination, since in our times, the crises of Palestine and Israel has monopolized our understanding of terror inflicted by an organized State that considers it self to be otherwise democratic. As well as expanded our understanding of the individual terrorist, which in the case of the Palestine freedom fighters, although a legal expert may be able to constitute the actus reus of a terrorist criminal act, will be unable to constitute the mens rea of terrorism, since the intention of these freedom fighters is driven by their right to self-determination and their opposing of the foreign occupation of their motherland. As in that case, we are facing with an illegal

occupation and a chain of criminal barbarous acts on the part of Israel, which openly uses terror as a tool and method of preserving the land it illegally occupied in the first place.

Yet, a practice, if in common view, and continuous repeated exercise, despite from becoming a habit in an individuals life, it also has the effect of becoming a custom, and to get slow recognition by the international community. To keep silent in situations of injustice is to become an accomplice in some sense, or as Desmond Tutu wisely said: "If you are neutral in situations of injustice, you have chosen the side of the oppressor."<sup>63</sup>

This is though the case with the international community, which allows to Israel to be an absurd criminal State, continuously breaking the international rules of humanitarian law, violating basic human rights, re-writing to the worst the rules of sovereignty and inflicting to humanity its venom through its military-police State. This is the image it exports to the world, and if one gets a closer look, the image becomes horrifying, from the constant killings, bombardments, and the criminal embargo to the Gaza strip, which is resulting into leaving people enduring inhuman living conditions, and children condemned to poverty.

Israel and its practices might be one example amongst many around the world, however, is one very illustrating paradigm that it seems to me, could serve as the: "Bible" of State-terrorism.

By proceeding, it is rather demonstrative, that according to Amnesty International, in 1996, out of 150 countries surveyed, 82 had participated in torture.

"A survey of Amnesty International's research files from 1997 to mid-2000 found that the organization had received reports of torture or ill-treatment by agents of the State

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<sup>63</sup> Quigley, William P., 'Ending Poverty As We Know It: Guaranteeing a Right to a Job at a Living Wage', Temple University Press, 1 edition, June 1, 2003, p. 8.

in over 150 countries during the period. In more than 70 countries."<sup>64</sup> Torture which is by definition a terrifying idea and tool, and if a method would qualify as being associated with the organized State, as well as containing all the necessary elements for falling under the purposes of State-terrorism, then torture would be that method.

Notwithstanding that, there are numerous examples that may illustrate what can be classified as methods of State-terrorism. Classical examples of 'State terror' are also the so-called 'death squads' that operated at various times in some South American countries.

An illustrating example is the case of the Cuban government officials, which have accused the United States Government of being an accomplice and sponsor of terrorism against Cuba on many occasions. According to Cuba, terrorism has been part of U.S. policy for almost half a century. These claims formed part of Cuba's \$181.1 billion lawsuit<sup>65</sup> 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 though, has long denied any involvement in the acts named in the lawsuit, and refused to respond to the complaint.

In the same continent, following the rise to power of the left-wing Sandinistas government in Nicaragua, the Reagan administration ordered the CIA to organize and

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<sup>64</sup> Amnesty International's 'Combating Torture: a manual for action', Date Published: 25 June 2003, Foreword. See: [www.amnesty.org/en/library/info/ACT40/001/2003](http://www.amnesty.org/en/library/info/ACT40/001/2003) [Retrieved on 13 January 2012].

<sup>65</sup> The People of Cuba vs. the U.S. Government, May 31, 1999, filed in Havana Provincial Civil Court. The complaint was served upon the United States through the appropriate diplomatic channels: from the Court, to the Cuban Ministry of Foreign Affairs, to the United States Department of State. As expected, the U.S. chose not to respond, and twenty days later was declared by the Court to be in default, in accordance with Cuban law. See: [www.thirdworldtraveler.com/Latin\\_America/LaDemanda.html](http://www.thirdworldtraveler.com/Latin_America/LaDemanda.html) [Retrieved at 06 December 2012].

train the right-wing guerrilla group "Contras". Florida State University professor, Frederick H. Gareau, has written that "Washington not only aided the Contras in their terrorist activities...but it also engaged in terrorism itself"<sup>66</sup> since US agents were directly involved in the fighting. In 1984 the US Congress ordered this intervention to be stopped, still it was later shown that the CIA illegally continued.<sup>67</sup> Professor Gareau has characterized these acts as "wholesale terrorism" by the United States. While in 1984 a CIA manual for training the Nicaraguan "Contras" in psychological operations was discovered, entitled "Psychological Operations in Guerrilla War."<sup>68</sup> The manual recommended "selective use of violence for propagandistic effects" and guidelines for how to "neutralize" government officials. Nicaraguan Contras were taught to use unconstitutional practices, which instrumentalized terror amongst other undemocratic monstrosities. For example, in the Chapter titled: 'ARMED PROPAGANDA, Paragraph 3. Implicit and Explicit Terror' it is clearly stated:

A guerrilla-armed force always involves implicit terror because the population, without saying it aloud, feels terror that the weapons may be used against them. However, if the terror does not become explicit, positive results can be expected.<sup>69</sup>

This is what a well-established practice State-terrorism is, and how the instrumentalization of terror by State-actors comes into existence. This proves that the United States government of the time, was using methods of State-terrorism in the most explicit manner. While obviously it is not only this State that employs terror in the service of their political interests, however, it is not every day that handbooks

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<sup>66</sup> Gareau, F. H., 'State-terrorism and the United States', London: Zed Books, 16 and 166, 2004. p.17.

<sup>67</sup> 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.

<sup>68</sup> Declassified Army and CIA Manuals. Latin American Working Group.

See: <http://www.lawg.org/our-publications/72-general/319-declassified-army-and-cia-manuals> [Retrieved at 06 April 2012].

<sup>69</sup> CIA, 'PSYCHOLOGICAL OPERATIONS IN GUERRILLA WARFARE, A tactical manual for the revolutionary'. First published by the Central Intelligence Agency and distributed to the Contras in Central America. See: [www.whale.to/b/ciaass.html](http://www.whale.to/b/ciaass.html) [Retrieved on 26 May 2012].

proving such a point are discovered, and with such detailed descriptions of their well-developed know-how, so well established that has been systematized into a handbook of guidelines. While developed and successfully tested all around the world, that they even proceed into exporting abroad their knowledge and expertise on the use of terror in order to achieve political goals in the interest of the State.

The Republic of Nicaragua vs. The United States of America<sup>70</sup> 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 committing their terroristic atrocities against the Nicaraguan government. The court stated that the United States had been involved in 'unlawful use of force'<sup>71</sup> and additionally:

The World Court found Washington guilty of illegally arming, equipping, financing, encouraging and supporting the Contras; attacking several Nicaraguan cities and a naval base directing over flights of its territory; laying mines in its territorial and internal waters; and declaring a general embargo on trade with it.<sup>72</sup>

USA has been found guilty for acts that could effortlessly constitute State-terrorism. The case with the official name: Military and Paramilitary Activities in and against Nicaragua (Nicaragua vs. United States of America)<sup>73</sup> and the ICJ's ruling, pressed charges against the defendant for "unlawful use of violence", yet according to the facts of the case, one could distil that the ruling essentially suggests that the USA has been found guilty of State-terrorism, although this term cannot be used since it is not an applicable and recognized or codified legal term.

However, as usual the United States refused to participate or contribute in the proceedings after the Court rejected its argument that the ICJ lacked jurisdiction to

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<sup>70</sup> Official name: Military and Paramilitary Activities in and against Nicaragua (Nicar.v.sU.S.), Jurisdiction and Admissibility, 1984 ICJ REP. 392 June 27, 1986.

<sup>71</sup> International Court of Justice Year 1986, 27 June 1986, General list No. 70, paragraphs 251, 252, 157, 158, 233. See: [www.icj.org](http://www.icj.org) [Retrieved at 30 July 2012].

<sup>72</sup> Gareau, F. H., 'State-terrorism and the United States', London: Zed Books, 16 and 166, 2004, p. 167.

<sup>73</sup> Full legal citation: Jurisdiction and Admissibility, 1984 ICJ REP. 392 June 27, 1986.

hear the case. The U.S. proceeded into blocking the enforcement of the decision by the United Nations Security Council, and consequently prevented Nicaragua from gaining any kind of compensation.<sup>74</sup>

Professor Noam Chomsky stated in relation to the Nicaragua case and the verdict of the International Court of Justice against the United States of America, that:

...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', the Court ordered the United States to terminate the crime and to pay substantial reparations, many billions of dollars, to the victim.<sup>75</sup>

It is worth noting that, the ICJ used the Psychological Operations in Guerrilla Warfare CIA manual as evidence in the case, which increases its validity and utility even for the purposes of my research.

Professor Chomsky furthermore, 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 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.<sup>76</sup>

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<sup>74</sup> Morrison, Fred L. 'Legal Issues in The Nicaragua Opinion'. American Journal of International Law 81: 160-166. 'Appraisals of the ICJ's Dec. Nicaragua vs United State (Merits)', January 1987.

<sup>75</sup> Hoodbhoy, Pervez, 'On the War in Afghanistan', Noam Chomsky interview. November 27, 2001. See: [www.chomsky.info/interviews/20011127.htm](http://www.chomsky.info/interviews/20011127.htm) [Retrieved on 19 May 2012].

<sup>76</sup> Barsamian, David. 'The United States is a Leading Terrorist State An Interview with Noam Chomsky'. Monthly Review. (2001). See: [www.chomsky.info/interviews/200111--02.htm](http://www.chomsky.info/interviews/200111--02.htm) [Retrieved on 26 October 2012].



Conversely, it seems reasonable to argue, that any attempt to create a list of acts labeled as State-terrorism, would require a description of State-terrorism beforehand. So, without a clear definition, it seems an exercise in vain, to try to list the acts that would constitute State-terrorism.

Hitherto, there are many countries in the world that have been accused of acts of State-terrorism. I am attempting to provide a representative illustration of them, although there are numerous and endless examples, and the mere act of including some paradigms, imply the parallel and automatic, in cases unintentional exclusion of others. One though risks the danger of extending the umbrella covering the phenomenon in cases that defense of the peace is at stake, or the self-determination of the peoples in cases of freedom fighters fighting a just cause provided by their motherland's right to do so.

I have provided a number of example's in order to demonstrate how wide spread State-terrorism is in reality, how it may be manifested, which forms may engender and what tools or methods are usually employed by the State-terrorists, yet more examples follow bellow.

We could for instance take a look in Burma's<sup>77</sup> practices who has been repeatedly reported by many UN bodies, as one of the few countries that are listed as practicing terrorism, including hiring child soldiers, or in the case of the killing unarmed democracy protestors in 1988.

Illustrating is the case of Cambodia, in which during the rule of the Pol Pot, and the Cambodian genocide of 1975-1979, in which about 1.7 million people were killed<sup>78</sup> or one-fifth of the country's population of the time. The Killing Fields and the Tuol

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<sup>77</sup> 'Despite support from 16 countries for a proposed United Nations commission of inquiry into serious violations of international humanitarian law by all parties to Burma's internal armed conflicts, no country took leadership at the UN to make it a reality.' Human Rights Watch, World Report: Burma, 2012. See: [www.hrw.org/world-report-2012/world-report-2012-burma](http://www.hrw.org/world-report-2012/world-report-2012-burma) [Retrieved on 7 January 2013].

<sup>78</sup> See: [www.yale.edu/cgp/](http://www.yale.edu/cgp/) [Retrieved on 9 June 2012].

Sleng prison, also known as S-21, shocked the entire world as the government committed brutal auto-genocide. Many legal scholars would spontaneously argue, that in cases of "crimes against humanity", such as genocide, there is no need for digging or complicating a case furthermore, since the treatment of law, is attributing to these crimes the most grievous, serious, severe characterization and accordingly legally criminal weight. Yet, in the view of my thesis, and advocating for the differentiation as a distinguishable crime of State-terrorism, allow me to draw your attention, that murder as well, brings the most severe punishment, but murder currying the mens rea of terrorism is a different matter all together, and the same argument goes for State-terrorism.

By continuing in the same line of rhetoric, we can mention China, which is also often denounced as committer of State-terrorism in its repression of pro-democracy activities, or with practices such as the forced abortion cases. Another example can be found in Indonesia, and the Suharto regime (1966-1998) with the occupation of East Timor, which committed 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. Which signifies and would classify as State-sponsored terrorism on behalf of US as well.

Furthermore, Israel's practices should be highlighted, since 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 neighborhoods, using force unjustifiably, and even terrorizing the whole Mediterranean, as did in the Gaza flotilla raid of 2010, where Israeli commandos shot dead unarmed peaceful pro-Palestinian activists. As the blue Marmara case

demonstrates, where among the charges listed in the 144-page indictment are "inciting murder through cruelty or torture and inciting injury with firearms."<sup>79</sup>

While, in preventing in 2012, the Estelle ship associated with the 'Ship to Gaza' international campaign, to reach the Gaza strip in order to provide humanitarian assistance. In a case that, a ship carrying human rights activists, politicians, and medical aid, food, children's books and so on and so forth, and Israel send their heavy armed commandos to stop the ship from reaching Gaza, while they know before hand, that the whole world is supporting this humanitarian initiative, and through internet and media, people were following the development of the mission, then the State of Israel is making a conscious choice, to act in that manner, maybe not in order to harm the ship's passengers, since they were peaceful unarmed pro-Palestinian activists, but as it seems mainly to spread the fear to the rest of the world, and through that terror to prevent people from future attempts of that nature. If then, we have this State, that uses terror as a tool for achieving its goals or other political objectives, then what is it that we are talking about? Allow me to ask and answer myself, it is State-terrorism that we are talking about, and it is the thesis of my dissertation, that if we are in need of examples of State-terrorism in order to demonstrate its forms, tools or methods, then one should not look very far from Europe, and the Mediterranean seas, since the State of Israel is a living and kicking example of State-terrorism, and could provide us with more paradigms of State-terrorism, that my thesis could facilitate due to word-limit reasons. In April 2002 the Organization of the Islamic Conference (OIC) denounced Israel's actions during the al-Aqsa Intifada as State-terrorism.<sup>80</sup> In 2004 Turkey made similar accusations,<sup>81</sup> and in 2006 condemned Israel's actions during the

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<sup>79</sup> See: [worldnews.nbcnews.com/\\_news/2012/11/06/14964741-turkey-puts-former-israeli-commanders-on-trial-over-deadly-gaza-flotilla-raid?lite](http://worldnews.nbcnews.com/_news/2012/11/06/14964741-turkey-puts-former-israeli-commanders-on-trial-over-deadly-gaza-flotilla-raid?lite) [Retrieved on 12 January 2013].

<sup>80</sup> See: [www.tribuneindia.com/2002/20020402/world.htm](http://www.tribuneindia.com/2002/20020402/world.htm) [Retrieved at 22 March 2012].

<sup>81</sup> See: [news.bbc.co.uk/2/hi/middle\\_east/3772609.stm](http://news.bbc.co.uk/2/hi/middle_east/3772609.stm) [Retrieved at 18 April 2012].

Israel-Gaza-Lebanon conflicts, as State-terrorism. The greatest minds of our times, have condemned the practices of Israel as being employing terrorism, yet, for rather incomprehensible reasons, Israel continues to be ruthless in using terror as a tool, although it should be noted and acknowledged that at the same time has suffered numerous deadly attacks on its lands, making Israel also a victim of terrorism, while if the acts are in line with the right to self-determination, as the Palestinian freedom fighters allege, then the attacks against Israel could not classify as terrorism, but as a rightful reply to their State-terrorism. We are to witness a vicious cycle of violence and terrorism if get a closer look on that case.

Other examples could be found in North Korea, in Syria, Iran, India, Greece and the list goes on and on. Another vivid example can be drawn by Argentina. In Argentina, the "Dirty War" in the 1970's, 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 labeled 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 disappearances, torture, child stealing, concentration camps, rapes and ideological persecution.<sup>82</sup> A spread of terror was part of the Regime's official policy, and the use of any method possible to achieve in breaking the spirit of any opposer.

Furthermore, it seems plausible to say, that the case of civil disobedience and police brutality could also fall under the heading of State-terrorism. What we have witnessed in Athens for instance, on 29<sup>th</sup> of June 2011, could easily fall under this description.

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<sup>82</sup> See: [www.nuncamas.org](http://www.nuncamas.org) [Retrieved at 19 March 2012].

When the riot police, was using prohibited by the Geneva Conventions and the Protocol of 1925, lachrymatory chemicals, tear gasses and asphyxiogones against peaceful democratic protesters, while whole families with their children were participating in the demonstrations, elder citizens, and students. Of course in every demonstration there are some groups of extremists causing criminal damage to property and provoking the police's violence, but in that case, they were a drop in the ocean. The police brutality went the extra mile into using excessive force against citizens participating in the demonstrations, in cases after arresting citizens, which is considered as torture, since any kind of violence after the passing of the handcuffs and while in police custody, constitutes torture and is in violation of international and domestic human rights law.

Through the tools provided by the terror-laws, the police conduct went beyond their powers, and in an outrageous witch-hunt for suspected rioters and terrorists, only to arrest hundreds of innocent democratic and peaceful demonstrators, while stripping them from their constitutional rights, and subjecting them into inhuman and degrading treatment in violation of their human rights. In times when the whole country was outraged with the government's policies, and foreign economic agreements, and the vast majority of democratic citizens were willing to demonstrate their disapproval by showing up in Syntagma square in Athens, where the Greek parliament is situated.

Yet, the police publicly apologized through popular media, by saying that they were following orders from higher ranked officials, and the orders were to break the spirit of the demonstrators, disperse the crowds, protect the parliament, and as it seems, to spread fear to the rest of the Greek population in order to prevent them from future participation to demonstrations. So, one could simply ask, isn't that a case of modern State-terrorism, when the government employs terror and fear to achieve a political

goal? The answer to that, is that at first instance it is visibly a way of State-terrorism, since there is the instrumentalization of fear by the government of the day for achieving a political goal, we could constitute the actus reus and the mens rea of the crime, but identifying the perpetrator is a very different proposition, while not impossible. On the other hand we are talking about a deep-rooted democracy, so an accusation of that nature would not stand strong. Still, one is driven in asking what kind of democracy is it that we are concerned with, could we say, that some democratic practices, like elections or a parliament or even a constitution, can characterize a polity as democratic? Evidently not, as the different political science's theories put forward through scales and measures of democracies, characterizing States as 40, 50 or 60% of a democracy and so on and so forth, but on the other hand, when we are dealing with a crime, as in the case of State-terrorism, ideally and normally, a legal practitioner should not need nothing more than one proven crime.

However, in the relevant to my argumentation Čelebići case, the ICTY upheld that, civil unrest and terrorism do not constitute armed conflicts, lacking the "protracted extent of the armed violence and the extent of organization of the parties involved"<sup>83</sup> which is needed for violent behavior, to qualify as an armed conflict of a non-international character.

There are numerous examples, that proves the point of my thesis, while it should also be mentioned at this point, the western super power's colonial spread of terror, including countries such as the United kingdom, France, Spain, and so on and so forth, an argument that has not been examined in great detail by scholars.

Nevertheless, what should be emphasized is that State-terroristic methods history, has proven so far that the concept could be used as a political tool independent from the

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<sup>83</sup> See: Prosecutor vs Delalić (Čelebići), Case No. IT-96-21-T, Judgment, para. 406 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

form of the political system. So, in that sense, acts that would satisfy the basic requirement of terrorism while they have been directed by State actors, governmental institutions and as part of the official policy of a State, could be found just the same in authoritarian political structures or in the other side of the political spectrum and within democracies. Obviously in the case of democracies the employment of these methods or tools that are directed to intimidate or spread terror for exercising political pressure and for the achievement of further political goals, would be expected to be more of a clandestine nature, however in the times of the information revolution that we are living in, nothing stays secret too long, take for instance internet, the wikileaks and so on and so forth.

## 2.6. DEMOCRATIC STATE-TERRORISM

As past case-law indicates, it seems to me, that care should be taken into differentiating State-terrorism from acts of violence carried out by government agents, which are not specified by government policy<sup>84</sup> 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, or in lack of such a policy, sufficiently could be proven, a pattern of attacks by State agents in the past that has gone unpunished, leading perpetrators to assume they act with impunity. The real difficulty rises from the seemingly impossible task, to actually prove that a government sanctioned a State-terroristic action by policy.

For example, an event that caught my attention in the beginning of February 2013, is an arrest from the Greek police force, of four (4) armed bank robbers. The three of them, are allegedly linked with the newly emerged Greek terrorist group ‘Conspiracy of the cells of fire’ (Συνωμοσία των Πυρήνων της Φωτιάς). The four of them while in custody, suffered great injuries and torture by the policemen. The days after their capture, the Police administration published photos of them, with their faces swollen and bruised from the beatings, and as Amnesty International reported, the Greek police unsuccessfully "Photo-shopped away" signs of brutality from these mugshots.<sup>85</sup> The Ministry of Justice<sup>86</sup> has been unable to stand in the level of the circumstances and assume its role in protecting Justice, and although promised "merciless punishment" if torture is proven to have been used, proceeded into defending the

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<sup>84</sup> See: Prosecutor vs Dusko Tadic, Case No. IT-94-1-AR72 para. 654. [Although the discussion in that case referred to crimes against humanity, I am expanding the legal principle distilled, since it seems to me that could also be applied in the case of State-terrorism.]

<sup>85</sup> See: [www.amnesty.org/en/news/greek-police-photoshop-away-signs-brutality-mugshots-2013-02-04](http://www.amnesty.org/en/news/greek-police-photoshop-away-signs-brutality-mugshots-2013-02-04) [Retrieved on 6 February 2013].

<sup>86</sup> See: [www.guardian.co.uk/world/2013/feb/04/greek-police-accused-beating-suspects](http://www.guardian.co.uk/world/2013/feb/04/greek-police-accused-beating-suspects) [Retrieved on 4 February 2013].



photo-shopped pictures by the police force, contra to the criticisms by many politicians and legal scholars. The torture inflicted to these so-called terrorists, it appears to be an official method of this State's institution, since its founding, with an endless list of cases and accusations that proves that point. Torture which can classify as a method of State-terrorism, since the way this official State's institution brought public awareness on their swollen bruised faces, indicates that they want to also pass the message to the public, that this is what happens when you mess with us. A fact that satisfies the "message-generating" requirement of State-terrorism's methodology. It is true that the Greek police force is untrained and under-financed, however it is obvious that they are indoctrinated into a culture that would better suit in the wild Texas and not in a democratic polity, while it is notable that their affiliation with the neo-nazist<sup>87</sup> movement has recently been uncovered; not a really shocking information, since most Mediterranean countries armed forces, military and police, have a long traditional affiliation with the extreme right-wing parties and followers, see for instance in Spain. Affiliations that are mainly traces of those countries recent dictatorial periods. However, it is a common secret within Greek society that if you find yourself in police custody, you will most likely get ill-treatment, beatings and get tortured, depending on the gravity of your offence.

There have been numerous allegations of torture, yet the Greek State<sup>88</sup> has done little to acknowledge and tackle these unjustifiable criminal behaviors by its State's actors, which are under its command and into its service, while acting into the State's behalf, consequently this State's inadequacy has cultivated a belief among the police's line of work, that they act with impunity. There have been some attempts, yet insufficient,

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<sup>87</sup> See: [www.timesofisrael.com/about-half-of-greek-police-officers-vote-for-fascist-political-party-in-last-elections/](http://www.timesofisrael.com/about-half-of-greek-police-officers-vote-for-fascist-political-party-in-last-elections/) [Retrieved on 12 July 2012].

<sup>88</sup> See: [www.amnesty.org/en/region/greece/report-2012](http://www.amnesty.org/en/region/greece/report-2012) [Retrieved on 2 February 2013].

and at the end of the day, the impunity of these State-actors always wins the battle within this corrupted Justice system, proven by the fact that through the appeal legal regime most of the sentences are being revoked.

This is an example of a democracy employing State-terroristic methods and tools, in order to intimidate a wide part of the population, and ensure their obedience. Obviously, there might be police officers that act in their own mind, yet, when the State does not provide for their punishment, it allows these practices to continue as business, and to become the orthodox practice and the norm, while in that case the infliction of fear is on the hands of the State, and not only on these police officers which it seems to me to be the final links of the chain of events that leads to a terrorized population. If an institution of the State, such as the Police, is operating by using methods and tools of intimidation, and the State is allowing that to happen and continue perpetually. It seems to me, that it is not such an impossible task to allocate responsibility, since if we follow the chain of command we will eventually arrive to the last link and the ones responsible for initiating the condemnable practice.

These potential terrorists, which were from 20 to 24 years old, are products of the State-terror of the modern Greek State, if viewed from a sociological perspective. They have witnessed the police's brutality first hand, since it has been reported that one of them was present when their friend Alexis Grigoropoulos had been shot and killed by a police officer in cold blood in the center of Athens in December 2008.

A well-known case, which led up to the minimum punishment of the responsible police officers by a Greek criminal court of law. An occasion of police brutality that triggered a whole new and unprecedented movement of protests and demonstrations by the Greek youth. In this line of reasoning, when scholars argue that State-terrorism gives birth to more terrorism, this is exactly what they mean. The terror from above,

will always trigger terror from below, or as Chomsky have said in respect to terrorism, if we want to eliminate terrorism we should stop participating in it.<sup>89</sup>

When in Greece, it is an official policy of the State, the drowning of the demonstrators by the use of illegal, and harmful lachrymatory chemical gasses, otherwise prohibited by the Geneva Conventions even in times of war, and although these demonstrators are in their majority young students, and peaceful democratic citizens, then in a way the State is educating this youth into an exercise of political warfare within a democracy. When this injustice becomes the norm, and the right to demonstrate is being cancelled in the name of the excess zeal by the riot police to protect the parliament, or as they argue the order and/or control a demonstration, by acting as if it is a personal vendetta between them and the public, while many have been caught on camera to brutally attack teenagers, or showing the middle finger to the protestors.

The Molotov cocktail bombs became a cool and trendy item for the Modern Greek youth, and this is a product of the hate seeds cultivated by the riot police in the center of Athens and other major cities across Greece, in the times of the cruel austerity measures imposed by the government due to the famous economic crises. This is one example, that the writer of this thesis is experiencing first hand, while in the following pages of this chapter, I intent to mention other instances and examples of State-terrorism, as well as methods or tools of the phenomenon of the terror from the above, otherwise State-terrorism, in order to assist to the comprehension of this concept.

Allow me though to emphasize on the fact, that just as terrorism, State-terrorism can be manifested within a domestic terrain as well as in the international arena, what I

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<sup>89</sup> 'An Evening With Noam Chomsky', 'The New War Against Terror', October 18, 2001 - Transcribed from audio recorded at The Technology and Culture Forum at MIT. See: [www.chomsky.info/interviews/20011018.htm](http://www.chomsky.info/interviews/20011018.htm) [Retrieved on 05 April 2012].

mean is, that it could be a crime perpetrated against the citizens of a government's own country, or as a foreign policy against the citizens or part of the population of another country, and so on and so forth.

Take for example Dershowitz, who openly 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.<sup>90</sup>

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 member States, and by various individuals, including funding or harboring terrorists and even conducting operations which can be considered terroristic according to international and even United States terrorism definitions.

However hyperbolic it may seem to accuse a democratic State, for State-terrorism, allow me to stress, that State-terrorism may take different forms in its manifestation. For instance, it could form a political system, which is mainly based on that philosophy of government, using terrorism as the norm and method of controlling its population and guaranteeing their obedience and the government's power; or it could take the form of foreign policy, that is part of systematic and well pre-meditated plan of action to employ terrorism as a governmental tool. While it could be employed as a tool in special circumstances, by different constitutional arranged States, without necessary carrying the pre-requisite of occurring more than once to become condemnable, just as in the paradigm of a crime.

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<sup>90</sup> See: [heathlander.wordpress.com/2006/07/30/dershowitzs-arguments-for-the-legalisation-of-torture-are-both-nonsensical-and-unnecessary/](http://heathlander.wordpress.com/2006/07/30/dershowitzs-arguments-for-the-legalisation-of-torture-are-both-nonsensical-and-unnecessary/) [Retrieved on 16 February 2012].

Yet, a democracy as well, could use methods and tools that fall within the category and purposes of State-terrorism. It might not mean that this State is 100% terroristic, or that its whole polity, constitutional arrangements or political theory regulating its governmental practices, is solely following the philosophy and commands of State-terrorism.

Nevertheless, when a democracy utilizes terrorism, its methods, tools and practices, or tolerates its institutions that may employ methods that would otherwise classify as terrorism, then we are talking about State-terrorism.

It seems to me, that just as any crime, including terrorism, requires only to occur once in order to become punishable, just the same should be applicable to State-terrorism.

## 2.7. CONCLUSION

In conclusion, if one distils from the information outlined and analyzed in this chapter, the common paramount elements and characteristics of the concept of State-terrorism, that are present to all mentioned definitional attempts above as its core factors, would come up with the following list of important conclusive remarks, that could serve in an attempt to construct a working definition based on these essential definitional components. These components are being lined up bellow.

State-terrorism is:

1. a form of terrorism;
2. the terrorism of the State;
3. sharing all the basic elements of terrorism, with the differentiation to be found solely in the perpetrator, and its methods which become more efficient, large-scaled, and immoral;
4. more dangerous than any form of terrorism, due to the access in the Judiciary;
5. manifested in a domestic, or foreign terrain, against peoples or governments;
6. a concept which could be comprehended as a political system, or as a political tool, or as a criminal act;

This six points list above, lines up the main essentials that are common to all description and definitional attempts of State-terrorism known to date, independent from their disciplinary standpoint. It seems plausible to argue, that these could serve as a guide for our comprehension of the concept and phenomenon of State-terrorism.

According to my thesis, both forms of terrorism namely the one from below and the one from above, share the same problematics exactly, since it is terrorism we are dealing with in both cases, and although as a concept has a political nature, it is still being treated through law. This tension might not be easy to be solved or minimized, however, according to criminal law, when harm to human beings is at stake, someone

has to be held accountable and responsible. There is nothing really new about our understanding of this concept, since everything that could be argued, has already been done so through the debates over terrorism. I do not find it essential to deepen my discourse, by repeating the same findings over and over again, however, what should be emphasized is that, this is a form of terrorism we are dealing with, which could be manifested in all the terrains just as the terrorism from below, yet the access to facilities and resources of the State in the case of the State-terrorism, makes its methods to be more large-scaled and wide-spread in comparison to the terrorism from below, while it is furthermore a much more immoral form of terrorism, since the same State which is preaching Justice and strives for counter-terrorism while condemning terrorism, it is viewed to employ the same criminal behaviors.

There may not be any new discovery or new elements to be considered, however what is new is the different placement of the puzzle pieces comprising our knowledge of terrorism and State-terrorism, which would serve in offering us a new seeing of this concept. What must be argued to be new, is the hypothesis that views this concept in a three folded possible state-of-being, namely as a political system, or as a political tool, or as a criminal act. In that sense, it seems plausible to assert that the fresh recognition of State-terrorism as a form of terrorism, would result in the initiation of an unprecedented legal treatment of this distinctive form of terrorism through the necessary legal codification, prohibition and punishment.

It should be highlighted though, that the studies on terrorism from below, which is the traditional form of terrorism associated with the normative nature of the phenomenon, have a crucial role to play in the further development of the scholarly comprehension and development of the research on State-terrorism, since all the relevant findings can and should be utilized in any attempt to discuss different forms of terrorism.

Undeniably, State-terrorism has been the target of many criticisms, while in my view, not well reflected beforehand discards of its utility, value and legal weight or prospect of constituting a prohibited and punishable crime.

While it should be noted, that these criticisms originate in their majority from the so-called "terrorist experts" who in reality form a clique in and around Washington D.C.<sup>91</sup> and who monopolize the knowledge production of this area. Since the initiation of my research on State-terrorism, I have repeatedly come across their commitment into discarding the utility of the concept of State-terrorism, by constantly diminishing its value, and by attributing to it characterizations such as, that it is an empty term, or an absurd legal conceptualization of a nonexistent phenomenon, or a strictly political construct that could only be discussed through disciplines other than law, like sociology, political science and international relations, hence rendering that it can only be applied to theoretical discourses, without anything to add in international law, legal scholarship and practice. I find important to mention these arguments in my discussion, in order to explain to the reader, or at least provide a possible reason for the great gap into the production of knowledge between terrorism and State-terrorism. However, it is not implausible to argue in philosophical terms that terrorism "is a non-existent substance, and empty name."<sup>92</sup> But the reasons for arguing such a thing as well as what follows after the 'but' at the end of an argument like that, is what makes the whole difference. For instance Alain Badiou, that stated the above quoted argument, continued by saying that: "But this void is precious since it can be filled."

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<sup>91</sup> See: [www.salon.com/2012/08/15/the\\_sham\\_terrorism\\_expert\\_industry/](http://www.salon.com/2012/08/15/the_sham_terrorism_expert_industry/) [Retrieved on 15 November 2012].

<sup>92</sup> Alain Badiou, 'Polemics', Trans by Steve Corcoran, Verso, London, New York, 2006, p.20.



In the contrary, the polemic "terrorist experts" regime, is unable to see the necessity for treating State-terrorism as a crime, that needs to be prohibited, investigated, prosecuted and subsequently be legally upgraded into a punishable practice. This avoidance by the "terrorist experts" to see the demands of our times, flourished mainly on the arguing line that there is no real need, neither utility for a new crime to come into existence, referring to State-terrorism, since they argue that criminal law has already all the necessary codified crimes to deal with any possible case or instance of harmful wrongdoing that would fall under the purposes of terrorism. So, why to waste resources, time and effort, as well as add to the already burdened legal practical and theoretical barriers, that to date are creating more legal paradoxes than they actually solve. According to this trend in scholarship, State-terrorism will only harm international law, if not render it obsolete, through weakening its enforceability and jurisdictional reach, since States would never agree into criminalizing a practice that could be turned back at them as boomerang, and neither would empower any international tribunal for prosecuting the same people that would be to sign and move the proceedings for the ratification of these treaties in the first place. Allow me to remind to the reader, that international law, is the laws signed by political States, and comes into existence, after these States ratify the agreements, and so on and so forth. The political element had and will always have an important role into the law-making production, since even in the domestic legal systems, it is the parliament of a democratic State that votes for the bills to be passed as laws and come into force. While, a detail that makes the difference, is that the last word on the survival of a law is always in the side of the Judiciary, since it is the Judges that will accept or condemn a law, if it is proven to be ultra vires, and consequently to move its withdrawal. However, in the international arena, the multicultural element of the

parties involved is making the agreement on the passing of a law a very different proposition, i.e. more problematic, however in my view and as it has been proven so far, not impossible.

Yet, the times are changing rapidly, and the criminalization of State-terrorism cannot be stopped by practicalities or refusals of that nature, a fact that is being proven by the current negotiations on the draft international convention on international terrorism that the United Nations are working on, and as it has been explicitly pointed out by the negotiations so far, that convention intends to include the concept of State-terrorism in the definition of terrorism as another manifestation and form of terrorism. It is noteworthy that, this law aspires into having extra legal value and supersedes the political agreement's limited applicability in a court of law.

What I mean is, that this will be a complete definition of terrorism, which aspires into enjoying universal consensus and applicability, and as it has been reported by the United Nations, there is a great unprecedented prospect of including State-terrorism in this definition. So, the traditional avoidance by the "terrorist experts" to even research on the concept of State-terrorism has been proven misleading and an unexcused barrier in the production of knowledge and scholarly engagement with this area of study.

According to my hypothesis, State-terrorism is the terrorism of the State, or to minimize the abstract expressing that the State brings to this Statement, terrorism committed by State-actors, while terrorism as we came to know it in modern times, is the terrorism committed by non-State actors. There are though, certain issues that need to be considered in my quest for understanding what State-terrorism is.

By concluding this chapter, allow me to stress that State-terrorism is an existing phenomenon today, and according to my standpoint always was. Even in 1948, when

the Universal Declaration of Human Rights was being drafted, terrorism, and State-terrorism, were both present and in existence, and even manifested through the fresh wounds all around Europe, by the harm inflicted to humanity 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.

In that sense, we cannot allow the State's actors impunity to be enforced when they act within the purposes of terrorism; or when the protector of the peoples rights, which is the natural role of the liberal modern State, assumes the role of the violator of rights, through punishable otherwise terroristic acts. In that sense, it seems to me that it should be possible to be held accountable for the specific crime of State-terrorism, while a deeper discussion of that allegation is to be found in chapter IV.

Unfortunately, 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, due to the setting of a new table of negotiations of inderogable fundamental and unquestionable<sup>93</sup> otherwise human rights, such as the right not to be subjected to torture or degrading or inhuman treatment,<sup>94</sup> 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

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<sup>93</sup> 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.

<sup>94</sup> The Universal Declaration of Human Rights article 5 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

fear to achieve their aims. Both deny and destroy human dignity. Both assume the end justifies the means."<sup>95</sup>

It seems plausible to conclude that terrorism's principal paramount is fear, the feeling of fear, and its criminal harmful utilization as a tool for achieving a political goal. No matter how many forms has engendered, or changes, transformations, and metamorphosis 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 summarized in the phrase: fear as a tool for achieving a political goal.

However, in the next chapter I proceed with an into depth endeavor to discover State-terrorism's essence. Since although the word essence is used in everyday language, like I just did in the previous paragraph, it should also be acknowledged that has an unbreakable bond with philosophy, and concerned philosophers from ancient Greece, up-to-date.

I proceed therefore in employing mainly the discipline of philosophy, in my struggle to comprehend the idea and concept of State-terrorism, while trying to see whether a philosophical elaboration could be proven to be useful or if it has any contribution to make in the definitional struggles of the type of terrorism that is the main theme of my dissertation.

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<sup>95</sup> Amnesty International, Terror and Counter-Terror Defending Our Human Rights, AI Index: ACT 40/009/2006, 26 August 2006.

**CHAPTER III\*****TI ESTI STATE-TERRORISM**

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*\*This chapter is based on an essay that won the 1<sup>st</sup> prize for young philosophy researchers in 2012.*

**3.1. PROLEGOMENA**

Ti esti State-terrorism, and what is it that this idea is referring to, is the question to be dealt with in the present chapter. 'Ti esti', literary means 'what it is', and can be traced back to Socrates, Plato and Aristotle. Yet, is more specifically concerned with the essence and/or the fundamental elements that a subject or idea is comprised by, without which would cease to be what it is. Ti esti, is claimed to be the first question philosophers asked, and by its expression initiated a distinctive philosophical enquiry into the quest for the definitions of 'things'. Is a ticket for a deeper than a 'what it is' question, because 'ti esti' refers to the essence of the subject to be questioned.

My purpose is to examine the hypothesis that, terrorism means State-terrorism by definition, and test the suggestion deriving from my study's findings, that the essence of State-terrorism is in fact the same as terrorism's.

I am examining this possibility of a shared essence, following the explanatory guidelines of such a possibility, outlined and defended from Aristotle within his *Metaphysics*. My ambition however, is to look through, yet, beyond the pragmatic, positive, empirical assertions that endeavor to portray reality, and into the normative of what should and ought to be, by attempting to contribute into the quest of defining terrorism, through the act of designating State-terrorism. As it has been affirmed: "Epistemology, too, can be seen as normative, in so far as it is concerned with the

justification of our beliefs, and with judging the rightness or wrongness of our cognitive states."<sup>96</sup>

It is beyond dispute, that philosophy has an unbreakable bond with the Greek language; whether we are readers or writers of philosophy, we have to acknowledge that fact, and trust into the teachings that the Greek world has offered to humanity.

However, I have been asked before, why to give any validity to the Greek language today, and why to believe that it may enhance our understanding of philosophy, political or legal concepts. Yet, I trust that I should devote some paragraphs into illuminating the significance of such a belief, for my thesis, since is a project that has been inspired by that fact, and founded on utilizing the ancient Greek teachings and language. I am not going to defend the Greek language in its totality, but as far as philosophy is concerned, it is definite that the contribution and value of that language is inestimable.

The terminology of political theory is being comprised in its majority, by terms originating in Greek. As well as concepts, ways of philosophizing, syllogistic processes, theories, ideas, notions and principles, are similarly of Greek origin. It is true that most modern philosophical theories or at least their majority can be traced back to the ancient Greeks. Consciously I interrupt this reasoning, and by closing this intervention, allow me to simply argue, that, if democracy, politics, or philosophy, are terms relevant today, and since we are still struggling to understand them and decode them, then we should agree that looking back at their birth and origin, the environment of their emergence, and the cultural background as well as historical evolution within the geographical part that this explosion of ideas has taken place, may add into our understanding in incalculable and unexpected ways.

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<sup>96</sup> See: Proudfoot, Michael, A.R., Lacey, 'The Routledge Dictionary of Philosophy', 2009, p. 277.

It is a given, that in 2012, from academia to politics, has been impossible to describe successfully what terrorism is, and consequently to reach agreement into a single definition. My thesis is re-formulating the question of terrorism, from a critical terrorism studies standpoint, in an attempt to redirect the philosophical dialogues on the phenomenon. It is not rocket science to acknowledge the common mistake in philosophy, that leads us into reaching a wrong answer, simply because we were asking the wrong question in the first place. Scholars, such as Noam Chomsky, have repeatedly stressed the need for further scholarly engagement with this field of study, and argued for the responsibility of the philosophers, to reflect on State-terrorism and terrorism, in order to clarify and define the concepts adequately, and this is also where my work intends to pay a small contribution.

It seems to me, that there is a need to employ different disciplines, in order to explain sufficiently my thesis. The hypothesis I am examining, aspires to serve as a critical contribution in our understanding of terrorism, and my discussion contains findings, reached through a well premeditated methodological process, which travels from philosophy to law, and from a critical terrorism studies, to critical legal studies, while approaching on occasions at the unconcealedness of the "aletheia"<sup>97</sup> in language.

My understanding of the significance of the term terrorism has been generated, by the simple intellectual exercise of looking back in its origin and birth as a concept, and into the term representing the concept through a language construction. It is a re-formulated question on terrorism, which is based on a historical truth uncovered, in order to highlight the basic features of this phenomenon. Allow me to clarify, that it was not in my intentions to work on terrorism as it is being portrayed in modern

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<sup>97</sup> By aletheia I refer to the literal meaning of the term. A-letheia comprised by the prefix a- that expresses negation or absence, and the -letheia, which literally means: 'forget', 'conceal'. So, the Greek word for "truth", aletheia (ἀλήθεια), meaning "un-forgetfulness" or "un-concealment".

academia, since my original intention was to explore State-terrorism, but my findings have dictated the topic and purpose of this manuscript, and that is to highlight that terrorism's essence or mother phenomenon is better and more accurately represented by the term State-terrorism.

Disregarding the criticisms advocating against the existence of State-terrorism as a phenomenon, crime, or concept, this dissertation aspires to deliver strong reasons and justifications of the opposite, by stressing that State-terrorism is indeed an existing phenomenon, not only of our modern era, but existing from the beginning of political thought, and the formation of the organized State, dating as back as democracy, and according to the theory developed and examined in my dissertation, State-terrorism is not only an existing concept, but it might very well be, that this is what terrorism's original meaning is all about.

Evidently, following the recognition of State-terrorism as a valid concept, and by acknowledging its actuality, then its criminalization should come as a natural consequence, a fact that increases my scholarly motivation. Through a philosophical discourse, one can initiate a legal mobilization in the future, for example by establishing a comprehensive theoretical basis, since later law could not oversee or ignore its natural role and duty of administrating justice, as with the formation of statutory laws, legal codification and even further criminal prosecutorial processes. While, its conceptual treatment is an intellectual exercise, that offers additional thought-provoking philosophical questions, especially when one considers the fact, that the Greeks when spoke of terrorism they referred to a form of government and a political system.

My hypothesis is based on an examination of the original meaning of the term, by travelling back in the history of its conceptual development and terminological



creation within the Greek language, and proceeds by employing the vehicles of a Socratic methodology, while in cases a modern Derridian logic. By doing that, I was led to examine what are the differences of the term in today's language in comparison to the past usage of the word, and to determine the ways and possible reasons for the departure of its original meaning.

Before I continue, I feel the need to return to my previous reasoning and stress the importance of knowing Greek when studying Philosophy. The majority of the Greek terms are transliterated into the Latin alphabet, but the importance of the capacity to comprehend the philosophical terminology which in its majority originates in the Greek language, should not be overlooked or diminished, as well as the obligation on philosophers to cultivate the ability of identifying a term wherever it may appear in a script. In my view, not knowing Greek would mean for a reader of philosophy, what not knowing the value of numbers for a mathematician.

Thus, I ended up talking about truth; truth that as a term in the Greek language means to uncover, to un-forget or remember again. The literal meaning of the word ἀ-λήθεια [aletheia= truth] is the state of not being hidden, or forgotten, of being uncovered. Based on that reading of truth as unconcealedness, I have advanced into a challenge to uncover the hidden or forgotten truth of the term terrorism and elucidate in a form of a reminder what philosophers and scholars have led to forget. As Heidegger claims: "To say that an assertion "is true" signifies that it uncovers the entity as it is in itself. Such an assertion asserts, points out, 'lets' the entity 'be seen' (απόφανσις) in its uncoveredness."<sup>98</sup>

In that line of reasoning, I find necessary to mention Sir David Ross's exquisite translation and interpretation of Aristotle's writings where he emphasizes that:

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<sup>98</sup> Heidegger, Martin, 'Being and Time', trans. by John Macquarrie and Edward Robinson, London: SCM Press, 1962, p. 261.

All teaching and all learning, Aristotle points out, start from pre-existing knowledge. The knowledge thus presupposed is of two types of fact; it is knowledge 'that so-and-so is,' or knowledge of 'what the word used means.' With regard to some things, the meaning of the words being quite clear, all that need be explicitly assumed is that the thing is so; this is true, for instance, of the law that everything may with truth either be affirmed or be denied.<sup>99</sup>

According to this logic, knowledge can be obtained from the examination of "what the word used means" since in our case the word 'tromokratia' which means terrorism and was constructed by the ancient Greeks, has a meaning that is apparent, clear and recognizable. I am parallelizing this equivalent in meaning, scope and function ancient Greek term, with the modern term terrorism, (terrorism which I am in general treating as a neologism in this part of my discourse) in order to discover whether there is any crucial elements that could assist us in our comprehension of the phenomenon of terrorism, and whether there is any essentials that we are missing, and consequently their absence is blocking the scholarly comprehension of the concept of terrorism, which is also manifested in the unsuccessful to date definitional attempts.

It is astonishing to realize, that nobody so far has talked about, or discovered, that the original meaning of the term, and subsequently in many cases, the original form of terrorism, or mother phenomenon, has and always had as a starting point the State, and therefore in the majority of the cases involved in that terrain, to talk about terrorism is to talk about State-terrorism. A conclusion reached by exercising the simplest reading of the term in its original form found in ancient (and modern) Greek, driven by the realization, that we are acting as political animals and exercising political thought, under the agreed understanding that our whole political systems, from raw material to constructed forms, are to find their origin in Greece, just like

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<sup>99</sup> Ross, David, 'ARISTOTLE' With an introduction by John L. Ackrill, Sixth Edition, London and New York, Routledge, 1995. p. 41.

Democracy is, and just as her sister term Tromocracy (which is the Greek term for Terrorism, with 'tromo' meaning terror), or allow me the construction, just as Terrorcracy is.

Later in this chapter a detailed discussion of the above hypothesis is to be found, based on the fact that in the Greek language, from which originate terms describing political systems such as democracy, aristocracy and so on and so forth, the term terrorism, belongs to the same family of words as democracy, and share the second suffix synthetic –kratos, which defines the meaning of the term in a greater depth, and automatically categorizes it.

Even Aristotle in answering: ti esti to be a citizen? "...relies partly on his own reasoning, partly on the ordinary usage of the word."<sup>100</sup> Still, in order to know one thing, we need to recognize its first cause, its substance or essence (ousia). As Ross<sup>101</sup> interpreted the Aristotelian view, even if we break down the compound of the entity, it is imperative to acknowledge that the why is ultimately reducible to the definition and the final why, is a cause and principle. The substance to be revealed refers to the first thing it is comprised by, and the last into which is resolved, meaning that this essence is permanently kept.

As it was mentioned above, terrorism and State-terrorism, from a philosophical perspective, might be found to share the same essence, since if we attempt to break down their compounds, accompanied by the attribute of 'the instrumentalization of terror for political ends', into their last parts, it seems to me, that in both cases we will end up with three elements: State, terror, and political goals.

While it could be argued that, the first and last element that stays unchanged in any manifestation or form of terrorism, is a "State of terror".

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<sup>100</sup> Idem p.260.

<sup>101</sup> Ross, W. D., 'Aristotle's Metaphysics', Oxford, Clarendon Press, 1924, Book 1, Part 3.

Nonetheless, to return to my main hypothesis, it would come intuitively to ask, what about the cases where an individual is the perpetrator, and the State is the victim of the terroristic act. Allow me to clarify, that this is one form that terrorism can take, a form that it is not in my intention to elaborate into depth, since there is already a plethora of literature dealing with it, in contrast to the neglected by scholars phenomenon of State-terrorism.

However, even in this form of terrorism, which has inspired great scholarly interest in recent decades, and that has been considered by the majority of scholars, as the only form of terrorism, or the orthodox form of terrorism, one could argue that in the majority of cases follows the unjustified violence of the State, or the State's terror. According to that hypothesis, the State has altered its constitution or the judicial proceedings to be in favor of the State's functions and the people harmed have no other way of demanding justice, having their views heard and considered, or bring political change, than assuming the role of the perpetrator of committing terroristic attacks, so employing terror for the achievement of further political goals.

In the case of the individual terrorist, one could also claim in relation to the logic underlying my thesis, that this form of terrorism, in the majority of cases that are relevant to my study, comes second, which means that there is always some sort of unjustified State violence and terror, that consequences to or triggers the individual terrorist to commit the actus reus that constitute terrorism, as for instance in the case of freedom fighters. We are not really talking about terrorism, when for example, an insane person commits atrocities against part of the population or any other criminal conducts. It should be made clear at this early stage of this chapter, that criminal law has the tools and capacity to deal with this kind of criminal behaviors and there is no need to involve terrorism in that process. It is not terrorism that is on the table, in

cases that it is not part of the intention or mens rea, the infliction of fear and terror on a population, or the instrumentalization of fear for the achievement of further political goals within the structural landscape of a State, and arguably this could form as a criterion of identifying the cases that terrorism is at stake, which is a crucial operation in any legal system.

A simple working definition of State-terrorism, for the sake of my argumentation, is to say, that State-terrorism is terrorism committed by State-actors.

By coming back to the modern times, it is interesting to consider that in the introduction of "Philosophy in a time of terror"<sup>102</sup> it is claimed that philosophy has a crucial contribution to make to the understanding of terrorism, while the author is in a way inviting philosophers into a dialogue, by emphasizing the necessity faced by theorists, to assume the responsibility of philosophy in assessing the importance of a present event.

But before proceeding, I should remind to the reader, that there are many scholars 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, it has been accepted through practice, as the "orthodox definition."<sup>103</sup> Interestingly, there are different trends for dealing with the theory of terrorism, that they have even been categorized<sup>104</sup>, into orthodox, radical or moderate terrorism studies.

Undeniably, the phenomenon of terrorism has fueled endless debates and caused numerous controversial definitions, without accomplishing a comprehensive description. What is terrorism is a question that has not met a satisfactory answer. We

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<sup>102</sup> Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004.

<sup>103</sup> Plaw, Avery, 'Targeting terrorists: a license to kill?', Ashgate Publishing Ltd., 2008, p.9.

<sup>104</sup> Franks, Jason, 'Rethinking the Roots of Terrorism: Orthodox Terrorism Theory and Beyond', Palgrave Macmillan, 2006.

are witnessing for decades, the attempts of the international law-making organs to create a complete and legal bounding document to cover the phenomenon of international terrorism in its entirety, but the issue of State-terrorism is repeatedly avoided. However, there is the undeniable fact of State-supported terrorism, and accordingly the relevant international laws covering the forbidden acts, like the United Nations Resolution 1373, but there are still a number of unresolved issues, and numerous shadowed areas that shout for clarification. Yet, this is the closest, "Western" International Law has come to State-terrorism, because there are other pieces of IL, like in the African Union, or the Arab Convention on Terrorism, which are explicitly using the term State-terrorism, but unfortunately these laws do not enjoy the universal applicability and power that a United Nations Resolution does. Although, allow me to clarify that it is not in my intentions to sound aphoristic as far as the function and establishment of IL, but it is not a secret that when international legal practitioners talk about universal consensus on a legal definition, it has been proven so far through practice, that what they mean is a consensus that would first of all serve the interests of the West, otherwise the negotiations take a different route, that of the dismissal. However, this practice has been proven to be unproductive in the case of terrorism's definition, and is necessary to acknowledge that we are witnessing a real improvement in the law-making processes, and a commitment from the United Nations to treat these problematics through the inclusion of all points of views, and relevant elements, within their struggles in defining terrorism, in an obvious attempt to identify the common paramounts, on which a definition of this act could be built, which arguably has been a big step for also eliminating this old habit of international law's creation processes, that had been identified in the past as mainly serving the West, its ideals and in the worst case scenarios its political interests.

It should be highlighted at this point that, is also in the purposes underlining this thesis, the parallel consideration of the hypothesis, that State-terrorism can take the form of a political system, and a form of government or an executive tool, where for instance the governmental power is preserved through the fueling of terror within the population, examples can be found from the Arab world to America, and from Asia, to the former USSR.

I find important to draw the attention of the reader on the fact, that terrorism and State-terrorism, are more political than legal terms. This is why I find important to elaborate and deal with this phenomena by interpreting them through the political theory's reasoning paths and through philosophical analysis, while anticipating that State-terrorism can be proven to be more of a political system, rather than just a criminal act, or better put, a criminal political system.

### 3.2. THE ESSENCE OF STATE-TERRORISM

In philosophical terms, to talk about essence, is to discuss the attributes or characteristics that makes a being or entity, what it fundamentally or essentially is, by discovering its "ousia" or in Aristotelian terms the "substance" of the entity in question, which if deprived of that core substance, would lose its identity.

It is a common assertion throughout the majority of the Platonic dialogues, within which one can observe the customary usage of the ti esti (ΤΙ ΕΣΤΙ) question; as for instance in Laches, Euthyphro, Charmides, Protagoras, or in Meno where the proposition is expressed, that in acquiring knowledge or have episteme of an entity, it is imperative to first of all discover the essence of it, a syllogism which is initiated by asking ti esti the thing of our syllogistic investigation, the idea that we are trying to understand and define. While afterwards and only then, to base one's knowledge of other matters about this entity, on the explicit knowledge of its essence. (Meno 71b, 86d-e, 100b). It is clear that for Plato, just as it was for Socrates, the essence of a thing is a fundamental unchangeable feature of it, and there is a priority of discovering, explicitly required, by the location of the question 'ti esti' to be in the top of the ladder.

It should be noted, that the Socratic inquiry through asking ti esti, directs the focus of the inquirer into identifying what a thing is in itself. As Aristotle<sup>105</sup> himself acknowledges, Socrates was the first to fix his mind on the universality of definitions and the struggle to discover the essence of things in the political, or within ethics, through expressing the ti esti question, which by principle triggers a quest of discovering the essence of the entity, in questions of 'horismos' (definition).

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<sup>105</sup> Ross, W. D., 'Aristotle's Metaphysics', Oxford, Clarendon Press. 1924. Book 1, Part 6, p 15.



Because what Plato did within his dialogues, was to place Socrates in a state of puzzlement and ‘aporia’, while leading him into initiating quests for definitions through the expression of the ti esti question. While in most cases, Socrates was depicted as being unsatisfied with the path of reasoning the interlocutors were taking in their attempts to answer his inquiry, and although there is not a really clear-cut methodological procedure one should take, in order to be in lines of the ‘correct practice’ of this form of questioning, however the relevant literary review can be found of assistance in illuminating certain requirements, that are distilled from Plato’s writings in describing the Socratic questioning of the definitions of things.

Vasilis Politis in a very relevant article titled "what is behind the ti esti question"<sup>106</sup> proceeds in lining up the most important and relevant requirements of bringing this question into existence. However as Dr. Politis acknowledges, and is in line with the underlying belief of my engagement with the ti esti question, this question is not of Platonic property, but is in the Greek as in the English language, a call for a standard for a thing’s being, a demand for understanding and defining, by indication to which we can conclude of a thing, whether it is such as it is, through the employment of the requirements of: "(a) generality, (b) unity, and (c) explanatoriness". However he concludes that there is nothing behind or before the ti esti question, since any priority over other inquiring method or question has not been proved necessary or as a pre-requisite, according to the Socratic engagement with the question, except and it is notable in the case of "aporia", which in certain dialogues might be fiercer.

Yet, I have made a conscious choice of words, and methods, by using the ti esti question, through which I am attempting to follow the same path of reasoning, while challenging the definitional inadequate knowledge that is to date offered to us, and I

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<sup>106</sup> Politis, Vasilis, "What is behind the ti esti question?" in J. Fink Ed. ‘The Development of Dialectic from Plato to Aristotle’, Cambridge, Cambridge University Press, 2012, Pp. 232 –260.

am struggling to discover whether the standards of the generality, unity, and explanatoriness requirements mentioned above could be satisfied, in the process of discovering elements that may be of further help into the definitional struggles of the concept of terrorism, and State-terrorism in particular. Since the generality requirement, always according to Politis, is sufficient in providing an answer to the *ti esti* question in its basic sense, and offering something that could serve as a standard for a thing's being. Since according to the basic sense of the *ti esti* question, there is no evident justification to reject a particular thing as an example of a thing that is, instead of an abstract general account, that can serve as such a standard. While it should be anticipated that in the case of State-terrorism, even the requirement of unity and explanatoriness could be found to be satisfied, while the standard, I am trying to discover in our case, could be better explained in terms of its essence, and the basic elements that without which it would cease to be what it is.

These elements will be later on discussed in the pages to come, but, as it has been acknowledged, and may illuminate the syllogism behind my particular discourse, one should consider the Aristotelian methodology and questioning of essence for the purposes of a definition, through which: "Aristotle means that to ask whether A is, is to ask whether there is an intelligible essence answering to the name, and that to ask what A is to seek to unfold this essence in a definition."<sup>107</sup>

However, taking an aporetic path, it does not necessarily mean that you are going to reach a solution to the problem that puzzles you. What I mean is, that most of Plato's dialogues that are demonstrating this methodological process, of the Socratic *aporia* in questions of definition, they end up in their majority by maintaining this aporetic state, without real satisfaction of acquiring definitional knowledge. However, this is

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<sup>107</sup> Ross, David, 'ARISTOTLE' With an introduction by John L. Ackrill, Sixth Edition, London and New York, Routledge, 1995. p. 49.

not an unbreakable rule, since in Protagoras for instance, the dialogue ends with a firm answer to the question of whether or not virtue can be taught.<sup>108</sup>

It is worth noting that according to the ‘Principle of the Priority of Definition for Knowledge’, ‘knowing the definition of F is the one and only way of knowing whether or not F is G. Common to the traditional reading and the interpretation I am proposing, these passages are addressed to Plato’s important distinction between the ti esti question (what is it?) and the poion esti question (what is it like?).’<sup>109</sup>

So, if I apply this principle to my research, it seems plausible to argue, that knowing the definition of terrorism is the only way of knowing whether State-terrorism is terrorism, and possibly the vice versa.

Advancing in my analysis, it would be useful to consider the genealogical style of deconstruction, which recalls the history of a concept, since it is being used as another method of analysis and examination of the concept of State-terrorism. As Derrida has said: "So we have to go back to the Greek origin, not in order to cultivate the origin or in order to protect the etymology, the etymon, the philological purity of the origin, but in order first of all to understand where it comes from...".<sup>110</sup> Yet, the kind of deconstruction I am engaging with, or I should say ‘demolishment’, is closer to the Platonic intellectual tradition and his teacher's maieutic analysis, parallel to a utilization of certain Aristotelian methodological guidelines.

So, permit me at this point, to employ the term democracy, in order to utilize it for the strengthening of the basis of certain ideas. The relevance and importance of the links with the term terrorism, will be later on explained in greater detail. Let me clarify though, that I chose to use the term democracy as a tool to prove my point, since the

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<sup>108</sup> See: V. Politis / *Phronesis* 57 (2012) 209-239 p.213.

<sup>109</sup> Idem p. 211.

<sup>110</sup> See: [hydra.humanities.uci.edu/derrida/vill2.html](http://hydra.humanities.uci.edu/derrida/vill2.html) [Retrieved on 12 March 2012].

majority of the readers have some basic understanding of the term and its function. It is not in my intention to analyze the term democracy if this analysis is not connected to my discourse on State-terrorism, neither to argue that there is an implied link between the two concepts in their manifestation, although this might be a possibility as I have argued in the previous chapter, hence it is not relevant now, and I do not want to allow for a misinterpretation of my objectives at this particular point.

In the table below, I am citing and comparing the terms democracy and terrorism. In order to visualize the journey of language, and to make the point of my thesis clearer, while allow me to clarify that the same intellectual exercise could be performed by the employment of any other term of this family of words, sharing the suffix –cracy, such as aristocracy, autocracy, androcracy, theocracy and so on and so forth.

**Table of terminological development**

<b>Explanatory notes</b>	<b>Term A</b>	<b>Term B</b>
In English (modern)	DEMOCRACY	TERRORISM
In Greek (modern and ancient)	ΔΗΜΟΚΡΑΤΙΑ	ΤΡΟΜΟΚΡΑΤΙΑ
Greek into Latin alphabet, transliteration.	DEMOCRATIA or DEMOCRACY	TROMOCRATIA [tromo=terror] or terrorcratia or terrorcracy
The same suffix of a term indicates its meaning.	DEMO-CRACY	TROMO-CRACY TERROR-CRACY
But, the modern term terrorism, has adopted the suffix –ism, which signifies political systems or belief, is found in France at 1792-95. Even this term was originally constructed to mean State terror.)	DEMO-CRACY	TERROR-ISM
Translations: 1 <sup>st</sup> synthetics: Demos [Δῆμος] = people, and tromo [Τρόμος] = terror. 2 <sup>nd</sup> synthetics, Suffix: -kratos [κράτος] or -cracy = holder of power, State. Suffix: -ism [ισμός] = indicates belief or principle.		

As it is being demonstrated in the table of the previous page, terrorism did not enjoy the same fruitful future as a term, unlike her sister term democracy, and all the other terms of that family of words, which are sharing the suffix –kratos, or in English –cracy, since the international scholarship has avoided using the Greek term describing this concept, instead of the term terrorism which originates in the French revolution and became the dominant terminological appointment. This neologism, which as it seems is not older than 300 years, substituted a term that is more than 3000 years old, and which is bound with a certain tradition of political thought and practice.

However, as it has been emphasized in my thesis, even the neologism, term terrorism, as a language construction was originally referring to the use of terror by the State for achieving further political goals, so it was originally closer to the Greek term's meaning, since it is signifying State-terrorism.

Furthermore, if one examines the Greek term referring to terrorism, which if transliterated in English would look like: tromocracy, (or to make it more easier comprehensible terrorcracy), with the intention of recovering the original meaning of terrorism, it seems to me that is important to highlight the fact, that political terms constructed with the suffix –kratos (cracy) refer by definition to forms of government and political systems, contrary to the modern treatment of the modern term terrorism as solely a criminal act with political motivation.

Nonetheless, if Aristotle was right, a probability is in existence, for the substance or essence of a concept to be proven to be the same, even if the terms we are dealing with are different. While even if this sounds hyperbolic, this exercise of discovery seems to me, that could either way provide some fruitful outcomes, which may be of benefit or assistance to our comprehension of the concept of State-terrorism and ultimately to the international definitional struggles of terrorism. So a further

elaboration on the crucial difference that the suffix –cracy brings into the scenery, is at this point mandatory.

Under this logic, according to the Greeks, to talk about *kratos* is to talk about defective forms of government. See for instance, the Aristotelian treatment of the term throughout his "Politics" and the detailed discussion of the dangers in different constitutional arrangements.

The truth of the matter is, that the suffix –*kratos* is principally referring to an abuse of power or tyranny, and is negatively charged as a political suffix, yet, the usage of –*kratos* and –*arche*, in describing political constitutions poses vital concerns. Still, there is an inherent negative value in –*kratos* (*cracy*) since it means power by force, while –*arche* which mean beginning, origin and sovereignty, do not share this negation. Illustrating is the description by Cornelios Castoriadis, who wrote that, *kratos* is referring to "raw violence."<sup>111</sup>

At this point, I am trying to attain a justified conceptualization and a philosophical hypothesis driven by language, by looking into the relationship of Democracy and State-terrorism or Terror-*cracy*, the most relevant link will be celebrated by recognizing that democracy and terrorism, in the Greek language, belong to the same family of words, and share the suffix *kratos*, while another connection, is the possibility of a democratic State using terror as a tool, as means and form of government. Under this logic, the word democracy derives from the Greek word, "*democratia*" (*δημοκρατία* in Greek), formed from the roots "*demos*" (gr. *δήμος*), meaning people, or the mob, or the many and "*kratos*" (gr. *κράτος*) referring to rule or the holder of governmental power.

My hypothesis is based on the fact that, in the Greek language, where the term

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<sup>111</sup> Castoriadis, Cornelios, 'Ancient Greek Democracy and its Significance for us Today', Ypsilon Publishing, Athens, (1986), 1999. Chapter 8, γ. To *kratos*, p. 53. This translation was made by me.

democracy originates from, the word democracy and the word terrorism have the same root and belong to the same family of words, since both terms share their second synthetic "kratos", which can be translated as power, holder of power or State. Keep in mind that the terms describing political systems in Greece, were mainly consisted by –kratos or –arche. Kratos being by far the worst and customarily was signifying abusive forms of political power. Yet, democracy's popularity led her to evolve into a more inclusive system, and has covered up over the centuries this negatively charged value.

A linguistic analysis of the terms in question follows below, (it would also be helpful to re-visit the table in page 90). In that sense, from Greek, "Δημοκρατία - Τρομοκρατία" transliterates in English as "**Democratia** – **Tromocratia**." So, "democratia" is in the English language the term democracy, and "tromocratia" is the modern word terrorism, with "tromo" translating as terror, and the substitution of the suffix –kratos by the suffix -ism.

Tromocratia (terrorism), then etymologically means the "tromo-cratia" or allow me the construction "terror-cracy", in which the holder of power is the "kratos" (the State), and keeps this power under control through the tool of terror. Since we are dealing with a polysynthetic term, which is comprised by two synthetics from which the first signifies the "who", like in our case the terror, and the second synthetic and suffix indicates the "what" which is the power or State. Under this logic, if we use an analogy with democracy, we could say that, in "terrorcracy" the people are no more the possessors and controllers of governmental power 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-kratia, and the "tromo" (terror) in the term tromo-kratia. The second part is the same (and is defined as the power and control, and the holder of power, or

State), then the first part of the terms constitutes who is the holder, indicates who has the power, the control and in the case of democracy is the people, the demos, in the case of terrorism: "tromokratia → tromocracy or → terrorcracy", the holder of power is the terror. According to this reading, terrorism is dictating its lexical meaning<sup>112</sup> and it seems to me, that this new interpretation could serve as a vehicle for our better and further understanding of the phenomenon of terrorism, and State-terrorism in particular.

So, if the essence of democracy could be held to be the 'power by the people', then following the same logic the essence of terrorcracy could be suggested to be the 'power by the terror'. Although, this might seem as a simplification, it seems to me that it might have more truth in it, or "aletheia" than most of the definitions of terrorism reviewed so far in this thesis.

If we dissolve democracy (δημοκρατία) to its basic elements, without which it would cease to be what it is, and proceed in the same intellectual exercise of expressing the questioning scheme guided by the ti esti trigger, then one could conclude that democracy in its basic character is the "people's State", its essence, basic substance or nature could be held to be the "power to the people", a constitutional arrangement of a political structure, where the governmental control is held by the people of this polity. So, if we dissolve democracy we will conclude that the first and last components which are always and forever unchangeable within its core characteristics and elements comprising her, would be the elements of the State and the people. Democracy, as it has been already explained apart from the constitutional arrangements that may hold strong justifications for such an assertion, and as it has

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<sup>112</sup> In semantics, the message conveyed by words, sentences, and symbols in a context. See: [www.britannica.com/EBchecked/topic/329791/language/27173/Lexical-meaning](http://www.britannica.com/EBchecked/topic/329791/language/27173/Lexical-meaning) [Retrieved on 21 June 2012].



been indicated throughout my analysis, is being comprised by two words, since is a synthetic term, while if we analyze this language construction, then we discover that its first part and synthetic which is the 'demos' and means the people, indicate the 'who' and the second part or synthetic which is the -cracy and means power, or State, indicates the 'what'. So according to this analytic method, one could argue, that this is a way of dissolving this entity into its first and last substances, faithful to Aristotle's discourse within his "Politics", and what we discover is that the properties which survive and stay unchangeable, could be summarized in the phrase "people's State". A realization that one could argue may be also verifiable by considering the long-standing tradition of democracy, which through more than 2500 years of practice and evolvement, had kept these properties in an unchanged manner, and which without a doubt, if any of these substances are to be altered or eliminated in any form, then democracy would cease to be, since then we will be dealing with another form of government and State.

In the same sense, if we apply the same reasoning to the equivalent to terrorism ancient Greek term tromocracy or terrorcracy (τρομοκρατία), and attempt to discover its basic elements in the model I just did above for the case of democracy, the substances that will be found to be the first and last ones to survive through an Aristotelian resolving method of the basic components that comprise this construction, would be the elements of the State and terror. Given that in that term just as it has been indicated, and exactly like in the term democracy, it is being comprised by two synthetics, and is sharing the suffix cracy with terms such as democracy, while the first synthetic which indicates the 'who' has the control of the governmental power, in this term is indicated that the terror has assumed control of the State, and the government.

As Aristotle indicated: '

As in other departments of science, so in politics, the compound should always be resolved into the simple elements or least parts of the whole. We must therefore look at the elements of which the State is composed, in order that we may see in what the different kinds of rule differ from one another, and whether any scientific result can be attained about each one of them.<sup>113</sup>

The elements that the State is composed in the case of terrorcracy, could be better explained by saying, that the terror has the power, so if in democracy the substances or essence could be held to be the people's State, then in terrorcracy or what today we are calling terrorism the essence of it could be expressed as being the "terror's State".

The findings of this analysis suggest in an illustrative way, what my main hypothesis, which is fuelling the drive of my dissertation, is striving to provide, namely, that State-terrorism could be asserted to be the root and mother-phenomenon of any form of terrorism, and since the ancient Greek term for terrorism, actually means terror-State, and equally as it has been demonstrated has the essence that could be best expressed as terror-State, then it might well be, that if we attempt to return to modern times and consider the terms terrorism and State-terrorism, it seems to me, that these two modern terms are sharing the same essence. A possibility presented as valid, in cases of the political, even from Aristotle, since it might well be that two things have the same essence, while certain different secondary attributes may alter their final being and function, however the essence of both remains the same and equal, given that their primary substances survive unchanged. What a possibility like this would mean for the modern terms terrorism and State-terrorism, is that although they may be sharing the same essence, which is that the terror has the governmental control, the secondary attributes in the case of terrorism would be that, the generator of terror

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<sup>113</sup> Aristotle, 'Politics', Written 350 B.C.E, Translated by Benjamin Jowett, Batoche Books, Kitchener, 1999. Book 1, Part 1, p. 3.

could be identified in non-State actors, while in the case of State-terrorism, the terror is generated by State-actors, however, in both cases it is terror that exercises the political pressure, and has the effect of moving the strings of the governmental direction, decisions, and so on and so forth, so the political power is assumed by terror in both cases, meaning that the State is being governed by the commands of terror, or in more practical terms by the ones exercising, initiating or generating the terror, which in the case of terrorism it might be the individual terrorist, while in the case of State-terrorism might be a State's institution or other State's actors acting on its behalf and with its official support, while at the end of the day, what we are left with in both cases, is a State of terror.

Conversely by advancing, it is important to note and as it has been previously pointed out, the suffix –cracy<sup>114</sup> in the term tromocracy (terrorcracy), which refers to forms of government, has not been transferred in the international literature as tromocracy, in contrast with democracy, autocracy, aristocracy and so on and so forth, which have been adopted unchanged. It seems plausible to ask at this point, whether a natural transliteration from Greek into Latin, with a more accurate representation of the term, by preserving the originally attributed suffix –kratos, since its importance and the extra value that it attributes to the term cannot be emphasized enough, entailed the danger of referring automatically into a political system, and consequently the word to describe and mean by definition State-terrorism. It is undeniable a good and useful question in reflecting on the matter, and the reasons that may have justified such a departure of the original term. In my view it is more likely that this negligence occurred due to the scholarly ignorance, on the importance of preserving the integrality of the terms referring to political systems, in the process of translating

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<sup>114</sup> World English Dictionary: suffix, -cracy, indicates a type of government or rule: plutocracy, theocracy. [dictionary.reference.com/browse/-cracy](http://dictionary.reference.com/browse/-cracy) [Retrieved on 03 May 2012].

philosophical Greek scripts and theories. The act of translation has more power than we attribute to it. It can alter the meaning of a script and can deform it, or even change the function of terms.

It is interesting, to examine the fact that, terrorism has been transferred in English from French, automatically having the ending –ism.<sup>115</sup> While equal importance for that matter, bares the reflection on the fact that the French construction of the term, was based on loaning the suffix –ism, and not the –cracy.

The suffix –ism, is usually shared by terms describing political theories or beliefs, such as Commun-ism, Liberal-ism, Capital-ism, Anarch-ism, Catholicism, Buddhism and so on and so forth. An interesting questioning scheme would be to ask, why this French attributed term *terrorisme*, which should be acknowledged that is of Latin-Greek origin, prevailed, plus why the adoption of the suffix -ism, and not stay more accurate by keeping the suffix –cracy, like all the other terms of the same family of political terms, as democracy or aristocracy. While, it is a given that between the 16<sup>th</sup> and 18<sup>th</sup> century scholars combined Latin and Greek into creating new words. Yet, the suffix -ism, which originates in Greek (see: –ισμός), refers to a system of ideas and is destined to form abstract nouns of action. Through this loan of the suffix –ism, the term automatically lost the negative reference that –kratos bears and brings to a term, as in the original Greek term *tromocracy* (terrorcracy) describing terrorism. If for instance there was a faithful adoption of the word from Greek into French or English, as is the case with all the other terms of this family of words, then the suffix -kratos would be dictating a different route into our understanding of the concept through its terminological formation. A research into literature may hold a possible answer to these issues, but this would fall outside the scope and word-limit of the present

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<sup>115</sup> A word ending that indicates action, manner, condition, beliefs or prejudice. See: [myword.info/definition.php?id=ism\\_1-a](http://myword.info/definition.php?id=ism_1-a) [Retrieved on 23 May 2012].

chapter.

I find important at this point to note, that Greek is a "polysynthetic language", what that means is that "a polysynthetic or syntactic construction of language...It is that in which the greatest number of ideas are comprised in the least number of words."<sup>116</sup>

This is what law is trying to do, in some way. Is like the legal codification of action, conduct, ideas into legal terminology. Where law ends and language begins, is in my view impossible to determine, while the significance of philosophy of language in jurisprudence cannot be stressed enough.

I find essential to mention "deconstruction" at this point. Miller has described deconstruction this way: "Deconstruction is not a dismantling of the structure of a text, but a demonstration that it has already dismantled itself. Its apparently-solid ground is no rock, but thin air."<sup>117</sup>

That is exactly what I am doing in the present chapter, deconstructing in the most "brutal" but natural way. I am exercising deconstruction in its most pure and original form, by breaking down the construction of language, of language representing a form, a structure, into its raw material and previous beings, beings as unique and sole words, that were before they were merged to create a new entity into this world, a new word and term, and consequently to form, the medium and means of describing a new concept. I am exercising deconstruction in this way, or I am according to Miller "demonstrating that the text has already dismantled itself".

Deconstruction is an approach, introduced by French philosopher Jacques Derrida,<sup>118</sup> while it is notable that he also refers to the power of language, in the term "Logocentrism", a term devised by Ludwig Klages in the 1920's, which is directing

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<sup>116</sup> Patterson, T., 'A Social History of Anthropology in the United States', Berg Publishers, 2006, p.11.

<sup>117</sup> Miller, J. Hillis, "Stevens' Rock and Criticism as Cure", Georgia Review 30, 1976, p. 34.

<sup>118</sup> Derrida, Jacques, 'Of Grammatology', G. Spivak trans., Baltimore, The J.H. University Press, 1974.

the focus back on language, since is a synthetic term comprised by logos (Λόγος) which mean words in Greek, and centrism (Κεντρικός) which indicate where the central interest and value is.

Logocentrism is wisely claimed by Jacques Derrida to be manifested in the works of Plato, Jean-Jacques Rousseau, Ferdinand de Saussure, Claude Lévi-Strauss, and many other philosophers of the Western tradition.

Professor Douzinas<sup>119</sup> takes Logocentrism deconstructive term, into law's Logonomocentrism<sup>120</sup> using a critical legal studies point of view. The metaphor of Logonomocentrism makes "the claim of the unity of self and others in absolute reason of the law". This claim is not as valid from a critical legal studies standpoint because of the failure of the law and the numerous miscarriages of justice that exist because of this logocentric point of view. Under the light that Logonomocentrism as a theory provides, the "logos" (words) is again the protagonist, the written words, terms are what are important, and in relation to law (Greek for law: Nomo), so, the necessity to have meaningful words that reflect the whole spectrum of any given phenomenon in need of a legal regulation is celebrated within this term. The central power is invested in "logos," in language, providing another justification for the utility of this chapter's theme. However, in my view, law is essentially connected to language and constructed within the terms of a logocentric tradition.<sup>121</sup>

Nevertheless, it is claimed in the majority of terrorism literature, that the first documented reference on terrorism comes from the 'Reigns of Terror' on 1793, when

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<sup>119</sup> Douzinas, Costas, Warrington, Ronnie, McVeigh, Shaun, 'Postmodern Jurisprudence: the law of texts in the texts of the law', London: Routledge, 1991, p. 91.

<sup>120</sup> Translation made by me: Logo= speech, Nomo=law, centrism=central. Logo-nomo-centrism.

<sup>121</sup> I should clarify for the avoidance of misinterpretations that it is not in my intentions to advocate in favor of this traditional legal function, since I am conscious of the dysfunctions justice-wise that a blind terminological following can cause. However, this traditional conception is a major part of my hypothesis and methodology, through the investigation of the function of language, and the utility of logonomocentrism in particular, since its utility and usefulness in theory, should not be trumped by its shortcomings in practice.

the Jacobins cited this precedent by imposing a 'Reign of Terror' during the French Revolution. Although, even in that case, a government imposed the terror, in a form of State-terrorism, still, in modern times terrorism refers to terrorism perpetrated by non-State actors.

My reading of terrorism is based on the fact that the term was in existence centuries before, in ancient Greece, enjoying its presence next to political constructions such as democracy, aristocracy and so on and forth.

Aristotle, for example, criticized the use of terror by tyrants against their subjects. However, tyrants could be found in tyrannies, oligarchies, aristocracies and so on and so forth, it was not an element to be found exclusively in State-terrorism. There hasn't been known to us today, whether there has been scholarly engagement with specifically State-terrorism. But, the idea and concept was in existence, even in the times of Plato, Socrates and Aristotle, maybe not in the way it has evolved to be today, since the well-established use of terror by power-holders in different constitutional arrangements and governmental formations, from religious rulings, royal regimes or even democratic polities, and the patriarchic norms of sustaining obedience through fear, it could be argued that in certain aspects has rendered the concept a very different proposition. Yet, the equivalent development of the sister-terms democracy, autocracy and so on, did not pose any obstacles in academia on the further studies over similar changes caused by time and practice. On the other hand, one could hypothesize, that one possible reason would be the evolution of our political thought, and the demolition of the traditional relationship of the State with violence, or the use of fear for reasons of control. As it seems, fear was a well-established tool in sustaining obedience and control, in many different contexts.

It is my understanding, that terrorism is as old as the existence of the organized State,

or as the ancient Greeks have named –kratos which would translate as power, for example, in the Greek mythology originating more than 3000 years ago, the Kratos is depicted as a male personification with sisters the Violence and the Victory. This myth demonstrates the strong connection of the State with violence and fear, and its well-established understanding of such a connection by its representation in mythology. Mythology, which had as main function the ethical education of the people, so, it contains teachings and deeper truths. While what I wish to distil from reflecting on this myth, is the fact that the Greeks had an organized thought about the close relationship of the State with violence and fear.

In ancient Athens for instance, a well-known terroristic attack<sup>122</sup> would be the cut-off the Hermon<sup>123</sup> dating as back as the 5<sup>th</sup> century BC.

The ancient Greeks were explicitly saying, "control the people through their fear of the divine and the rage of the gods." A belief and statement that can be found in ancient drama and tragedies amongst other philosophical writings, demonstrating the instrumentalization of fear for the purpose of controlling a population and achieving further political goals. If that last sentence does not ring a bell, allow me to draw your attention to the orthodox terrorism theory and definition, which is almost the same.

It seems plausible to say, that, in order to understand the idea of State-terrorism, and its function, we need to look at its original meaning, which according to my study can be discovered in ancient Greece and the term terrorcracy, contra the existing beliefs and terminological definitions that are based on a neologism, as I treat the term terrorism at this point of my thesis, since is first traced on the 17<sup>th</sup> century onwards and the "Reign of Terror."

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<sup>122</sup> As in the case of the philosopher Critias, who in 415 BC, has been accused and imprisoned together with Alciviades, for the mutilation of the statutes of Hermes. See: [www.iep.utm.edu/critias/](http://www.iep.utm.edu/critias/) [Retrieved on 23 March 2012].

<sup>123</sup> In free translation, from the original 'Αποκοπής των Ερμών', referring to destruction of the statues of Hermes the ancient Greek god serving as the messenger of gods to humans.



One way to start this new understanding of the term could be to view the term from an etymon point of view, etymologically then, the term terror-cracy, would refer to a form of government by terror, in other words State-terrorism. In this line of reasoning, terrorism is a political system and a form of government within which terror holds the power (cracy). There is an undeniable necessity to engage in further dialectic examination and analysis of the above assumptions, and this thesis aspires to fuel the initiation of further dialogues on this theory.

Logically then, since the two terms, democracy and terrorcracy are being constructed by the same roots, the same "raw material", then they were both originally constructed and destined to describe political systems, or forms of government. It is time to put an end to this confusion of concepts and terms, by setting the record straight, and illuminate the original meaning and purpose of politically fuelled language constructions.

Terrorism or terrorcracy, in this line of reasoning, in the Greek language means "terror-State", just as democracy means "peoples-State", an outcome that has been already established through the analytic attempt in the previous paragraphs of this thesis to discover the essences of these political structures. If we accept this rightful re-definition of the concept, then the chain of events may generate further constitutional implications and trigger a possible necessity to re-consider for instance the unconstitutional criminalization of pro-terrorism ideological expressions, since it could not be possible to punish a terror-ist for her beliefs and according practices, no more than it is possible to jail a commun-ist for her beliefs, obviously as long as harm to others is not involved. This would be against her political freedom of thought, conscious and belief. An idea that is clearly contra the current practices prescribed by the counter-terrorism legislation around the globe, and which initiates a number of

legal paradoxes.

It seems to me, that if we successfully manage to recover the original meaning of terrorism, the well accepted statement, that historically, terrorism has been the tactic of the weak against the strong, could be proven to be deceptive.

Noam Chomsky and Edward S. Herman, viewed as ground-breaking thinkers in relation to State-terrorism<sup>124</sup>, have argued that, "the distinction between State and non-State terror is morally relativist, and distracts from or justifies State-terrorism perpetrated by favored States, typically those of wealthy and developed nations."<sup>125</sup>

Thought-provoking ideas on State-terrorism, can be found in the moral analysis of the philosopher Igor Primoratz, through which he proceeds in the formulation of four reasons that show State-terrorism as morally worse than non-State-terrorism.<sup>126</sup>

Firstly, due to the availability to the modern State of "the amount and variety of resources", State-terrorism results in greater number of victims than the non-State-terrorism. Secondly, since State-terrorism is linked to secrecy, the State terrorist would usually act criminally and then preach morality and ethics, hypocritically. Thirdly, since States are signatory parties of international conventions against terrorism, their acts would be in breach of their international commitments. Lastly, Primoratz argues that is impossible that a State has no other option for a different course of action, apart from State-terrorism.

The philosopher has pointed out some very important arguments, to demonstrate the severity of the immorality of the phenomenon, and hence, he indirectly adds value to the validity and importance of the term.

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<sup>124</sup> Sluka, Jeffrey A., ed., 'Death Squad: The Anthropology of State Terror', University of Pennsylvania Press, 2000. p. 8.

<sup>125</sup> Chomsky, Noam and Herman, Edward S., 'The Washington Connection and Third World Fascism: The Political Economy of Human Rights: Vol. 1'. South End Press, 1979.

<sup>126</sup> Primoratz, Igor, "State-terrorism and Counter-Terrorism". In Primoratz, Igor. Terrorism: The Philosophical Issues. Palgrave Macmillan, 2004. . pp. 119-120.

However, I should highlight that according to my theory, the term State-terrorism signifies clearly the definitional direction to be taken. It is comprised by primary essential words, which could be argued that they compose its essence, and without which it would cease to be the same entity. Since according to Aristotle, one kind of definition, is the definition of a primary term.<sup>127</sup>

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<sup>127</sup> Ross, David, 'ARISTOTLE' With an introduction by John L. Ackrill, Sixth Edition, London and New York, Routledge, 1995. p. 50.

### 3.3. DECONSTRUCTION

This part of the chapter is devoted to deconstruction, through an attempt to clarify my theory's perspective on the issues rising during my discourse, and an effort to demonstrate in my syllogistic scheme, the parallel deconstruction and construction of the ideas involved. Deconstruction has been comprehended in a variety of ways depending on the reader's viewpoint angle, but it has a common use as a synonym for critical analysis, which also indicates that is being used as a method for analysis and examination. A method possible to be applied to any subject matter, from humanities and social sciences to film and art, contrary to the famous theory of Derrida that was meant to refer to literary analysis through the discovery and examination of differences within a text, and as he repeatedly stressed not as a method.

Deconstruction is prominently attributed to Jacques Derrida, and his priceless theoretical discourse on this area. His idea of "différance" is epic, and his influence on my thinking process incalculable. Yet, allow me to anticipate, that my work is not trying to escape the history of metaphysics, neither any kind of continuity from Derrida's ideas might be explicitly visible, by that I mean, that my starting point ought to be attributed to the ancient Greeks, who's philosophy was bound with deconstructive tendencies by designation of their thinking process. Equally, "deconstruction has never had faith in newness, especially its own"<sup>128</sup> and as it has been highlighted earlier in my dissertation, Derrida has been categorically explicit in pointing out that deconstruction can be observed in the works of Plato, or Heidegger, and so on and so forth.

As it has been said: "The safest general characterization of the European

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<sup>128</sup> McQuillan, Martin, 'The Politics of Deconstruction: Jacques Derrida and the Other of Philosophy', Pluto Press, 2012. p. 1.

philosophical tradition is that it consists of a series of footnotes to Plato"<sup>129</sup> and what this seemingly hyperbolic statement suggests is, that modern theories can be traced back to the ancient Greeks. Yet, my thesis is based on the view that what young philosophy researchers ought to do, is to analyze the current issues of their interest, with reference and knowledge to the origins of the ideas involved. That been said, is not in my intention to diminish the contribution of modern philosophers, quite the opposite, such as in the case of Derrida, which I must say I admire and follow, but nonetheless the importance of setting the record straight from the beginning of my discourse is herewith beneficial for the avoidance of misinterpretations.

To quote Derrida's knowledgeable words:

A 'philosopher' (actually I would prefer to say 'philosopher-deconstructor') would be someone who analyzes and then draws the practical and effective consequences of the relationship between our philosophical heritage and the structure of the still dominant juridico-political system that is so clearly undergoing mutation. A 'philosopher' would be one who seeks a new criteriology to distinguish between 'comprehending' and 'justifying'. For one can describe, comprehend, and explain a certain chain of events or series of associations that lead to 'war' or 'terrorism' without justifying them in the least, while in fact condemning them and attempting to invent other associations.<sup>130</sup>

Our philosophical heritage is inevitably bound to ancient Greece and the philosophical wealth that has been offered to us, and is still to be discovered. The "truth" in the mind of a philosopher may have been a very different proposition than the "truth" that a modern reader may be able to grasp. It seems plausible to argue that in order to understand an idea, one cannot solely trust on reading a translated text, by a non-native speaker, with no knowledge of the cultural, historical, geo-political and psychological elements that may have formed the background of the genesis of such

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<sup>129</sup> Whitehead, Alfred North, 'Process and Reality: An Essay in Cosmology', New York: The Macmillan Company, 1929, p. 63.

<sup>130</sup> Derrida, Jacques, 'Autoimmunity: Real and Symbolic Suicides, a Dialogue with Jacques Derrida', in 'Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida', ed. Giovanna Borradori, Chicago and London: University of Chicago Press, 2003, p. 106.

an idea. The complications are not without a purpose in that case, the necessity for these impediments to be acknowledged, is of crucial importance, since the mutations that the Greek philosophical thought has been subjected to, through centuries of horrific in cases, academic attempts to translate and interpret these ideas have been essentially harmful.

In order to illuminate my syllogism, allow me to quote Aristotle's Politics.

Aristotle for example, in his Politics dating back in 350 BC, was explaining and referring in my view to an early form of "deconstruction", and a method of analytic philosophical reasoning, through the suggestion of dissolving the questioned subject into its simplest elements in order to understand it and define it, and I quote a translated into English paragraph:

As in other departments of science, so in politics, the compound should always be resolved into the simple elements or least parts of the whole. We must therefore look at the elements of which the State is composed, in order that we may see in what the different kinds of rule differ from one another, and whether any scientific result can be attained about each one of them.<sup>131</sup>

As has been also interpreted: 'His method of discovering the differentia of the state is to analyze it into its parts, and to study it in its beginnings.'<sup>132</sup> Whether these differentia, remind the difference of Derrida, yet in a different terrain and context, I am not in a position to answer, since it would fall outside the purposes of my dissertation, however, I am obliged to raise the question, and state this puzzlement I find my syllogism in.

Although the modern reader may find common sense the above syllogistic methodology outlined by Aristotle, and described in many cases indirectly by Plato through the mouth of Socrates in many of the Platonic dialogues, it is in my view a

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<sup>131</sup> Jowett, Benjamin (translator), 'Politics, by Aristotle', Written 350 B.C.E, Batoche Books, Kitchener, 1999. p. 3.

<sup>132</sup> Ross, David, 'ARISTOTLE' With an introduction by John L. Ackrill, Sixth Edition, London and New York, Routledge, 1995. p.250.

product of ancient knowledge acquired by us through the ancient Greek philosophy, allow me to point out that it may seem as common sense today, but it was not in 3000 years ago, neither would evolve to be part of our foundations of thought, if it had not been stated in the manner that it has by the fathers of philosophy, and immortalized through the Aristotelian and Platonic scripts, through this methodical and in a comprehensive manner way. What our common sense is being based on in that case, can be traced back to the teachings of the motherland of philosophy, in a Freudian interaction between our conscious and subconscious. The knowledge, syllogistic processes and methodological analytical political thought, that we the moderns ignorantly in my view, consider as naturally emerging from our exercising of pure reason, is not at all solely an inherent talent that springs through our gifted minds, but rather the result of a combination, of our exercise of critical reason, grounded on a multidisciplinary educational process, promoted by the majority of the intellectual thought, born and flourished in ancient Greece.

The Aristotelian tradition is based upon methods like the one stated in the first lines of the Politics and has shaped the history of metaphysics. To re-state today a theory developed centuries ago, it does not make it a new theory, although this is the case with the majority of theories in the modern philosophical era.

Aristotle has clearly pointed out the necessity to deconstruct in the most extensive possible way the subject of our examination, following the example of other scientific methodologies, that as it had been proven successful and valid scientific methods, could also have applicability in the political context, and our analysis of the State or political systems. In a way to anatomize the political structure in order to distinguish the parts is made from, and discover the way it functions. This is in simple terms the deconstruction I am employing in my work, the deconstruction guided by the pursuit

for truth and the deconstruction brought forward by the ancient Greeks. It is this analytic process based on a dialectical method as a Socratic aporia on the text, that I am employing in my thesis, the deconstruction that have been in demand from philosophy since her birth.

Hence, Derrida's words I am quoting above, dealing with who should be engaging with philosophy, brings strength to my chosen methodology, as well as gives weight to the justification of a reasoning based on these ideas.

Returning to the subject matter of my dissertation, allow me to pick up from the issues surrounding the suffixes -kratos and -ism. As has been already pointed out earlier in my thesis, the suffix -kratos refers always to negative or violent forms of power, while the suffix -ism is destined to refer to political ideologies or political systems.

The term terrorism in the Greek language is *tromokratia*, and belongs to the same category of terms such as *demokratia*, *autokratia*, *aristokratia* and so on and so forth. Yet, today we are dealing with the term terrorism which is a neologism, and word created from the combination of Latin and Greek, traced in the 17<sup>th</sup> century and the French revolution, so it was transferred to the western literature with the misinterpreting suffix -ism, in forming the term terror-ism. A more detailed examination of the above findings is to follow, with the telos of understanding how and what happened in this search on the evolvment of the term. Although evolvment is better associated with progress and as synonym of a better state of being, yet in our case my thesis is based on arguing rather the opposite, since this modern departure of the original terminological appointment by the Greeks, has led us modern thinkers having to defend the obvious, and that is that State-terrorism is the best way to describe terrorism in the first place, contrary to the common position of



international law that advocates against the existence of the phenomenon. Yet this is the reality, while I am attempting to construct strong justifications for the demolition of the previous unjustified legal certainty.

What is common knowledge today, is the understanding that terrorism is a synthetic word comprised by the two elements the first is terror which signifies "the who" and the second is the suffix –ism which signifies "the what". In that sense, to try and define terrorism would require us to look at this Aristotelian deconstruction and by resolving the compound to its basic elements, to understand what it signifies and what it represents or what is it that it is, "ti esti". Terror is not the relevant term at this point, but the suffix –ism holds much interest. The departure of the original term happened in an undocumented point in history, after the establishment and reckless silent agreement within the scholars producing written work and the international literature shapers, to use the term terrorism, rather than the original term tromokratia originating in Greek. The quantity of publications referring to the phenomenon as terrorism, has made possible this repression of the memory of the original term, as in a Freudian process, yet it seems to me that this is a matter of forgetting the truth, as in a Heideggerian discourse of the aletheia in language. Through time and use, a normalization of this new mysterious un-referential term took place. With such a vague interpretation leading the term terrorism to enjoy an even wider terrain of manifestation and symptoms, while it is tragically ironic in a sense to realize that it has been re-introduced to the mother-land of political concepts mutated and has been adopted and harmonized within the Greek language in blind. Today for instance, the modern Greek speakers, use the term tromokratismos, in many cases referring to terrorism, although tromokratia is still the dominant term referring to the phenomenon of terrorism. Tromokratia, which is in use from the beginning of political thought, up

to our days. This journey of the concept through time and language is intriguing indeed, and allow me to analyze the term *tromo-krat-ismos*, in order to demonstrate how misleading language can become if not read and reconstructed cautiously. This newly introduced word then, is a polysynthetic term which is being comprised by three elements, 1) *tromo*: meaning terror, 2) *krat*: meaning State, holder of power, from the suffix *-kratos* (*cracy*) and 3) *-ismos*: being the suffix *-ism*, attributing to the term the properties of an action, a doctrine, a manner, or a characteristic, since is forming nouns of action or process or result based on the associated verb in *-ize*.<sup>133</sup>

Yet, is as paradoxical as a language construction, as saying *demo-crat-ism*. What is the need for two suffixes in the same term, has only one answer, and that is that there is no need for two suffixes, since this is a paradox and a syntactic error. The suffix is supposed to contribute to the identity of the term, and to have two opposite and different suffixes only adds in the confusion of the reader, and renders the term incomprehensible if not empty, since a "negating" or refuting suffix as the *-kratos*, next to a "positive" or affirmative such as *-ismos*, one could argue that according to basic mathematic principles equals to nothing, because this antithesis present in the same language construction results into effect to "neutralize", defuse and nullify or annul the meaning of the word. It is notable though, that the suffix *-ism*<sup>134</sup> has the property of creating a broader term, as in the case of *Nazi*, which may refer to one individual, and *Naz-ism* that would refer to the ideology.

The term *terrorism* or *terrorisme* in French, can be traced back to the period of 1792-1795 in France, where after the abolition of the Royal regime the extraordinary

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<sup>133</sup> From *-ισμα* (*-isma*), from stem of verbs in *-ιζειν* (*-izein*).

<sup>134</sup> The meaning of the suffix *-ism*: 1. act; result of; practice (*terrorism*); 2. condition of being (*barbarism*); 3. qualities characteristic of; conduct characteristic of (*patriotism*); 4. doctrine; theory; principle of (*socialism*); 5. devotion to (*nationalism*); 6. instance of; example of; peculiarity of (*Galicism*); 7. abnormal condition caused by (*alcoholism*). See: Michael J. Sheehan, 'Word Parts Dictionary, Standard and Reverse Listings of Prefixes, Suffixes, Roots and Combining Forms', McFarland and Company, Inc., Publishers, Jefferson, North Carolina, and London, 1939. p. 44.

revolutionary courts were being founded, courts that are known through history for the terrible persecution they unleashed. However, even this term was intended to mean terror of the State, in line with the original conceptual term constructed by the ancient Greeks. "The original general meaning of terrorism was of terrorism by the State, as reflected in the 1798 supplement of the Dictionnaire of the Académie Française, which described terrorism as systeme, regime de la terreur."<sup>135</sup>

After this point, and the domination of the production of knowledge, by the powerful countries of the times, the term terrorism became the "orthodox" term suggesting politically motivated violent acts, that were employing terror as a tool in order to achieve further political goals. In that sense, it is interesting and demonstrative to mention that even in Greece there was a short period when the term *terrorismos* (*τερορισμός*), began to characterize all forms of terrorism that carried politically motivation.<sup>136</sup> So, after this point in literature, the term came into existence, while it should be highlighted that the concept was already enjoying a mother term, originating in the Greek political thought and language constructions, by the term *tromokratia* (terrorcracy). The ignorance of the original term, led the producers of knowledge, also known as academics, philosophers, theorists and so on and so forth, to replicate the newly constructed term terrorism throughout the literature, instead of *tromokratia*, and consequently allow for a mutation to come into this world by the word terrorism. This is my hypothesis when trying to explain this departure from the original term. Only ignorance, negligence and recklessness could explain the reasons for this misinterpretation, which resulted in an unsuccessful terminological construction, in the attempt to describe the phenomenon of using terror for political

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<sup>135</sup> See: [www.princeton.edu/~achaney/tmve/wiki100k/docs/State\\_terrorism.html](http://www.princeton.edu/~achaney/tmve/wiki100k/docs/State_terrorism.html) [Retrieved on 30 July 2012].

<sup>136</sup> Diamantidis Antonis, 'The Lexicon of -ismen, From Avantguardism to Ofelism', Greek words ending with -isms, Gnosis Publishing, Ed. Ioanna Xirokosta, 2008. [Translation by the author].

goals. A construction that to date has been immune to any attempt of defining it adequately, no matter where this attempt originates from, whether it is academic, political or legal.

By proceeding, I find useful if not necessary to quote Hannah Arendt and her pioneering work in the "Origins of Totalitarianism". Arendt's definition of Totalitarianism is unprecedented and groundbreaking, her research has pointed out that Totalitarianism is the collective concentration of several forms of oppression, united under a violent methodology of control and aggressive self-centered education, and she elaborated on the probability of having discovered the "nature" of this tyrannical form of government that was created upon itself, while she highlighted that the development of various decisions to control the masses is based on basic conditions of control and tyranny.

Yet, she asked: "Or whether, on the contrary, there is such a thing as the nature of totalitarian government, whether it has its own essence and can be compared with and defined like other forms of government such as Western thought has known and recognized since the times of ancient philosophy."<sup>137</sup>

As I see a great relevance to my area of study and Arendt's treatment of totalitarianism, I need to elaborate on the issues rising from this relevance. In my view Arendt referred to the specific political construction of government, that the world faced through Nazism and Stalinism. It is not the same thing that I am talking about. I am talking about State-terrorism, a form of government that the western thought has the tools and capacity to recognize if the appropriate light through a specific discourse is to be led. A form of government that can be compared and

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<sup>137</sup> Arendt, Hannah, 'The origins of totalitarianism', New York: Harcourt, Brace and World, 1966. p. 304.

defined like other forms of government since the times of ancient philosophy. That is where my whole argumentation is based upon. On the fact that State-terrorism is a form of government manufactured by the same raw materials as other forms of government, and as such it is possible to be compared and defined according to its own essence.

Arendt's theory makes the claim, that Totalitarianism is as new and incomparable as Nazism and Stalinism are, yet their methods need not be. For example the factor of fear has been humankind's chief initiative of command against a weaker subjugate, as well as the fear to retaliation and the consequent penalty by the ones in power, has been and will always be, the most efficient source of influence, and many societies before ours knew this. Arendt argues that it is inherent in mankind to sustain power through fear. An argument that it does not come as a surprise to anyone capable of exercising reason, however it seems to me that to argue that a practice as such is inherent, might also engender the risk of expanding this argument into saying that, as is inherent then it is also natural. A view that I do not share, however I am trying to demonstrate the danger of arguing such a thing. I find necessary to clarify and emphasize on my view that Totalitarianism is not the same thing as State-terrorism, although it would be plausible to say that a thinker can see, the one inside the other, and vice versa.

### 3.4. CONCLUSION

By proceeding in the conclusive remarks of this chapter, I find it essential to set the record straight as far as it is possible, and emphasize on the fact, that most Platonic dialogues end in aporia, a realization that demands from me to clarify that I may not necessarily hold the answers to our definitional questions, neither I aspire into reaching a universal truth through answers on our puzzlement. But I want to demonstrate, certain issues, that their consideration may deliver aid in our understanding, comprehension and further explaining of the crucial elements of terrorism and State-terrorism.

It seems to me, that Plato, may have displayed the way for examining and questioning definitional problems, however it should be highlighted that is not an unflawed methodological process, neither a guarantee for reaching a solution to our puzzlement by a tackling of our aporetic state, and this needs to be clarified for the prevention of misinterpretations of my intentions or desired outcomes of my research's endeavors.

I am referring to terrorism and State-terrorism as being in cases one, and the same phenomenon, while being termed differently allowing the circumstances. Allow me at this point to clarify, that while they are two different phenomena, it is the thesis of this paper that, in the original terminological appointment, the Greeks, in aiming to describe the concept through the polysynthetic Greek language, constructed the term *tromokratia*, or terrorcracy which is the equivalent term to the modern term terrorism<sup>138</sup> in order to describe firstly the terrorism employed by a State actor, and not by a criminal individual as in the modern established understanding. Governmental power of any sort, and terrorism were meant to share an unbreakable bond, a bond that has been broken by the deformation and unsuccessful reconstruction

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<sup>138</sup> Terrorism in Greek is the word *tromokratia*, or terrorcracy.

of the idea in a term of Latin-Greek elements, and consequently into the majority of the western languages.

I have attempted throughout this chapter to elaborate on an Aristotelian methodological route, with the telos of discovering the essence of State-terrorism. According to my discourse, if the essence of democracy which has been the main sister term utilized in order to prove my point, is people's-State, then under this logic the Greek term tromocracy (terrorcracy) which has been examined and analyzed above, would have an essence that could be best expressed as terror-State, where the governmental power is being held by and through terror. The original as I view it term tromocracy (terrorcracy) that is found in ancient Greece, is signifying what the modern neologism term terrorism which is deriving from the French revolution era, was also originally meant to denote, since was similarly in that sense constructed in order to signify the terror of the State, or State-terrorism. Equally the two terms were meant to refer to the terror of the State in their original purpose. I have proceeded into a detailed discussion of these matters, and attempted into lining up strong justifications that could uphold the assertion that State-terrorism is an existing concept, idea and phenomenon, and is so deep-rooted as the political State, with the hope to shake the traditional understanding of this phenomenon, which has directed the mainstream academic knowledge towards a dismissal of the utility and urgency for treating this political "disease".

Yet, it should be emphasized, that as in the past so in the present, State-terrorism is the worst, most dangerous and greatly immoral form of terrorism, while my drive for engaging with this area of study is comprised by a determination to have an effect on the future. Apart from the significance of history and the past in my research, I should note the importance of the future, which is also a motivating power inherently

underlying my scholarly engagement. The future that is connected to the prevention of human rights violations, a prevention that can be an important instrument and could have great effect on the future. "Prevention that also means to address the root causes of systematic human rights violations."<sup>139</sup> 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.

Terrorism and State-terrorism, are not easy subjects to work on, but at the same time the challenges surrounding their blurred and un-clarified faculties, impose a duty upon academics to address the necessary questions, in order to contribute in the scholarly labor process, in the production of knowledge, and eventually assist into the birth of a complete convention on international terrorism, leading the way into disrupting the silent consent of the international legal justice system's current practice of law, which eclectically criminalizes the act, depending upon the perpetrator.

There has been a lot of ink used about terrorism, but in contrast, the bibliography on State-terrorism is limited and insufficient, plus, suspiciously neglected as a field of study. There is the urgent need for further research in order to outline the main problematics of these multidimensional and evolving polymorphic phenomena. It is important to note that terrorism as a phenomenon of this globalized and highly technological era, is a continuously evolving concept, a fact that holds a contributing role in the constantly procrastinating legal environment surrounding the concepts of terrorism and State-terrorism, and their not so different routes and roots. 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. While, it should be highlighted that, terrorism cannot exist without the pre-given existence of the State, and apparently, we

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<sup>139</sup> Nowak, Manfred, 'Introduction to the Human Rights Regime', The Raoul Wallenberg Institute For Human Rights Library, Martinus Nijhoff Publishers, Leiden/Boston, 2003, p. 341.



cannot really talk about terrorism outside the context of the State, they are bound to exist together in an interlinked and dependable relationship.

Hence, the optic corner that this thesis is viewing the phenomenon of terrorism 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 other words when the same terroristic 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, a group of individuals or any other non-State actor.

In the following chapter, I proceed in a more extensive consideration of the possibility for the concept of State-terrorism to legally develop and become a subject of criminal law, and on a profounder analysis of the key legal issues that such a disciplinary maneuver would entail and engender.

**CHAPTER IV****THE CRIME OF STATE-TERRORISM**

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**4.1. INTRODUCTION**

At this part of my dissertation, I advance into a legal examination and analysis of the phenomenon of State-terrorism. I find essential to deal with this area of study by employing both philosophy and law, with the anticipation to merge them into a form of a philosophy of law, deriving from a critical legal studies standpoint.

My research has been inspired by the realization that law-makers preferred, as it has been proven historically, to distance themselves from the treatment of this concept. An avoidance, which has established through time, a silent dismissal of the idea itself as being *a priori*<sup>140</sup> legally absurd. This is also demonstrated by the widespread across disciplines traditional view, that State-terrorism is an inherently empty and meaningless term, which has nothing to offer epistemologically. In the same path of reasoning, terrorism also belongs to this category of empty terms, which is a view cultivated mainly by the same school of thought and its "terrorism experts". Yet, the urgency and constant evolvement that terrorism carries and enjoys, one could argue that imposed on legislators an unprecedented duty to legally codify and treat it, especially through the necessity infused to this duty by cases of shocking terrorist attacks. Take for instance the post-9/11 era<sup>141</sup> and the terror-lust propagandized by USA and their allies given the opportunity, which led to the manufacture of a number

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<sup>140</sup> Martin, Elizabeth A., 'A Dictionary of Law', Fifth Edition, Oxford University Press, 2003, p. 31.

A priori: Latin for, from the previous. Makes a presumption that is true as far as is known.

<sup>141</sup> The period after the September 11<sup>th</sup> 2001, terrorist attack in New York City of USA.

of terrorism related international mechanisms, treaties and legal tools, in an unprecedented high rate.

Yet, it is common epistemologically the dismissal of an idea one can not grasp, is obviously the easy way out, and keeping in mind that theorists have struggled for centuries and even more so in modern times, to discuss terrorism itself, one can instinctively predict the fate of a term such as State-terrorism, since in an environment of uncertainty and confusion no solid comprehension of such a phenomenon could possibly flourish. The crime of State-terrorism is not in existence in our justice systems, neither any form of universal jurisdiction exists over that harmful wrongdoing.

Yet, according to my thesis, State-terrorism ought to be punishable by law, *de lege ferenda*<sup>142</sup> since as it will be demonstrated below, according to basic legal theory falls within the category of criminal unlawful acts, and consequently there is an urgent necessity to be recognized and treated as a subject of international criminal law, as a distinguishable punishable crime.

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<sup>142</sup> De lege ferenda: Latin for, of the law that is to come into force. A phrase used to indicate that a proposition relates to what the law ought to be or may in the future be. See: Martin (2003), p. 143.

## 4.2. THE CRIME OF STATE-TERRORISM

As it is well established in the theory of criminal law, and I quote:

...from the development of common law until modern times, all crimes have two essential elements: (1) the physical act or omission, and (2) a mental requirement known as criminal intent or purpose. Some writers refer to these crimes as true crimes...The Latin term *actus reus* (guilty act) is used by the courts and writers to describe the essential physical act, and the term *mens rea* (guilty mind) is used to describe the essential mental requirement.<sup>143</sup>

So, if for the actuality of a crime *de lege lata*<sup>144</sup> there is the prerequisite of criminal harm and of two basic elements, namely the *actus reus* and the *mens rea*, in simple language the guilty act and the guilty mind, then a crime comes into existence and becomes automatically and naturally a subject of criminal law. Now, the reality is, that an act of terrorism if anatomized into these two basic elements, it is a punishable crime according to all known legal systems, except in the case that the perpetrator differs. So if the perpetrator can be traced back to an organized State, then as if by magic the crime seizes to exist. Allow me to use a legal syllogistic tool, for allocating criminal responsibility to the wrongdoer, in other words identifying who should be accused in a court of trial, and discovering the root of an unlawful harm, that is to say, the legal thinking process characterized by examining the *chain of events*. So, if from a terrorist attack we travel back to the crucial actions that led to the attack in question, then one can discover the one interconnected link in the chain of events, that carries the responsibility for this unlawful wrongdoing, as for example is being demonstrated by the assertion, that not only the one that pulls the trigger is responsible, but also a number of different possibilities for allocating responsibility may be in existence, since the intention for example or the plan of action may have been constructed by

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<sup>143</sup> Gardner, Thomas J., and Anderson, Terry M., 'Criminal Law', Cengage Learning, Jan 1, 2011, p. 52.

<sup>144</sup> De lege lata: Latin for, of (or concerning) the law that is in force. A phrase used to indicate that a proposition relates to the law as it is. See: Martin (2003), p. 143.

another actor. In *Prosecutor vs Issa Hassan Sesay*<sup>145</sup> for example, the Special Court for Sierra Leone ruled that terrorism requires proof of an intention to spread terror among the civilian population. It seems to me, that this required mens rea, is an intention that State-terrorism carries by definition.

Thus, the established legally binding rules, *de jure*<sup>146</sup> are excluding, unjustifiably in my view and contrary to the basic theory of criminal law, certain categories of perpetrators as being immune to criminal responsibility *a priori*, as is the case with States, although we may encounter the exact same elements in the chain of events, that may be enough to constitute a crime and a case presentable in a court of justice in order to stand for trial. So, if the last part of the chain of events is leading us towards the direction of the State, instead to a non-State actor, then the case is inadmissible, and that is always according to the current legislative framework of the western world's justice sphere. It seems to me, that this is *ultra vires*<sup>147</sup> if not a legal *lacunae*, and should be considered in greater depth by the administrators of justice, and "terrorist experts". Hence, according to relevant case-law, for a crime of terrorism to be admissible in an international court, has been asserted that, it should comply with the principle of legality, and to "provide effective safeguards against arbitrary prosecution, conviction and punishment."<sup>148</sup>

However, identifying the fault bearer, in other words the one to be accused in a court of trial, is a very complicated and difficult task, while not impossible. Criminal law has all the necessary tools for tackling these practical difficulties, such as for instance the collective responsibility doctrine, or the individual ministerial responsibility

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<sup>145</sup> Case No. SCSL-04-15-A, para. 1198 (Special Court for Sierra Leone, Oct. 26, 2009).

<sup>146</sup> De jure: Latin for, as a matter of legal right. See: Martin (2003), p. 142.

<sup>147</sup> Ultra vires: Latin for, beyond the powers. Describing an act that goes beyond the limits of the powers conferred on it. Ultra vires acts or laws are invalid. See: Martin (2003), p. 513.

<sup>148</sup> S.W. vs United Kingdom, 335-B Eur. Ct. H.R. (ser. A) (1995); see also C.R. vs United Kingdom, 335- C Eur. Ct. H.R. (ser. A) (1995).

amongst other legal tools. That was the case with the corporate liability in the past as well, yet the law has evolved and managed to find ways of allocating responsibility to these strange legal entities that corporations were held to be. Criminal law is the most developed and detailed of all legal disciplines, since it is being practiced for centuries, and its undoubtedly one of the most important and necessary legal frameworks for a guarantee of justice, as well as law's and order's existence, since it is the body of law dealing with crime. Notwithstanding, that in international criminal law it is acceptable for violations of customary international law to generate individual criminal responsibility.<sup>149</sup>

Requiring a clear and comprehensive legal definition of the crime, and with the precondition that this crime is covered by an international binding agreement, guaranteeing the jurisdiction of the appropriate international criminal court, where the wrongdoer is judged.<sup>150</sup> Yet in my view, the issue and problematic of allocating responsibility, can also be dealt with *stare decisis*<sup>151</sup> which is an axiom stating the fundamental core of the principle of legal precedent, in simple language constituting the obligation for taking into consideration past legal court's cases and relevant judgments, as well as prescribing that is compulsory to abide by former precedents, when the same points arise again in litigation. In this line of reasoning, there could be many answers for the problematic of allocating responsibility in such a complex and overpopulated structure as is the State, by precedent created by cases such as in the Nuremberg trials, or in the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda, and so on and so forth. However,

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<sup>149</sup> Prosecutor vs Hadžihasanović, Case No. IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial, para. 38 (International Criminal Tribunal for the Former Yugoslavia March 11, 2005).

<sup>150</sup> See Prosecutor vs Delalić (Čelebići), Case No. IT-96-21-T, Judgment, para. 406 (International Criminal Tribunal for the Former Yugoslavia Nov. 16, 1998).

<sup>151</sup> *Stare decisis*: Latin for, to stand by things decided. See: Martin (2003), p. 475.

terrorism is not explicitly embraced by the jurisdiction of the ICTY or of the ICC,<sup>152</sup> an inefficiency of these Courts that indicates the barriers that phenomena such as terrorism or State-terrorism are subjected to. While it should be mentioned that the inclusion of the crime of terrorism, can be found within the jurisdiction of the Statute of the International Criminal Tribunal for Rwanda (ICTR), and the Statute of the Special Court for Sierra Leone (SCSL).<sup>153</sup>

It is attention-grabbing, though, that the ICTY originally prosecuted criminal wrongdoing that indicated terrorism, under the heading of other crimes of armed conflict.<sup>154</sup>

In the *Čelebići* case, for instance, the Judge softly criticized "the frequent cruel and violent deeds committed in the prison-camp" through observing that the captives were "exposed to conditions in which they lived in constant anguish and fear of being subjected to physical abuse" and "were thus subjected to an immense psychological pressure which may accurately be characterized as 'an atmosphere of terror'."<sup>155</sup> It is notable that the accusations on Radislav Krstić involved the crime of persecution, grounded on the fact that he actively participated in the process of terrorizing the Bosnian Muslims.<sup>156</sup> However, the Court ruled that the type and class of assaults versus specific communities and villages, exhibited that the soldiers were not just fighting to eliminate armed opposition, since as it has been revealed: "they terrorized the civilians by intensive shelling, murders and sheer violence."<sup>157</sup>

However, State-terrorism as a term or crime, is not an option within a legal sphere.

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<sup>152</sup> ICC Statute, *supra* note 25, art. 5.

<sup>153</sup> Statute of the International Tribunal for Rwanda, U.N. Doc. S/Res/955 (Nov. 8, 1994) art. 4(d), or Statute of the Special Court for Sierra Leone, U.N. Doc. S/2000/915 art. 3(d) (Oct. 4, 2000).

<sup>154</sup> See: *Čelebići*, para. 1091.

<sup>155</sup> *Idem*.

<sup>156</sup> *Prosecutor vs Radislav Krstić*, Case No. IT-98-33-T, para. 533 (Int'l Crim. Trib. for the Former Yugoslavia Aug. 2, 2001).

<sup>157</sup> *Idem*, para. 630.

It seems to me, that this problematic, requires greater into depth analysis, but, only after the constitution of the crime of State-terrorism, and the dismissal of the traditional refusal of the international legal world to treat it as a crime.

Henceforth, State-terrorism *de facto* did not enjoy the same attention as terrorism has. That been said, allow me to highlight that the main concern of my discourse is directed towards international law, because an offence of the nature of State-terrorism can only be dealt with efficiently, by a legal structure in the model and legislative framework that international law has to offer. Since it is this legal construction, which makes States accountable, and their governments a subject of law, imposing duties and obligations with the possibility of allocating liability and responsibility, in other words is empowered by essence to impose punishment upon the malfeasant in face of their breach.

To talk about a justice system capable of administrating justice, is to speak about a structure that covers the process of justice from Alpha to Omega. By that I mean, that the whole spectrum of administrating justice ought to be covered and served, since no other conclusion may offer a completeness of the justice's journey, neither a fulfillment of her destiny, namely the metamorphosis of the injustice to justice. That is to say, from defining, legally codifying and discovering a crime, to identifying its actors and perpetrators, to constitution and proof of their fault, until charging a sentence and punishment by any means available according to the case.

In international law a theoretical discourse on a crime is not enough neither efficient, yet in a blank canvas as the one we are facing, to theorize is always useful. Still, the world of international law lacks the certainty of punishment, since in certain cases it is comprised by political agreements without legal value to the extent of true penalty in face of their breach. Which means that the administration of justice, does not reach its



destination and fulfillment, in other words the mission of justice is not accomplished. This is the case, due to the political element that is so present and empowered in the proceedings and mechanisms of its workings. International law is said to be the child of law and politics, in a unique unprecedented way. A marriage not really made in heaven, since it has produced in many cases monstrous legal rules, or allowed for injustices to develop into norms, as for instance by allowing dictatorships to function within the international arena, and even through the United Nations cooperation or alignment with human rights violating governments.<sup>158</sup>

When for instance politicians and diplomats are called to negotiate on subjects of law and justice, is expectable to witness a very different outcome than the one required by fairness, backed up with alibis as a State's sovereignty and the immunity of the political actors and Heads of States. It is agreed that certain political insurances should be protected and guaranteed in order for politicians to be able to function unconstrained, but, justice ought to serve higher ideals than the ones existing in political life, which is by definition entailing the Machiavellian idea that the "ends justify the means" for the sake of practicality, amongst other foreign to law "qualities". What I am referring to is the impossibility to prosecute political entities, due to the asylum and impunity they enjoy, given by their political status, a legal paradox that has endless examples in its portfolio throughout the world's history.

Still, the practical complications and problems, that rise from such a vast area of international legal practice, are unending and form the usual alibi of the legislators involved, for avoiding to include certain legal problematic and crimes, such as is the case of terrorism by the International Criminal Court. I am mentioning terrorism,

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<sup>158</sup>As for example Libya, Syria, Iran, North Korea, and Israel (just randomly chosen examples).

because State-terrorism is a nonexistent phenomenon and crime according to the International Criminal Court and its supporters views, *lex lata*.

State-terrorism is treated, by international legal experts, lawyers and judges as an absurd idea, a fictional crime, and as having no status *de jure*. There is in recent times though, an uprising in publications, which indicates a greater interest in this area of study, and an examination and analysis of the issues involved by certain scholars, predominantly in the philosophical arena and the political science's field, such as for example Chomsky's unique influence, and in this trend of thought is my study's ambition to pay a contribution.

Furthermore, it has been stated that: "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."<sup>159</sup> However, it seems to me, that the alibi of the legitimate monopoly of violence<sup>160</sup> cannot serve in modern times for unjustified violence directed to the population of any State in question.

There is not a legal definition *lex lata*, of the term of State-terrorism with enforceability in international law, that is a given and has been explicitly acknowledged throughout my writings and within my legal treatment of the concept of State-terrorism.

The closer point international law has come into using language analogous, synonymous or equivalent, referring to unlawful acts that could fall within the description and purposes of State-terrorism, is to be found under the International

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<sup>159</sup> Schmid, Alex P., 'Repression, State-terrorism, and Genocide: Conceptual Clarifications', in Bushnell P. Timothy (ed.) *State Organized Terror; The case of Violent Internal Repression*, Boulder: Westview Press, 1991pp. 23±37. p.29.

<sup>160</sup> Weber, M., 'Politics as a Vocation'. In *From Max Weber: Essays in Sociology*, pp. 77- 128. Ed. and trans. by H. H. Gerth and C. Wright Mills. New York: Oxford University Press, 1958.

Conventions dealing with the financing of terrorism, the debates over State-sponsored terrorism, and the war crimes designation in the Geneva Conventions.

Yet, State-terrorism is not a new crime, or unknown criminal practice, my dissertation claims that it has a new hypostasis, under its new international form, but it is not a new criminal activity. Under this reasoning, my thesis advocates for the improvement of law, by the recognition of State-terrorism as another form or type of terrorism, and as such, to proceed into including it within the legal regime of combating through law the crime of terrorism. It is necessary according to my view, to call each crime by its name, and although there might be different criminal tools in existence, that could at the end of the day, punish the wrongdoers under the titles of different crimes, even in the absence of the crime of State-terrorism, in other words for acts that might have been committed and could otherwise constitute State-terrorism, it is still however, my strong belief, that in the absence of the crime of State-terrorism from the Court's reports, Justice will never really be served. A legal practitioner is familiar with the fact, that by using the term terrorism, "not only emotional, but also legal doors will be opened which would otherwise have remained closed."<sup>161</sup> By labeling a crime as a terrorist act, enables and obliges various legal actors to apply a different range of legal tools, instruments and means. It also results in increasing both the minimum and the maximum penalties automatically. It is therefore in the interest of the individual offender, the victim, the prosecutor and the defense, as well as the international regime, to know exactly when a certain act amounts to terrorism.

Nevertheless, international humanitarian law itself uses the term "terrorism", "acts of terrorism", "measures of terrorism", and "terror", it is not in that sense a complete blank canvas that law-makers are dealing with in relation to codifying terrorism

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<sup>161</sup> Idem.

directed into a universal jurisdictional reach. There is no strong reason, for shying away from these terms, despite the advocates of the viewpoint holding these terms empty and legally worthless. Rather, IHL may yet help establish a precise and legally sound definition of terrorism in order to prevent its being used as a political weapon by assigned authorities. 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."<sup>162</sup> 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."<sup>163</sup> Most scholars argue, that there is much that we can learn from looking back at the international legal treatment of the phenomenon of terrorism within international humanitarian law, despite the old aged texts and the outdated in cases viewpoint, given that the international element of terrorism has taken a new dimension in recent times, a quality that was not present in the time of the drafting of the Geneva conventions.

It is humanitarian law, which has to offer *de jure* fact of law and this needs to be highlighted, since through the principle *lex specialis* a legal researcher could discover tools for tackling the possible antinomies rising from the new treatments and unsuccessful definitional attempts of terrorism in modern times. As well as, equip one-self for providing strong justifications, in order to challenge the constant denial of lawmakers to include State-terrorism on the table of negotiating terrorism's definition, while they persistently rendering it nonexistent and incomprehensible legally. In that sense, the Geneva Convention of 1949, condemned and prohibited "all measures of intimidation or terrorism"<sup>164</sup> long before the United Nations decided to deal with

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<sup>162</sup> See: [www.unhchr.ch/html/menu3/b/92.htm](http://www.unhchr.ch/html/menu3/b/92.htm) [Retrieved on 13 April 2012].

<sup>163</sup> See: [www.unhchr.ch/html/menu3/b/94.htm](http://www.unhchr.ch/html/menu3/b/94.htm) [Retrieved on 15 April 2012].

<sup>164</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Part III : Status and treatment of protected persons #Section I : Provisions common to the

framing legally the phenomenon and crime of terrorism, and it seems plausible to argue that, it is implied in this law that State-terrorism is included in the prohibition, since the wording of the law states all measures of terrorism, then State-terrorism could be assumed as falling within this grouping, if we agree that it is another form, type or measure of terrorism.

State-terrorism however, has not enjoyed the required academic and legal attention, neither the interpreters of the Geneva Conventions highlighted the probability that State-terrorism ought to be acknowledged and prohibited according to the law's dictation.

Whereas, for scholars defining the term State-terrorism is as difficult as defining any other key terms,<sup>165</sup> as for example the traditional form of terrorism, which has been the main cause of the deadlock that the **Draft Comprehensive Convention on International Terrorism** is to be found since the initiation of the drafting of this document in the end of 2000, and the Ad Hoc Committee's establishment by the United Nations General Assembly's Resolution 51/210.<sup>166</sup>

What is important to underline, is that for the first time in such a manner, and within the negotiations and workings of an international organization of the magnitude of the United Nations, which is in our days the most empowered international law-making institution, and the so-called ambitious project to construct a complete international convention on international terrorism, we meet the idea of State-terrorism on the same

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territories of the parties to the conflict and to occupied territories, Article 33, Paragraph 1, 2. 'Measures of intimidation or of terrorism', See: [www.icrc.org/ihl.nsf/com/380-600038?opendocument](http://www.icrc.org/ihl.nsf/com/380-600038?opendocument) [Retrieved on 24 October 2012].

<sup>165</sup> See: Duvall and Stohl 1983; Stohl 1983; Schmid and Jongman 1988.

<sup>166</sup> For an indication of subsequent developments concerning the negotiations of the draft comprehensive convention, the following documents may be consulted: A/57/37, A/59/894, A/C.6/60/L.6, A/61/37, A/C.6/61/SR.21, A/62/37, A/C.6/62/SR.16, A/63/37, A/C.6/63/SR.14, A/64/37, A/C.6/64/SR.14, A/65/37, A/C.6/65/L.10, A/66/37, and A/C.6/66/SR.28. See: [www.un.org/law/terrorism/index.html](http://www.un.org/law/terrorism/index.html) [Retrieved on 12 December 2012].

table as the idea and crime of terrorism, as belonging to the same category of wrongdoing and condemned criminal punishable practices.

It is unavoidable, and it is my theory's basic belief, that at one point the law-makers will have to deal with this idea as a subject of criminal law, no matter how absurd or empty they conceive it to be until now. So in one way, this turning in policy, demonstrates this point in time that the denial is fading and in her place a recognition of the reality emerges, holding that State-terrorism is a valid concept, a fruit-full idea philosophically, and an urgent subject requiring criminal law's attention, in other words that requires the international law's treatment and prohibition, as well as codification and definition. This change in the use of language, although small and undeveloped, it is still of great significance for the purpose of my hypothesis, since it is adding greater value to the importance of my chosen topic of research.

The language I meet in researching on State-terrorism throughout the United Nations literature slowly but steadily begun to change in favor of an acceptance of the existence of State-terrorism. It is interesting to note that the Chair<sup>167</sup> of the Ad Hoc committee, on the discussion of opinions throughout the informal consultations "unequivocally condemned all terrorist acts, regardless of their motivation, as criminal and unjustifiable, wherever, whenever and by whomsoever committed." Allow me to anticipate that by that statement, one can distil the possibility for the impunity of certain perpetrators to get directly affected, as well as ultimately, it may well be interpreted as implying the intentions of the UN for a new viewing of State-terrorism as a crime, that requires punishment and legal codification to come into existence.

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<sup>167</sup> Annex I, A. General, Paragraph. 1 in Page 5 of the report. Ad Hoc Committee report: 2011 (A/66/37) in [daccess-ods.un.org/TMP/2890277.20689774.html](http://daccess-ods.un.org/TMP/2890277.20689774.html) through the United Nations official website: [www.un.org/law/terrorism/index.html](http://www.un.org/law/terrorism/index.html) [Retrieved on 6 January 2013].

While, my realization for a turning in policy and use of language, in favor of State-terrorism, is explicitly demonstrated by the report of the Coordinator, who stated and I quote:

... **the convention should address terrorism in all its forms and manifestations, including State-terrorism**, and that activities undertaken by the armed forces of States not regulated by international humanitarian law should also fall within its scope. (see A/60/37, annex III, and A/65/37, annex I, sect. B, para. 11).<sup>168</sup>

Finally some real bold language, which explicitly talks about State-terrorism, and an unprecedented turn into the direction of the definitional attempts of terrorism, by the seemingly simple highlight of the possible intention to include State-terrorism in the complete international terrorism law. While it is worth to mention again at this point, that according to my hypothesis, all definitional attempts of terrorism have proven to be unsuccessful, exactly because the lawmakers avoided blindly to include State-terrorism in the forms that terrorism may take, a fact of insufficiency and lacunae in international law that it seems to me that will continue to be as such, as long the legislators do not include State-terrorism in the definition of terrorism.

Nevertheless, at this point in time and within the workings of the Ad Hoc Committee, that has an ambition and mandate that demands the producing ultimately of a complete convention on international terrorism, we meet the emerging of the intention to include State-terrorism in the definition of terrorism as another form of terrorism and another manifestation of terrorism. This is great progress, according to my perspective, which seems to me that renders the possibility for a successful definition of terrorism to finally come into existence. A definition that not one party could object too, if truth and justice are the virtues driving its formation, and a definition

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<sup>168</sup> Annex I, B. Draft comprehensive convention on international terrorism, Paragraph 10, page 7 of the Ad Hoc Committee report: 2011 (A/66/37). (All the United Nations reports can be found in: [www.un.org/law/terrorism/index.html](http://www.un.org/law/terrorism/index.html)) [Retrieved on 13 January 2013].

that will finally look for truth into the root causes of terrorism, as could very well be the practice of State-terrorism, since as many argue State-terrorism creates a vicious cycle of more terrorism in the form of resistance.

Hitherto, I find necessary to mention the background course, which led to the proposal of the Draft Comprehensive Convention on International Terrorism, in order to shed some light into the process that is needed in an international organization's apparatuses.

The timely manner that the United Nations mechanisms proceed, can be demonstrated by looking in the way the Ad Hoc Committee in question has struggle through her initiation. From 1996 the General Assembly, in resolution 51/210 of 17 December, established the Committee to elaborate an international convention for the suppression of terrorist bombings and, successively an international convention for the suppression of acts of nuclear terrorism, in order to supplement associated existing large-scale utensils dealing with terrorism and counter-terrorism, and afterwards to provide measures by an additional comprehensive legal framework of agreements dealing with international terrorism. Their mandate has changed by a continuous revision every year from the General Assembly through their resolutions on the agenda item "Measures to eliminate international terrorism"<sup>169</sup> and declarations that further framed the expansion of their mandate.<sup>170</sup> While, the pattern of meetings of the Ad hoc Committee has been such, that it has held one session per year, over a one or two week period. The work is then continued in the framework of a Working Group of the Sixth Committee held later in the year during the regular session of the General Assembly. Many criticized this timely manner the committee proceeds in her work

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<sup>169</sup> Declaration on Measures to Eliminate International Terrorism, Res. 49/60 of 9 December 1994. See: [www.un.org/documents/ga/res/49/a49r060.htm](http://www.un.org/documents/ga/res/49/a49r060.htm) [Retrieved on 20 December 2011].

<sup>170</sup> Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, Res. 51/210 of 17 December 1996. See: [www.un.org/documents/ga/res/51/a51r210.htm](http://www.un.org/documents/ga/res/51/a51r210.htm) [Retrieved on 11 December 2011].



and it seems common sense to critical argue that, the commitment of the United Nations into delivering results, does not evidently seem to be very strong according to this program of meetings.

Conversely, the Ad Hoc Committee, according to the United Nation's official regulations, works on the basis that nothing is agreed until everything is agreed. Which has making the final production of an agreement rather difficult, keeping in mind the urgent and contradictory nature of their area of work. It must be mentioned though, that the outcome of the Ad Hoc Committee's labor since its formation, resulted in the adoption of the following important terrorism related treaties:

- a) International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly in resolution 52/164 of 15 December 1997.
- b) International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly in resolution 54/109 of 9 December 1999.
- c) International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly in resolution 59/290 of 13 April 2005.

The global society has been dynamic into agreeing on a number of legal and political tools, in order to combat international terrorism, yet, terrorism still remains undefined. Furthermore, allow me to demonstrate the main features in the Draft Comprehensive Convention on International Terrorism, that are crucially relevant to my argumentation and my dissertation's hypothesis, a Draft that is currently under negotiations in the UN and it:

obligates Parties to refrain from organizing, instigating, facilitating, financing, assisting, or participating in the commission of terrorist offenses in the territories of other States, acquiescing in, encouraging, or tolerating activities within their territories directed toward the commission of such offenses; take practical measures to ensure that their respective territories are not used for terrorist installations and training camps, or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens; take appropriate measures, before granting asylum, to ensure that the asylum seeker has not engaged in terrorist activities; and cooperate in preventing and punishing terrorist acts by preventing and

impeding the preparation in their respective territories of such acts by exchanging information and implementing relevant international Conventions, including the harmonization of their domestic legislation with those Conventions, and conclusion of mutual judicial assistance and extradition agreements.<sup>171</sup>

Yet this is a general summary of the direction the draft has taken, while is explicitly demonstrable of the intentions driving the formation of this new while promising international terrorism law, as well as exhibiting the explicit inclusion of terrorism committed by the State, which for the first time seems to touch the core and essence of the problematic of terrorism, which in my view is the State. It seems as if for the first time, the international legal treatment of terrorism is directed into treating the roots of this criminal harmful act, and in my view any attempt of that nature could not, should not, and ought to not exclude State-terrorism.

Furthermore, in the United Nations Committee's workings, the Coordinator has acknowledged the emerging necessity for including State-terrorism, in their discussions on terrorism, by taking into account the concerns of the delegates taking part in the drafting procedure of this promising new complete law on international terrorism, and in this point I quote:

The Coordinator recalled the main concerns raised by delegations during the negotiations, namely: (a) the right of peoples to self-determination under international law; (b) the activities of armed forces in armed conflict; and (c) the activities of military forces of a State in peacetime, also taking into account related concerns about State-terrorism. These concerns had been properly addressed in the 2007 proposal in a manner that took into account existing international legal regimes, including international humanitarian law; the draft convention should not aim either to rewrite other fields of international law or to rectify any perceived flaws in these other fields of law. The 2007 proposal was legally sound and politically realistic.<sup>172</sup>

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<sup>171</sup> Inventory of International Nonproliferation Organizations and Regimes © Center for Nonproliferation Studies, p. 1-2. See: [cns.miis.edu/inventory/pdfs/intltterr.pdf](http://cns.miis.edu/inventory/pdfs/intltterr.pdf) [Retrieved on 15 December 2012]

<sup>172</sup> Annex I, B. Draft comprehensive convention on international terrorism, of the Ad Hoc Committee report: 2011 (A/66/37), p. 8-9.

In the 2007 working group report, it is clearly emphasized, that State-terrorism cannot be left outside of any sound effort for a comprehensive definitional attempt, and it has been especially underlined that, any comprehensive convention on international terrorism must include State-terrorism in its treatment and mandate. I quote below the part of the report that this point has been stated:

Some other delegations emphasized the importance of including, in the draft comprehensive convention, a legal definition of terrorism to distinguish it from the legitimate struggle of peoples for self-determination. In addition, other delegations expressed the view that State-terrorism would have to be included in any comprehensive convention on international terrorism. It was reiterated that acts of State-terrorism were of serious concern to the international community and that such acts only contributed to a vicious cycle of terrorism.<sup>173</sup>

This is the way of the future, *de lege ferenda*, and the traditional avoidance of the idea of State-terrorism by the legal world, is approaching to its ending. The political pressure that was responsible so far for preventing State-terrorism by even reaching the table of negotiations of international law, is now used by other power-holders that also possess the art of political pressure, but this time for ensuring that State-terrorism is included as an integral and defining part of a complete law on international terrorism.

It is a fact, that terrorism by the moment that has been categorized as a crime, and covered by criminal law, has entered into a path full of *lacunae*, of the so-called "holes" in the law and numerous gaps as well as blanks in writings. State-terrorism is inevitable to be subjected to many legal problematics as well, yet, what should be noted is that the political nature of both phenomena, which renders their comprehension unattainable, is one side of the coin, is not the whole picture. While,

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<sup>173</sup> Sixth Committee Working Group reports: 2007 (A/C.6/62/SR.16-Oral), page 6.

their legal status has a more tangible quality to offer to our comprehension of their function, elements, qualities, and effects.

Some scholars argue against the legal weight of terrorism, such arguments can be found in the writings of Judge Rosalyn Higgins, the first female judge elected to the International Court of Justice, as she said and I quote:

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.<sup>174</sup>

Yet, there is a large number of legal experts that argue for that logic, and advocating that we do not really need more legal terms, neither new crimes codified in law, since law has already all the tools and mechanisms to deal with any kind of criminal conduct.

Nevertheless, this is a draft international convention on international terrorism with the ambition to form a complete, and legally binding document to serve for future generations. It seems to me that the failure to include all forms of terrorism, including State-terrorism, will only serve as annulling the possibility for this convention to become a genuinely complete law on terrorism. The Coordinator of the Draft Convention Maria Telalian from Greece, at the 48th meeting, on the 15 of April, through her official statement emphasized on the extra legal value added on the draft convention, as a law enforcement instrument, and it should be also highlighted in my discussion that this is an international legally binding document they are working on, and a complete convention on international terrorism we are dealing with, and not just a politically binding agreement. An authentic law that considers finally the idea, concept, phenomenon, and crime of State-terrorism as a necessary element on the

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<sup>174</sup> Rosalyn Higgins, 'The General International Law of Terrorism' in Rosalyn Higgins and Maurice Flory (eds), *Terrorism and International Law* (1997) 14, 28.

table of examination when considering the elements of terrorism related practices, an idea to get anatomized, and legally codified, which means that automatically will get upgraded into a recognized through international law crime.

However, not all legal systems of the world are foreign to the crime of State-terrorism. In *jus civile*, 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, which renders the practice of State-terrorism as a subject of criminal law and criminalizes the concept. 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 has emerged at this point, in order to work by using the tools that this area of the legal science can provide.

For example, in the **Arab Convention on the Suppression of Terrorism**<sup>175</sup> 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 terrorism when these are to be committed by the State. The Treaty places an

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<sup>175</sup> 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).

obligation and receives an implied promise from the contracting State, not to commit State-terrorism. Automatically, the States are recognizing 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**<sup>176</sup>, 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."

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<sup>176</sup> Organization of African Union Convention on the Prevention and Combating of Terrorism (Algiers July 1999).

And last but not least, in the **Convention of the Organization of the Islamic Conference on Combating International Terrorism**,<sup>177</sup> Article 3, I, it is rigorously stated: "The Contracting States are committed not to execute, initiate or participate in 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 imperiling their lives, honor, 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 laws the language used, which is similar if not identical. All three Conventions proceed into explicitly forbidding the signatory State from committing terrorism. Obviously, the above language openly refers to State-terrorism. So, it is held, that terrorism can be committed by the State, which also implies a recognition of State-terrorism, as a manifestation of terrorism.

In this point it is necessary to repeat the fact that according to International Law there is no legal definition on State-terrorism. Of course the above Conventions are

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<sup>177</sup> 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).

creatures of International Law, but what we lack is the numbers of signing State-parties, as well as international consensus on a single definition, or even the backing up of these treaties by the United Nations in order to achieve universal jurisdiction. These are regional conventions and the signatory parties are limited in the region and do not represent the whole world. A problematic that even the wider international law faces since its initiation.

It should be emphasized that a condemnation and explicit prohibition of State-terrorism can be found in all three above mentioned Conventions as *lex lata*, but unfortunately not in the European Convention on the Suppression of Terrorism<sup>178</sup> 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.

While as it has been stated earlier in my thesis, there has been a turn of viewing the concept of State-terrorism, which is manifested through the possibility of being included in the next Convention for International Terrorism by the United Nations, which is a great step forward and for categorically tackling terrorism in its root.

However, why is it that these regional conventions are so progressive as to include State-terrorism, when in the international arena the climate is exactly the opposite, is a very good legal question. It is ironic and legally paradoxical, to realize that the countries that are more likely to be accused, and a noticeable number of them already have been accused for State-terrorism and State-supported terrorism, reach a consensus and agree into using such rigorous wording in Conventions that impose obligations for further criminalization of the acts of State-terrorism. A criminalization that can be turned back as boomerang on their governments and States. I do not hold a possible answer to that question, but it seems to me, that a practice so well spread in

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<sup>178</sup> European Convention on the Suppression of Terrorism concluded at Strasbourg on 27 January 1977. (Deposited with the Secretary-General of the Council of Europe).



this part of the world, has become a recognizable political idea, as well as the necessity for prohibiting this brutal criminal act is of the greatest possible urgency, resulting to the production of agreements as such that prohibit this practice, though the blood that has been openly shed by administrative terror in this part of the world, has in certain cases a stronger voice than legal arguments trying to tongue-tie the advocates for the criminalization of such horrendous governmental terroristic practices.

### 4.3. LEGAL DEFINITION AND THE ICC

One 1988 study<sup>179</sup> identified a total of 109 different definitions of terrorism; and a 2011 study from the same scholar<sup>180</sup> compiled 260 definitions of terrorism; while arguably the number would be most likely higher today.

However, it is interesting to consider the allegation that holds, a definition to be an equation. In using legal language we refer to the codification of acts and conducts, a codification, which might very well resemble an equation, especially in certain bodies of law, such as the criminal law. Accordingly the theory of logic<sup>181</sup> holds that the word to be defined is the *definiendum*, followed by the *definiens* in the form of a collection of words that describes that term of our interest. Yet to talk about a legal definition of a term, it is to talk about a term recognized by law as being a subject of law which requires legal treatment. That been said, would be impossible to discover through research, a legal definition of State-terrorism, since it is not recognized by law as being a valid concept, or a crime requiring criminal law's prohibition.

Notwithstanding that even with terrorism which through centuries of intellectual struggle with its definition, and with even grander motivation after the September 11<sup>th</sup> 2001 attack, its common knowledge that the efforts to advance in a commonly acknowledged legal description of terrorism have repeatedly failed. While it is agreed, that to date, terrorist attacks have been characterized as serious offences of criminal nature, as crimes of the most grievous character, which are prohibited by national legislations and domestic legal mechanisms. Yet, in the international arena, the

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<sup>179</sup> 'In our first Research Guide we identified 22 word-categories in the 109 definitions we discussed.' See: Schmid, Alex P., and Jongman, Albert J., 'Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature', New Brunswick, New Jersey: Transaction Books, 1988, pp. 5-6.

<sup>180</sup> Schmid, Alex P., 'The Routledge Handbook of Terrorism Research', Taylor & Francis, 2011, pp. 99-200.

<sup>181</sup> Hurley, Patrick J., 'A Concise Introduction to Logic', Cengage Learning, Jan 1, 2011, pp. 93-94.

situation is still unstable and very different. A look in the state of affairs of the International Criminal Court it seems to me that would be necessary at this point.

The Preamble of the Rome Statute<sup>182</sup> recognizes that the International Criminal Court itself is a last resort for bringing justice to the victims of genocide, war crimes, and crimes against humanity, as it has been declared, this court is concerned with the most serious crimes against humanity. It consequently invites 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 legal systems. It is a given that States are under an obligation to cooperate fully with the ICC according to Article 86, but it should be noted that there is no mechanism to secure immediate observance. Which seems to me, that it makes the outcome of this cooperation governed by legal paradoxes, political motivated complications and likewise infusing to the credibility of the Court the negative quality of an implied sense of procrastination and the standard of timely procedures with uncertain outcomes, wounding the certainty that the administration of justice requires by essence.

As a descriptive prerequisite, terrorism refers to an attack directed against a civilian population, while one could argue that is exactly as required by the ICC Statute for crimes against humanity,<sup>183</sup> and if it is executed pursuant to or in furtherance of a State or organizational policy,<sup>184</sup> it should effortlessly fulfill the jurisdictional

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<sup>182</sup> The Rome Statute of the International Criminal Court adopted on 17 July 1998.

See: [untreaty.un.org/cod/icc/statute/romefra.htm](http://untreaty.un.org/cod/icc/statute/romefra.htm) [Retrieved on 27 March 2012]

<sup>183</sup> See: Statute of the International Criminal Court, art. 7(1), U.N. Doc. A/CONF.183/9 (July 17, 1998), reprinted in 37 I.L.M. 1002 (1998).

<sup>184</sup> *Idem.* art. 7(2)(a).

necessities and requirements for a trial in the ICC as a crime against humanity.<sup>185</sup> Since in the majority of cases is an occasion of inhumane acts...causing great suffering, or serious injury to body or mental or physical health, therefore terrorism undoubtedly in theory succeeds to fulfill the requirements of the ICC's jurisdiction as a crime against humanity.<sup>186</sup> However in reality the Court is turning the blind eye in these arguments. Whilst, it should be noted that there could be occasions and specific cases of terrorism, which would be impossible to qualify as crimes against humanity, cases of either smaller scale, or lesser harm, but according to my thesis, even these cases should and ought to be admissible in the ICC if the State handling the imprisonment process, has direct interest in the prosecution, or is either unwilling or unable to prosecute the terrorists, as is being regulated by the principle of complementarity, and so on and so forth.

The complementarity principle, which obligates the prosecutor of the ICC 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, a possibility given by Article 17(3).

This is in contrast with the ICTY and the ICTR, which were created to have primacy over national jurisdictions, in order to be effective and productive, a rule that may well be useful to ICC as well, yet it seems to me that this superiority and primacy over national law, is unlikely to be something States would accept, and may had brought forward the impossibility for the ratification of the Rome Statute by States in the first place, due to the lack of urgency that for instance the two other mentioned special courts possessed and carried.

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<sup>185</sup> William A. Schabas, *The International Criminal Court: The Secret of Its Success*, 12 CRIM. L.F. 415, 426–27 (2001) (saying that ICC has no jurisdiction for terrorism as a crime against humanity).

<sup>186</sup> ICC Statute, art. 7(1)(k).

However, 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. For example, some States have proposed that terrorism should be considered as one of the international crimes to be subjected to the jurisdiction of the International Criminal Court (ICC), explicitly as a crime against humanity,<sup>187</sup> conversely many States including the USA fought against such a proposal primarily on four grounds:

- (i) the offence was not well defined;
- (ii) in their view the inclusion of this crime would politicize 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.<sup>188</sup>

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<sup>189</sup> were rejected. Recent case-law is in line with this cautious approach.

For example, in 1984, and the *Tel Oren vs Libyan Arab Republic*<sup>190</sup> case, the Court of Appeals of the District of Columbia held 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.

Another example can be found on a 2001 serious case of terrorism, which allegedly involved Ghaddafi. In that ruling the French Court of Cassation held, that terrorism

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<sup>187</sup> Proposal submitted by Algeria, India, Sri Lanka and Turkey, U.N. Doc. A/CONF.183/C.1/L.27 (June 29, 1998).

<sup>188</sup> Cassese, Antonio, 'The Human Dimension of International Law: Selected Papers', Oxford University Press, 2008, p. 449.

<sup>189</sup> See: UN Doc.: A/CONF.183/C.1/L.27/Rev 1.

<sup>190</sup> 726 F.2d 774 (D.C. Cir. 1984).

was not an international crime, and as such did not entail the lifting of immunity for Heads of State, it therefore quashed proceedings initiated against the Libyan leader.<sup>191</sup> Yet, soon after the above case, the terrorist attack of 11<sup>th</sup> September 2001 followed, which meant for many misconstructions to be discarded, as well as the unwillingness to recognize terrorism as a crime of international elements, and resulting for new more powerful fuel to be supplied to the debates over whether terrorism is an international crime or not. In that line of reasoning, terrorism in the post 9/11 era has been openly described as a crime against humanity by many prominent jurists, academics, politicians, the former UN SG Kofi Annan, as well as by the UN High Commissioner for Human Rights at the time, Mary Robinson. As well as celebrated international attorneys have openly advocated in favor of that same view.

It is an undeniable fact, that this fierce terrorist attack in the United States soil, reflects all the elements of crimes against humanity of international nature, from the magnitude and extreme gravity of the attack, as well as the fact that it has targeted civilians, and it seems to me that it was characterized by a unique element of an injury inflicted to the whole humanity, a view that can be justified from the fact that the whole world's eyes were directed to that part of the Globe after the incident, or at least the whole Western part of the world, either through media or internet. It is indisputable that everybody still remembers where they were, and what they were doing, when the news of the attack reached them. Even if we like it or not the USA is a catalyst in many ways for the West, especially in our times, and is supposedly offering the model of a country that all States should strive to achieve. It is the superpower that has made a motto the "American dream", a human ambition that

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<sup>191</sup> 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.

through capitalism has been widespread across the world, rendering it the absolute goal of success for all. That been said, the audience of this attack was the widest possible one, so if terrorism has the goal of spreading terror into a population, then in this case, the target population was the whole Western civilization, and maybe even capitalism, in an unprecedented symbolic way, considering that the twin towers attacked, were the featured landmark of the World Trade Center or as is otherwise called "the heart of world capitalism."

As some argue, it is possible in the future for States to progressively adopt the classification of a "crime against humanity" for terrorism, and deem grievous crimes of terrorism as belonging to this group of extremely serious crimes. As would Article 7 of the ICC Statute would provide, in the case of the subgroups of "murder" or "extermination" or even "other inhumane acts." In that case though, the legal problematics that may rise are not without complications, since the conception of crimes against humanity would be seriously extended. Legal problematics such as:

"(i) the specific conditions under which terrorist attacks fall within this notion and of (ii) whether the ICC would be authorized to adjudicate serious cases of terrorism."<sup>192</sup>

Yet as Antonio Cassese, the first President of the International Criminal Tribunal for the former Yugoslavia and the first President of the Special Tribunal for Lebanon, asserts, it is plausible to argue that crimes such as the September 11<sup>th</sup> 2001 attack in the USA, which was a large-scale terrorist act, could fall under the description of that group of crimes such as the crimes against humanity, as long as they satisfy the basic requirements of that category of crimes. Allow me to point out, that if and when that occurs, the ICC will be obliged to deal with terrorism, automatically, meaning that the

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<sup>192</sup> Cassese Antonio, 'Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law', *European Journal of International Law*, (2001), Vol. 12, No. 5, 993-1001.

jurisdictional mandate of the Court would be extended into including terrorism and according to my hypothesis State-terrorism.

What I mean is, that if the new international legally binding law<sup>193</sup> on international terrorism that the United Nations are negotiating as I write this text comes into force, with the prohibition of State-terrorism included, then we are looking at the certainty of State-terrorism to be a crime in the jurisdiction of the International Criminal Court as well.

Before concluding this part of my legal treatment of State-terrorism, there is the need for acknowledging certain knowledge that is underlying my elaboration on the legal definition of the concept and my methodological utensils, through recognizing the fact that a large part of my understanding of the function of law and its unbreakable relation to philosophy, has been fuelled by Lacan and the theoretical discourse on the utility of psychoanalysis in interpreting texts. A thought-provoking and relevant to my syllogistic process theory, and is to be found in relation to psychoanalysis and the law. Psychoanalysis as a method has been argued, that can provide tools and methods that could be applied in the interpretation of legal text, subjects and practice.

In that line of reasoning:

Psychoanalysis endeavours to provide a systematic theory of human behavior. Law, both as a body of substantive decisions and as a process for decision-making, has been created by man to regulate the behavior 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 behavior, and his environment may justify this assertion of mutual relevance.<sup>194</sup>

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<sup>193</sup> Draft Comprehensive Convention on International, Ad Hoc Committee, United Nations General Assembly's Resolution 51/210.

<sup>194</sup> Goldstein, Joseph, "Psychoanalysis and Jurisprudence" 77 Yale Law Journal 1053 (1968). Faculty Scholarship Series. Paper 2452. See: [digitalcommons.law.yale.edu/fss\\_papers/2452](http://digitalcommons.law.yale.edu/fss_papers/2452) [Retrieved on 10 March 2011].



Psychoanalysis feeds a process of symptomatic reconstruction of biographical and historical clues. It handles the specific text as a text to be decoded and rebuilt according to an ignorant biographical construction, which is revealed only in replications, errors, and other seemingly unintentional symbols or hints.

In my understanding there is an inescapable demand principally throughout philosophy of law, imposed by law's development and evolution, to apply a more emotional approach on our legal discourses, whether is reading, interpreting or reconstructing legal principles. Psychoanalysis as it has been asserted provides a powerful method of analysis of texts and of psyche and culture as texts.<sup>195</sup>

My belief is based on the fact that both the creation and the interpretation of law, has been equally problematic throughout all our known history, however:

This hermeneutic attempt 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.<sup>196</sup>

However, and more importantly, what needs to be addressed is that psychoanalysis as a legal tool can be proven to be pioneering in our struggles to understand and define terrorism and State-terrorism. The psychological factor involved with the practice of State-terrorism, and the employment of psychological tools, infused methods and practices cannot be over-stated. There is one side of the coin, and that is the use of the psychological intimidating tools employed by the perpetrator of terrorism, however there is the other side of the coin, and that is the effects on the targets of terrorism through the manipulation of their psychological state. These effects which could be

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<sup>195</sup> Lacan, Jacques, 'The Function and Field of Speech and Language in Psychoanalysis', Routledge & Kegan Paul, London, 1977.

<sup>196</sup> Goodrich, Peter *Maladies of the Legal Soul: Psychoanalysis and Interpretation in Law*, 54 Wash. & Lee L. Rev. 1035 (1997). See: [scholarlycommons.law.wlu.edu/wlulr/vol54/iss3/6](http://scholarlycommons.law.wlu.edu/wlulr/vol54/iss3/6) [Retrieved on 26 March 2012].

classified as falling within the purposes of the victims terrain within terrorism studies, whereas is not without its complications, since it is one of the most important features and elements of terrorism, without which would cease to be terrorism. What I mean is, that this is the parallel last effect or the pre-telos of terrorism, the inspiration of negative psychological effects, that are the direct in many cases result of the State-terroristic act. In my view, psychoanalysis as a legal tool could become a useful utensil in the definitional struggles of terrorism, parallel to a deeper engagement with the discipline of psychology, since the psychological component of terrorism has not been considered in great depth to date, although is one of its most important secondary components or essentials, without which it would cease to be what it is.

#### 4.4. WAR ON TERROR

At this point I will touch upon certain legal issues that the war on terror has engendered, and would be useful to familiarize the reader with, since they are relevant to my legal treatment of State-terrorism. It is not in my intentions to deal with the war on terror in its totality, yet, certain key matters are in need to be mentioned. War on terror, which may fulfill the requirements of the purposes of a "democratic State-terrorism." Since it has managed to terrorize a great portion of the international population, and has reportedly used methods, such as torture, cancelation of basic human rights, acted in disrespect of the due process rights, and fuelled hostilities and raw violence that would be unjustified even in times of war.

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."<sup>197</sup>

Walzer claims 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. He 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, this allowance may damage the standard of non-combatant immunity. Third, it is founded on a historical misconception. Finally, it is grounded on a premeditated delusion, the idea that killing non-combatants can win wars. The case for discarding this exception however, has been resisted by those who

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<sup>197</sup> Walzer, Michael, 'Arguing About War', Yale University Press, 2004. pp.33-50.

influentially claim that, it is wrong to tie leaders hands when they confront supreme emergencies. My thesis addresses this question and suggests that the principle of proportionality may give political leaders room for maneuvers in supreme emergencies without permitting them to deliberately target non-combatants, the time that casualties of war were an unavoidable parameter of hostilities should be locked in history's dark days, and can not be tolerated in our modern times which are characterized and determined by the human rights supremacy.

The constitution of UNESCO tells us that "wars begin in the minds of men"<sup>198</sup> which might be of help when trying to comprehend the "war on terror" which is more likely a war just in the minds of some men and not a real, or actual "legitimate" war, however undoubtedly since 9\11 and this irrational "imaginary war" the world has changed in a real and actual way.

The public announcement of the "war on terror", has led the international community into a path that has not been well reflected on beforehand. The arguments in this particular area are un-ended. There are of course the ones such as the former president George W. Bush, who argue that the best way to battle terrorism is by "hunting down the enemy and bringing him to justice", but there are others like Noam Chomsky, that argue that 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."<sup>199</sup>

It is this later view, that is being mostly in accordance to my dissertation's line of reasoning, and it seems to me, that if you cultivate a culture of violence then in harvest is more violence that you should expect to get; or according to a Greek traditional saying: "violence gives birth to more violence."

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<sup>198</sup> See: [www.portal.unesco.org/en/ev.php-URL\\_ID=15244&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://www.portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html) [Retrieved on 29 March 2011].

<sup>199</sup> Idem: supra note 85.

A very interesting if not convincing argument pronounces that by declaring war on terrorism then in a way you tend to legitimize 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 hazardous suggestion. Is leading States globally, to a vicious circle of paranoia, and into considering every human being, as a possible threat, capable of entering in this alleged new religion of political sinister activism, as terrorism could be characterized.

In the 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.<sup>200</sup>

In my view, it is important to highlight the role of language; language that is limiting humanity's efforts to tackle this globalized threatening method against its own existence. Language that might show us a new way to confront the new challenges that law experts and philosophers are bound to inevitably deal with.

Re- interpretation of terminology might be a possible and effective way to philosophically reflect, as well as re-determine the 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 with, since this is what they have been doing from the birth of philosophy, in ancient Greece. Reflecting on un-answered philosophical questions and coming up with explanations, terms and meanings.

As Derrida has stated intricately:

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<sup>200</sup> 'This is the Fourth World War: The Der Spiegel Interview With Jean Baudrillard', review translated by Dr. Samir Gandesha (Simon Fraser University), Volume 1, Number 1 (January 2004), ISSN: 1705-6411. See: [www.ubishops.ca/baudrillardstudies/spiegel.htm](http://www.ubishops.ca/baudrillardstudies/spiegel.htm) [Retrieved on 14 November 2011].

The expression *war on terrorism* thus being one of the most confused, and we must analyze this confusion and the interests such an abuse of rhetoric actually serve.<sup>201</sup>

By using so negatively charged terms as the "war", as "terror", one can only be expected to lose sight of the real purpose and of the reason for engaging in particular tactics, methods, and policies. Terrorism is a method, and war 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 expresses 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.<sup>202</sup>

Kant's perpetual peace<sup>203</sup> seems more utopic than ever under these new challenges that terrorism and the "war on terror" is imposing as shadows upon the human rights theory and practice, but nonetheless, the reality is that even the human rights experts have failed to adequately deal with terrorism, State-terrorism, the war on terror and the new modernized effects that this phenomena gave birth to.

However, the human rights community have repeatedly pointed out, that it is problematic and paradoxical to conduct a war in defense of the rule of law, when you are shredding that rule yourself, referring to the allies of the war on terror.

It is paradox by its description, 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

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<sup>201</sup> Borradori, Giovanna, 'Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida', The University of Chicago Press, Fall 2004. p. 101.

<sup>202</sup> Ignatieff Michael, 'The Lesser Evil: Political Ethics in an Age of Terror', Princeton: Princeton University Press, 2004.

<sup>203</sup> See: 'Perpetual Peace: A Philosophical Sketch' by Immanuel Kant, 1795.

security of another part of the planet, as well as imposing your own territory and citizens to open and more direct, or as some argue 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, like further violence, terror, torture, disrespect of the due process of law and so on and so forth.

For the purpose of this part of my thesis I will examine the relevant issues as assuming that the governments engaged in the "war on terror" act bona fide, have good intentions, that is to say, I will argue having good faith to the States and governmental practices.

As Ignatieff points out<sup>204</sup>:

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 Dershowitz<sup>205</sup> 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 basis and principles, and as Ignatieff

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<sup>204</sup> Ignatieff, Michael, 'The Lesser Evil: Political Ethics in an Age of Terror', Princeton University Press, 2004. Can be found also in [press.princeton.edu/chapters/s7578.html](http://press.princeton.edu/chapters/s7578.html) [Retrieved on 23 March 2012].

<sup>205</sup> Dershowitz, Alan M., 'Why Terrorism Works: Understanding the Threat, Responding to the Challenge', New Haven: Yale University Press, 2002. pp.143-144.

has asserted, it maintains the view of the State that the human beings are expendables, which any reasonable human being would conclude that is a view fully immoral.

As Ignatieff writes:

..torture should remain anathema to a liberal democracy and should never be regulated, countenanced, or covertly accepted in a war on terror. For torture, when committed by a State, expresses the State's ultimate view that human beings are expendable. This view is antithetical to the spirit of any constitutional society whose *raison d'être* is the control of violence and coercion in the name of human dignity and freedom.<sup>206</sup>

To date, the only country in the world to publicly<sup>207</sup> 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 neighborhood. 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, mainly by putting in use the justification of supreme emergency.

Interestingly, Walzer on his discourse on the topic of supreme emergency, he clearly asserted that it was a case of "dirty hands", and indeed he seems to have come to the view that only under special conditions of supreme emergency a dirty hands justification may be reasonable. He argues, that the doctrine of dirty hands is that:

...according to which political and military leaders may sometimes find themselves in situations where they cannot avoid acting immorally, even when that means deliberately killing the innocent. And again: ...dirty hands aren't permissible (or necessary) when anything less than the ongoingness of the community is at stake, or when the danger that we face is anything less than communal death.<sup>208</sup>

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<sup>206</sup> Ignatieff, *The Lesser Evil*, p. 143.

<sup>207</sup> 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).

<sup>208</sup> Walzer, 2004, p. 46.



Arguably, there are a lot of factors that one is bound to consider when dealing with the above issues; undoubtedly, a part of this paper should also consider the opinions<sup>209</sup> that render the war on terror to be in reality a law enforcement policy.

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."<sup>210</sup>

In the name of war on terror, governments are exceeding their powers over its own citizens, and they are acting in breach of international treaties and legal binding documents. The intelligence agencies gained more powers<sup>211</sup> 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 international terrorism, and the unprecedented consequences of the war on terror.

After the 11<sup>th</sup> of September 2001, the international community's agenda has been violently altered, whilst it automatically passed into an emergency state of being and of decision-making, that has been mainly concerned with the suppression of terrorism, while triggering unending debates around the phenomenon of international terrorism.

International terrorism, which is an open wound for the human rights system, and constitutes the most heinous inhuman means of depriving the enjoyment of the most fundamental and inderogable rights and freedoms that every individual is entitled to enjoy by birth. What should be emphasized though is that, a negative side of the

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<sup>209</sup> As Senator John Kerry, in the Democratic Presidential Candidate Debate, (MI, 10/26/03), pointed out: 'War on Terror is far less of a military operation and far more of an intelligence-gathering, law-enforcement operation.'

<sup>210</sup> See: Human Rights Watch -[hrw.org/english/docs/2003/01/06/usint12470.htm](http://hrw.org/english/docs/2003/01/06/usint12470.htm) [Retrieved on 21 May 2011].

<sup>211</sup> Through the Patriot Act in the USA and the Counter-Terrorism legislations throughout the globe.

international legal regime of terrorism and of the international cooperation between States, is the manifestation through the Guantanamo Bay detaining facility. A "prison" that has managed to produce more terror than it actually prevented. In the period this thesis is being written, there are 166 illegally imprisoned human beings in Guantanamo Bay illegal "prison", which contrary to Obama's pre-election promises of shutting down this legal monstrosity, is still a functioning detaining facility, while the American legal authorities held that, the detainees will kept there until the end of the "hostilities", (whatever the term hostilities may refer to). The previous president of the United States, as it has been proven, tried to establish a para-legal judicial regime, which would be based on the military courts of the 1942 post World War II, era, and in the model of the military commissions, which do not have the same respect for the due process of law or human rights as the civilian constitutional courts have. A legal monstrosity which as such would be impossible to serve for just causes or the administration of justice.

Illustrative of the above point is the Al Odah vs United States 2002 case<sup>212</sup>, which on behalf of twelve imprisoned Kuwaitis, demanded the right of habeas corpus. However the government of the day, issued a motion to dismiss the petition. An appeal followed, parallel to a consolidation of the case with the other two important habeas corpus petitions, Rasul vs Bush<sup>213</sup> and Habib vs Bush.<sup>214</sup> Nonetheless, on March 11, 2003, the D.C. Circuit Court of Appeals dismissed the case. Eight months later, on November 10, 2003, the Supreme Court granted *certiorari*<sup>215</sup> to the three leading habeas petitions, consolidated under the name Rasul vs Bush; and on June 28, 2004,

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<sup>212</sup> (06-1196). (2003)

<sup>213</sup> 542 U.S. 466 (2004).

<sup>214</sup> Civil Action No. 02-CV-1130. (2004).

<sup>215</sup> Quashing order: A discretionary remedy, obtained by an application for judicial review, in which the High Court orders decisions of inferior courts, tribunals, and administrative authorities to be brought before it and quashes them if they are ultra vires or show an error on the face of the record. See: Martin (2003), p. 401.

the Supreme Court issued a breakthrough ruling on the question of Guantanamo prisoners. In *Rasul vs Bush*, the Court ruled that in relation to Guantanamo, the right to habeas corpus does not depend on citizenship. This groundbreaking judgment upheld the jurisdiction of the U.S. judiciary system and courts over Guantanamo cases, and in simple words, it confirmed the right of detainees to defy their imprisonment before an American court of law.

However, the Bush administration, has persistently asserted that "Gitmo" detainees are not entitled to due process of law rights, and in 2004 established the Combatant Status Review Tribunals (CSRT), which could be characterized as military forums in substitution of the civilian and military courts of the U.S. normal judicial process. This unconstitutional methodology employed by the Bush Administration, was to be demolished through the ruling of the Judge Joyce Hens Green, who on January 31<sup>st</sup> of 2005, exercising her authority as the coordinator of all the habeas corpus petitions following the *Rasul vs Bush* decision, ruled that detainees are entitled to constitutional protections, and that the CRST system is inadequate in the task.

The tension between the judiciary and the executive however, continued with the further passing of laws, dictating and calling for the faithful compliance of the Judges to the commands of the government, like for instance with the Detainee Treatment Act (2005), and the Military Commissions Act of 2006.

While later, the Judiciary served in my view the Justice's purpose, by the United States Supreme Court ruling, in *Boumediene vs Bush*<sup>216</sup> where it was upheld that the Military Commissions Act could not remove the right for Guantanamo captives to access the US Federal Court system. In that decision was included that all earlier

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<sup>216</sup> (Nos. 06-1195 and 06-1196) 476 F. 3d 981, reversed and remanded. (June 12, 2008).

Guantanamo prisoners habeas petitions were entitled to be re-instated, which has been a historic day for Justice.

In *Hamdan vs Rumsfeld*<sup>217</sup> the Supreme Court of the United States held that the military commissions constructed and directed by the Bush administration in order to prosecute detainees at Guantanamo Bay lack: "the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949." Precisely, the judgment states that Common Article 3 of the Geneva Conventions was violated, and proceeded into ruling in favor of Hamdan.<sup>218</sup>

These real cases, are all products of the security necessity under the extreme emergency blind-sighted doctrine. To fight injustice by creating more injustices, is neither the legally right think to do, neither the moral. However, the war on terror, has engendered so many injustices. However, these alterations of the judicial system, laws and constitution, which do not respect the due process of law, cannot be tolerated.

The tension between the Executive and the Judicial, carries many problematics, however, in my view the balance between security and liberty cannot be entrusted solely to the executive, since history has proven that the executive does not respect, protect and ensure the Justice's commands when security is at stake. In that sense, the last word in any legal modification or new legislation should always be entrusted to the Judiciary, for the guarantee of fairness and legality.

The reality is that there have been endless debates and discourses within the terrain of terrorism by the international law-making institutions, leading to further confusion rather than clarifications, as well as constructions of new and in certain cases unnecessary legal theories, principles, terms and even international rules.

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<sup>217</sup> 548 U.S. 557 (2006).

<sup>218</sup> See: [www.supremecourt.gov/opinions/05pdf/05-184.pdf](http://www.supremecourt.gov/opinions/05pdf/05-184.pdf) [Retrieved on 20 February 2013].

For instance, it is a given that unlawful combatants "...are often summarily tried and enjoy no protection under international law."<sup>219</sup> It is unacceptable, to annul the rule of law, even in cases that terrorism is at stake. The due process of law, and the basic rights of the individual, for the protection of their dignity and humanity even in times of war, has been the force behind the initiation of International Humanitarian Law. However, under the light of the threat of terrorism, we have witnessed governments to proceed in unconstitutional policies through even the alteration of their judiciary, in order to serve their interests, which inarguably fails to really serve justice, since in this kind of processes we are witnessing injustice and unfairness without any respect to the long-rooted and tested through practice of centuries legal rules and procedures, such as the due process of law, and that anyone is innocent until the opposite is proven.

What the above example also illustrates is the point that law, international or national, is in constant need for review and improvement. A law is not always by definition fair, since it can be *ultra vires*, unconstitutional and consequently should be withdrawn and rendered void. A perfect legal system does not exist in this world, and if we drown the critical legal voices, then it is unavoidable to have a sterile and back-forward if not impossible to evolve and improve legal system. By that I wish to advocate for the need to hold a critical viewpoint in reviewing international law, and although the examples I have chosen to use so far are mainly demonstrating a negative side of this legal organism, which may seem as my standpoint is directed against the existence, usefulness or productivity of this international legal framework, permit me to clarify that the truth is quite the opposite, since I am in reality a

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<sup>219</sup> Detter, Ingrid, 'The Law of War', Cambridge University Press, 2d ed. 2000, p.148.

supporter of the ideals of justice behind its construction as a legal entity, and the fruitful future justice-wise, that has to offer to humankind's survival and prosperity.

Yet, as it has been repeatedly stressed in my thesis, to date consensus has not been met on a single universal definition of terrorism. A simple definition of terrorism can be found in the United States Department of State, which asserts that is a:

...premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine State agents, usually intended to influence an audience. The definition includes terror by the State, but the wording directs only in so far as it involves clandestine State agents.

So, one could come to the conclusion, that clandestine State agents, as the CIA's, would fall within this definition of terrorism by the United States Department of State. However, the USA has too much power in the UN, and they constantly fuel the deadlock that the law-making mechanisms of the UN are to be found.

By proceeding in my elaboration of the most relevant legal issues surrounding State-terrorism, I need to highlight a recent Human Rights Watch report<sup>220</sup> where the issue of ending impunity has been put forward. Human Rights Watch reported, that there are concrete grounds to investigate George Bush, Dick Cheney and Donald Rumsfeld, for authorizing torture and war crimes, and that the roles of Condoleezza Rice and attorney general John Ashcroft, should also be examined. The crimes are there, but the impunity of the perpetrators is holding back the administration of justice.

A common legal problematic when the harm-doers hold high governmental offices.

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<sup>220</sup> See: [www.hrw.org/en/node/100390](http://www.hrw.org/en/node/100390) [Retrieved on 11 July 2011].

#### 4.5. IMPUNITY and IMMUNITY

The following text was triggered by a practical problematic, and that is the actual impossibility of prosecuting head's of States for State-terrorism. Hence, this functional impossibility in most cases, can, should and ought to be trumped by the necessity of administrating justice. Nothing should be viewed as impossible when justice is at stake, and this is where and why philosophy of law serves as a vehicle for a finer elaboration of the issues involved.

What follows bellow is an elaboration on State-terrorism and impunity. When should senior State officials be tried for international crimes, is the skeleton question to be dealt with. An attempt will follow, to relate these problematic areas of international law and philosophy of law, of immunity and impunity to the case of State-terrorism, and try to understand as well as explain, what are the grey areas that require illumination, namely, what is and what should or ought to be the function of law, in relation to this crime. Because for the purposes of the following elaboration, I will refer and treat State-terrorism as a crime, and at least for the sake of my argumentation I will consider it to be one.

In this line of reasoning, I am attempting to deal with the most relevant issues of these topics through travelling from law to philosophy and in cases psychoanalysis as a legal tool. A simplified outline of the following discourse, could be summarized in the following statement: "the impossibility of constituting a case against State officials, for the crime of State-terrorism."

The improved "Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity," submitted to the United Nations Commission on Human Rights, defines impunity as:

‘Impunity’ means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.<sup>221</sup>

Although, no definitions of the legal notion of immunity are in existence, neither in universal international agreements or legal enforceable statutes, yet the term is often employed in the process of justice.<sup>222</sup> As the Special Rapporteur of the United Nations highlighted in the Preliminary Report on Immunity of State Officials from Foreign Criminal Jurisdiction:

‘Immunity’ is a legal concept which can be expressed in terms of jural relationship”; “‘immunity’ to which a person ... or State is entitled is correlated to ‘no power’ on the part of the corresponding authority”; “the expression ‘immunity’ connotes the non-existence of power or non-amenability to the jurisdiction of the national authorities of a territorial State.” (Yearbook ... 1980, vol. II (Part One), document A/CN.4/331 and Add.1, Para. 17).<sup>223</sup>

What is important to highlight is that impunity develops from a failure by States to meet their obligations into investigating violations, whereas the concept of parliamentary immunity is as old as parliaments are. However, it should be noted that this is an idea, which slowly but steadily loses its enforceability, in the name of the demanded accountability of political personas by the peoples all around the world, and within different political systems. Immunity and impunity are similar, but not indistinguishable, neither in significance nor meaning. Immunity refers to protection

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<sup>221</sup> ‘Updated Set of principles for the protection and promotion of human rights through action to combat impunity’. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, United Nations, E/CN.4/2005/102/Add.1, 8 February 2005. Sixty-first session, Item 17 of the provisional agenda. P.6.

See: [ap.ohchr.org/documents/alldocs.aspx?doc\\_id=10800](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10800) [Retrieved on 18 March 2012]

<sup>222</sup> United Nations, General Assembly, ‘Preliminary report on immunity of State officials from foreign criminal jurisdiction’, By Roman Anatolevich Kolodkin, Special Rapporteur, International Law Commission, 60<sup>th</sup> session, Geneva, 5 May-6 June and 7 July-8 August 2008. A/CN.4/601, Distr.: General 29 May 2008, 08-35715 (E) 110708, \*0835715\*, 250808. p.27.

<sup>223</sup> Idem, p.28.



from punishment, duty, or liability, while impunity is narrower and signifies protection from punishment.

Nonetheless, 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 International Criminal Court 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 organization allegedly responsible for those crimes.<sup>224</sup>

Article 27 of the 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 of the prosecutor, on considering and prosecuting those bearing the greatest responsibility, although suitable, appropriate and necessary for the efficient function of the Court, has triggered fears for an alleged possibility of an "impunity gap", in case that the Office restricts its action to key leaders and major

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<sup>224</sup> Paper on some policy issues before the Office of the Prosecutor, of September 2003. II, 2.1. p. 7.

situations. The phrase "those who bear the greatest responsibility" comes from the statute for the Special Court for Sierra Leone<sup>225</sup> which faced a very different reality as a temporary court with a three-year mandate. It's worth noting that the legal terminological phrase "those who bear the greatest responsibility" is not really mandated by the Rome Statute and the International Criminal Court.

It seems plausible then, to argue that the same principle and legal framework could also be applicable to State-terrorism, since we are dealing with a political structure that is based on hierarchy, and ideally is usually the head of State that have the last word in official policies, even if these policies are meant to spread terror. Although this might not be an unquestionable standard, since there could be cases that the real power is controlled by other groups within a State's government, however, with the principle of those who bear the greatest responsibility, there is an implied flexibility into including any person within the government, either visible or clandestine, head of State or otherwise, that would have the greatest responsibility. It is also evident, that this rule is meant to tackle the problematic of allocating the sole responsibility, since there might be many links in a chain of command, that would render impossible to put all the responsible actors in trial, since for instance some of these malfeasants might have contributed in the lesser possible way in the execution of these crimes.

Furthermore, it is important to highlight complementarity, which can play a part in preventing impunity. In the Paper on Policy Issues it is highlighted that:

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 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.<sup>226</sup>

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<sup>225</sup> Statute of the Special Court for Sierra Leone (SCSL Statute), January 16, 2002.

<sup>226</sup> Paper on some policy issues before the Office of the Prosecutor, of September 2003. II, 2.1. p. 7.

The truth is that, the ICC relies on the cooperation of the States. The States should give and reach consensus in order for 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 the requirement on the signatory States to agree on something that might be turned back at them as boomerang in the future, may explain the whole avoidance with dealing with State-terrorism as a crime of international nature in the first place.

There were though some attempts in Rome, to involve terrorism within the Statute under the heading of crimes against humanity.<sup>227</sup> Attempts which have been proven to be inadequate, as well as to lack commitment by the legal scholars advocating for such a pioneering legal progression in the international arena.

Furthermore, the reader should keep in mind that the immunity of State officials is based on the legal distinction between immunity *ratione personae* and immunity *ratione materiae*, two types of immunity, which are dealt with in detail in relevant international caselaw, as for instance in the Pinochet No. 3 case.<sup>228</sup>

Additionally, critical legal issues in relation to the international criminal nature of the act itself, can be found within the "legitimate monopoly of violence" doctrine's implications, as well as in relation to the practice of unlawful use of violence, or the crime of aggression, and even in the justifications employed by State's when defending their use of violence through international customary law, its principles, or even in general international law's principles such as *ius ad bellum* and *ius in bello* in relation to terrorism. Hitherto, as Greenwood argues:

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<sup>227</sup> See Recommendation of the Coordinator on "Crimes within the Jurisdiction of the Court", U.N. Doc. A/CONF.183/C.1/L.44 (July 7, 1998); U.N. Doc. A/CONF.183/C.1/L.44/Corr.1 (July 7, 1998), art. 5(2)(1)(j bis). This proposal contains the same definition of terrorism as the one proposed by India, Sri Lanka, and Turkey. Proposal Submitted by India, Sri Lanka and Turkey, U.N. Doc. A/CONF.183/C.1/L.27/Rev.1 (July 6, 1998). Algeria was not cited as a party to the Revised Proposal.

<sup>228</sup> International Law Review, vol. 38 (1999), p. 580, at pp. 600, 601, 605, 606, 644, 645.

The rule of international law governing the legality of the use of force by States (*ius ad bellum*) and the rules by which international law regulates the actual conduct of hostilities once the use of force has begun (*ius in bello*) have seldom sat happily together.<sup>229</sup>

Yet, in my view, the mixing of law and politics is inevitable in the full function of the international lawmaking mechanisms. International relations and diplomacy have a new empowered role to play in this redecorated theatre, of law birth scenery. 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."<sup>230</sup>

Expanding on this logic, it is worth noting that there have been advocates of the two ways of dealing with the definitional struggles of terrorism and consequently State-terrorism, that is to say, the general or the specific approach. Each of them provides with pros and cons, however, Nicholas Howen, the Regional Director for Asia-Pacific of the Office of the UN High Commissioner on Human Rights, argued that:

The problem in the UN is that for political reasons States focus too much on who could be labeled a terrorist rather than what a terrorist act looks like. In most cases, even if you cannot recognise a terrorist, "you know a terrorist act when you see one." Most States and commentators would probably agree on some core ingredients of the definition of international terrorism. Terrorist acts are generally considered to include the threat or actual use of violence to create extreme fear and anxiety in a target group in order to coerce it to meet certain political or quasi-political objectives.<sup>231</sup> States could perhaps agree a definition of terrorism if they limited it to attacks, aimed at civilians, that spread terror. This would in effect apply to peacetime the existing prohibitions in international humanitarian law of attacks on civilians during armed conflicts. Indiscriminate violence against civilians, even by national liberation movements, is not morally or legally defensible.<sup>232</sup>

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<sup>229</sup> Greenwood, Christopher, 'The relationship between *jus ad bellum* and *jus in bello*', *Review of International Studies*, Vol. 9 (1983), 9, 221, 234.

<sup>230</sup> Suresh [2002] 1 SCR 3, [94].

<sup>231</sup> Schachter, Oscar, "The Lawful Use of Force by a State against Terrorists in another country", in Han, Henry H., (ed.) *Terrorism and Political Violence: Limits and Possibilities of Legal Control*, Oceana Publications Inc., New York, 1993, pp. 243-266.

<sup>232</sup> Howen, Nick, 'MILITARY FORCE AND CRIMINAL JUSTICE: THE US RESPONSE TO 11 SEPTEMBER AND INTERNATIONAL LAW', *International Meeting on Global Trends and Human Rights*, September 2001: Impacts on Human Rights Work, Geneva, 10-12 January 2002, p. 4. See: [www.ichrp.org/en/projects/118](http://www.ichrp.org/en/projects/118) [Retrieved on 06 August 2012].

It seems to me, that these exact elements, namely, of targeting civilians as well as spreading terror are what are missing in the Arend and Beck<sup>233</sup> definition of terrorism, which otherwise constitute a good illustration of the extensive approach, as well as in the use of force.

Impunity provides the exception of punishment, and the loss of accountability. The perpetrator cannot become a subject of justice's purposes and investigations. Which means that, cannot stand a trial in a court of law, or elsewhere. Take for instance the case of Romeo Lucas Garcia, a Guatemalan war criminal who as the headlines of the time wrote, was a war criminal who died a free man. The most incomprehensible though from a legal perspective, can be found in the case of Ríos Montt, who although a war criminal, the bloodiest dictator of the history of Guatemala, he was allowed to run for the 2003 presidential elections, unsuccessfully, but still, he was able to exercise his democratic rights. Some argue that impunity is a ticking bomb, for the rule of law, and it seems to me that has allowed for more miscarriages of justice, instead of protecting the fair political actors, from unfair prosecution driven by political interests.

Where impunity ends and the rule of law begin, is a rather debatable matter, however, the western justice system model supposedly holds the value of the rule of law in its highest place, since the rule of law is the corner stone of every justice system that wants to be called Just and Fair. Yet, impunity creates solid legal doors that open only to the key of political power, and are empowered to even trump the rule of law. A realization that is contra any theory of law, from Dicey<sup>234</sup> which is considered a legal

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<sup>233</sup> Arend, Anthony Clark, and Beck, Robert J., 'International Law and the Use of Force: Beyond the UN Charter Paradigm', Routledge, 1993.

<sup>234</sup> Dicey, Albert Venn, Introduction to the Study of the Law of the Constitution (5th ed.) [1885], London: Macmillan, 1897. The copy used can be found published by Lightning Source Incorporated, 2009.

theory's giant, to Hart<sup>235</sup> which has been a pioneer in legal positivism. Yet it seems to me that impunity, should exist until it is not legitimate for this rule to be in existence. Impunity and immunity from criminal investigations and punishment, are legal problematic matters that in most cases ought to be solved case by case, and seems in first glance as if there is no real necessity for a uniformed legal rule that would be applicable everywhere and always.

However, I should remind to my reader, that the State is a political structure, governed by politicians, which means that the ideals of the International Criminal Justice are not always on the top considerations of a State, when deciding on matters related to the ICC, and consequently there is the danger for more complicated and clandestine interests to gain a place at the further development and evolution of international criminal law.

Although, terrorism and State-terrorism, are not in the International Criminal Court's mandate<sup>236</sup> and jurisdiction, meaning that the court is not responsible for investigating or prosecuting explicitly, terrorism related offences, there is the future possibility for some crimes to fall under its jurisdiction, if these crimes fulfill the criteria of the "crimes against humanity" legal category. Thus, the Tokyo trials and the Nuremberg trials, the International Criminal Court and the international tribunals of Rwanda as well as for the former Yugoslavia which are mandated with prosecuting perpetrators of specific atrocities and of the highest legal complications, the United Nations, or even the national legal systems, as well as the cases of punishment of foreign officials, for wrongful death, torture, bodily grievous harm, are all constituting relevant case law.

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<sup>235</sup> Hart, H.L.A., 'The Concept of Law', 2nd edition, Oxford: Clarendon Press, 1994. (First published in 1961).

<sup>236</sup> See: [www.law.harvard.edu/students/orgs/hrj/iss16/goldstone.shtml](http://www.law.harvard.edu/students/orgs/hrj/iss16/goldstone.shtml) [Retrieved on 12 July 2011].

To be found liable of criminal responsibility, of a crime as multidimensional as terrorism and consequently State-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.

However, international humanitarian law, is full of useful legal tools, as the idea that IHL "can provide guidance to the legal approach to terrorism in peacetime" which was introduced by Peter Gasser, in his 1986 paper<sup>237</sup> "Prohibition of terrorist acts in international humanitarian law", dealing with the provisions of contemporary international humanitarian law which prohibit terrorist acts, commonly referred to as terrorism.

In this line of reasoning, Schmid's short definitional suggestion, which was proposed in a report for the United Nations Crime Branch in 1992, emphasized on considering an act of terrorism as "peacetime equivalent of a war crime."<sup>238</sup> It seems to me, that if that idea really flourish, then terrorism would again automatically be mandated by the Rome Statute, and would be covered by the jurisdiction of the International Criminal Court.

As it has been emphasized: "...this allusion to International Humanitarian Law 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.'<sup>239</sup> The contribution of IHL in the definition of terrorism and especially of State-terrorism, could be valuable.

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<sup>237</sup> Gasser, Hans-Peter, 'Prohibition of terrorist acts in international humanitarian law', *International Review of the Red Cross*, Vol. 26, Issue 253, August 1986, Cambridge University Press, pp 200-212. See: [journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5980528](http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5980528) [Retrieved on 03 February 2012].

<sup>238</sup> Siegel, Larry J., 'Criminology', Cengage Learning, Jan 4, 2008, p.328.

<sup>239</sup> See: [i-p-o.org/supreme-court-philippines-judgment.htm](http://i-p-o.org/supreme-court-philippines-judgment.htm) [Retrieved on 26 April 2012].

It is worth noting that in the Dissenting Opinion of Justice Kapunan in *Lim vs. Executive Secretary*, G.R. No. 151445, April 11, 2002, 380 SCRA 739.<sup>240</sup> The judge referred to the Austrian Professor Hans Koechler, and his Fourteenth Centenary Lecture at the Philippine Supreme Court on 12 March 2002, where has been asserted that:

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...Lists of States 'sponsoring terrorism' and of terrorist organizations are set up and constantly being updated according to criteria that are not always known to the public, but are clearly determined by strategic interests.<sup>241</sup>

It is one thing to read such a claim by a PhD candidate, and another by a Judge or a celebrated professor. However, both of them strengthen the main arguments listed within my thesis, as well as the utility of my research's hypothesis, since they highlight that it is legally consistent to include the crime of State-terrorism in the definition of terrorism. A possibility which is gaining more supporters with time, and which according to my thesis, inevitably law-makers and practitioners will, in the near future, have to deal with the crime of State-terrorism both in the domestic, but utmost crucially in the international legal arena.

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<sup>240</sup> *Randolf S. David vs. Pres. Gloria Macapagal-Arroyo*, G.R. No. 171409, May 03, 2006, at pp. 61-63.

<sup>241</sup> *Lim vs. Executive Secretary*, G.R. No. 151445, April 11, 2002, Dissenting Opinion, at p. 7. The case can be located at 380 SCRA 739. See: [i-p-o.org/supreme-court-philippines-judgment.htm](http://i-p-o.org/supreme-court-philippines-judgment.htm) [Retrieved on 21 October 2012].



#### 4.6. CONCLUSION

After the 11<sup>th</sup> of September 2001, the International Community's agenda has been violently altered and passed into an emergency State of urgent decision-making, while has been mainly concerned with the suppression of terrorism, accompanied by the unending debates around the phenomenon of international terrorism, whereas it seems this urgency has served different political interests, in cases driven by other than fair and just motives.

It was inevitable a dissertation on State-terrorism, to include a discussion on the war on terror, and by concluding I feel the need to underline that the net of practices that has engendered, introduced further problematic legal questions and practices, and not justice, while in occasions produced actual State terror. 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 of this sinister and undoubtedly unjustified by no means threat to humanity, there has been more losses of human lives than in the 9\11, which has generated 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, whilst the manipulation of law for political reasons has been taken to a completely new level.

Allow me to emphasize that parallel to any legal elaboration on terrorism and State-terrorism in particular, there should be a philosophical one, since philosophy has a crucial role to play in our understanding of their construction and function, especially if we are in pursuit of a comprehensive description. Philosophy's conceptualization tools and methods, offer paths of reasoning not to be found in law, since philosophy does not allow for unjustified restrictions or outdated rules to regulate her practice like is the case with law.

The human rights world faces challenges deriving from two main sources, that is to say, from the theory and the practice. These idealistic ideas, to become reality and to be put into practice, in other words to implement and enforce them, is expectable to be demanding. The whole justice system's construction is problematic, given that law remains logocentric and outdated, contributing to rendering the insufficiencies of the justice system as unavoidable and consequently the norms. A more emotional approach to law is in demand for future generations, and through my thesis I have implied the utility of psychoanalysis as a legal tool, as well a more emotional approach to law, since its significance is being shouted louder day by day by leading legal scholars and philosophers. For example, human rights are legal constructions aimed into the protection of human beings, of unique individuals which are comprised by psychosomatic elements, so it seems plausible to argue that a progressive approach to law is in command, since the human subject of law could be more adequately considered through the mechanisms and tools of psychoanalysis, henceforth the combination of the two, law and psychoanalysis, can open new doors for the further development of the human rights theory, as well as, our better understanding of State-terrorism and terrorism, which are concepts comprised by a strong mental element, namely the feeling of fear and the manipulation of the psychological properties of its victims by inspiring and reproducing the emotion of terror.

As I have stressed through my thesis, no consensus has been met to date, on a single universal definition of terrorism or State-terrorism. 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."<sup>242</sup> This definition includes terror by the State, but the wording directs only in so far as it involves "clandestine State agents." As Van Krieken<sup>243</sup> wrote, it is in reality State-terrorism that prevents the international community on agreeing on a universal definition on terrorism, and this is in accordance with the basic conviction underlining my whole research.

Debatably, an urgent need may not exist, for new terms and further codification of allegedly new crimes, as some assert State-terrorism to be, which is a view grounded on the fact, that most of the acts that constitute terrorism or State-terrorism, are existing codified crimes, although, under different naming, and are subjects of criminal law, all around the globe. A view that is not convincing enough, since every crime has a different codification for a reason, and that is, that the legal weight that each crime carries, depends on its unique characteristics and elements comprising it. It is one thing to get punished for manslaughter, and another for murder, yet they both are punishing the killing of a human being, it is one thing to face trial for depriving the life of hundreds of people, and another to face trial for genocide, and accordingly, it is one thing to face trial for unjustified violence and another for State-terrorism, since the restoring of justice requires in certain cases the "naming and shaming" of governmental practices. The writing of the judiciary history demands for appropriate classification, and terminological assignment of each separate crime, and it seems to me that the arguments that render for the opposite, mainly for the shake of practicalities and time-saving reasons, are rather weak, pointless and back-forward. Yet, according to my thesis, State-terrorism is not a new crime, and through this dissertation, I have repeatedly argued that it has a new hypostasis under its new

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<sup>242</sup> US Department of State, *Patterns of Global Terrorism*, 1988, (1989), p. v.

<sup>243</sup> 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.

acknowledged international form, but it is not a new criminal activity. It is as old as the organized State, and our political thought with traces reaching as back as the ancient classical Greece.

As it is well known in the legal circles, by using the term terrorism, not only political or emotional, but also and in certain cases most importantly, legal doors will be unlocked which would otherwise have remained locked. By labeling a crime as a terrorist act, enables and obliges the various actors across the whole spectrum of the process of administering justice, 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 legal regime to know exactly when a certain act amounts to terrorism and when it does not.

Nevertheless, international humanitarian law itself uses the term "terrorism", "acts of terrorism", "measures of terrorism" and "terror". So one could argue that 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. Legal treatments of the concept of terrorism, which in most cases imply State-terrorism in their description.

However, it should be emphasized again, that the involvement of politics and international relations within the law-making processes, engenders risks for more shadows to cover the international law's credibility. Since, State-terrorism was always present and in existence, even in 1948 when the Universal Declaration of Human Rights was being drafted, terrorism, and State-terrorism, were both existing, having still fresh wounds inflicted by the Nazi's State-terrorism, all around Europe. Yet, there is not any mentioning in this pioneering treaty, of the crimes of terrorism or

State-terrorism, maybe just a promise preparing the soil for their future recognition, by the declaration that we should all be free from fear.

As the rule of law commands, "no one is above the law", which means that we are all accountable under the reach of justice, me, you and our prime-minister, this is why Justice is being represented as being blind-folded, in order to indiscriminately apply her fairness or punishment to all. Consequently, impunity cannot serve as a blindfold in Justice's sight, because there is only one reason that Justice is being represented as a blind being, and that is to preserve the rule of law and not for saving the really powerful politicians from prosecution.

Terrorism is a crime, where different links at the same machine must act in order to fulfill the actus reus, in other words responsible is not only the one that pulls 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, therefore, the perpetrator does not need to have a concrete idea of the consequences of his acts.<sup>244</sup> Terrorism's lifeblood is fear, the feeling of fear in its most extreme manifestation, namely of terror, and its usage as a tool for achieving a political goal. No matter how many forms has engendered, or changes, transformations, and metamorphosis have occurred, the core of terrorism and of State-terrorism for that matter, is the same throughout the centuries that humankind is exercising politics, that is to say, although everything surrounding the phenomena are changing and overextending the net of the elements comprising these concepts, in reality their essence, is the same, and is summarized in the phrase: terror as a tool for achieving a political goal, while in the case of State-terrorism is: State inflicted terror for achieving a political goal.

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<sup>244</sup> See: Prosecutor vs. Dusko Tadic.

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 spring of mass human rights violations. My intentions can be summarized in the principle of the human rights theory arguing that, prevention of human rights violations is a useful instrument for their future 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 provide for the opposite, as I have argued earlier in this chapter. However CL does not have the legal weight required in case that terrorism is at stake, and is the origin of many legal paradoxes.

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. I have attempted to be as inclusive as possible in my elaboration, by using the different but inter-linked sciences of law and philosophy, psychology, sociology and political science.

State-terrorism is a very precarious and hazardous term by itself, yet the bibliography covering the subject and phenomenon is rather limited if non existent, compared to the publications about non State-terrorism, hence, I hope my intentions to meet their goals, that is to say, this thesis to become a little contribution to the bibliographical advancement of this area of study and to inspire further scholarly engagement, for the better and future comprehension of the phenomenon and crime of State-terrorism.

By concluding, it is not acceptable to argue that defeating terror requires violence. In that case, you produce more terror. I believe that in reality the war on terror for example, it produced more terror than it eliminated. 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.

Since the Second World War which was a big lesson for the whole humanity and the Cold War, which signaled 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 have passed, resulting to disremember the atrocities that humankind is capable of committing. It seems like humankind has forgotten what are the results of war, especially under its globalized form, or of political violence, this is why history should be treasured, in order to remind to the future generations that nothing is for granted, and that human rights need to be protected and advanced.

By summing up, this chapter dealt with State-terrorism from a legal scholarly perspective, by acknowledging the failure of international law to include State-terrorism under its protection umbrella. While pointed out, that the road for the criminalization of this old as the existence of the political State practice, is open and fruitful, due to the United Nations decisiveness to include it within the new law on international terrorism, that is drafting as I write these lines. The literature dealing and explaining this crime is inexistent, yet the philosophical discussions are in a better proportion. This thesis advocate's amongst other, for the necessity to criminally codify this harmful act, in an international legal level, as well as to finally enjoy the recognition that it deserves by scholars, a recognition that would provide for the effective future tackling of its harmful effects and the perpetual injustice conducted by immune and invisible to Justice perpetrators of otherwise criminal acts.

**CHAPTER V****CONCLUSIONS**

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Since Homer, Euripides, Sophocles and Aeschylus, in cases Aristofanis, and obviously Socrates, Plato and Aristotle, the questioning of fairness in the hands of power-holders remains the same, as well as the struggle of substituting violence with justice.

State-terrorism is the manifestation of a political disease of a harmful nature and a wholly immoral essence. However, our modern understanding of this concept, has been directed towards a dismissal of the utility of any engagement with its political and even more so its legal analysis. State-terrorism in that sense, is being portrayed as an empty, fictional and useless term. I have tried to demolish this misdirecting knowledge that modern academia is determined by, through the demonstrating that State-terrorism is older than what we are taught to believe, and deserves to be treated as a universally manifested political phenomenon of the most harmful and immoral nature, that undeniably has criminal law's elements, while through international law's instruments, I attempted to stress the urgent necessity to be viewed as a distinguishable, prohibited, and punishable crime.

The essence of terrorism has been maintained that is the same as State-terrorism, since they share the same substance (ousia), and if we exercise an Aristotelian resolving of the compound they are composed by, the parts that would be found to be first and left last, and that without which they would both cease to be what they are, are the same, and that could be summarized in the phrase terror-State, or what today



we call in English State-terrorism. The 'who' is the terror and the 'what' is the State, while the 'why' would be for the achievement of further political goals, whereas is notable that the parameter that changes the equation is the allocation of the generator of terror, since in one case is the State, while in the other the citizen.

This thesis, deals with the problematic of defining State-terrorism. To date, any attempts to define State-terrorism, or terrorism for that matter, has been unsuccessful and has contributed in an environment of international consensual legal procrastination. Although my research, is indirectly being intended to become a contribution to the understanding of the new phenomenon of globalized terrorism, however, the optic corner that I am viewing the phenomenon is through its other hypostasis, of terrorism committed by the State: State-terrorism. In legal terms, 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.

This dissertation constitutes a philosopho-legal attempt to discuss and examine *ti esti* State-terrorism. Taking for granted that the knowledge offered to a researcher is insufficient and inadequate, since the literature on the subject is directing any scholar to have as a starting point of any examination, the acknowledgement that a definition of terrorism has not been yet successfully established or achieved. I have proceeded by looking further back than the historical trace of terrorism can be found in literature, which as I have stressed within my thesis, was in the time of the French revolution at the end of the 17<sup>th</sup> century, and critically visited the available political literature from the beginning of our recorded political history in ancient Greece.

I have discovered that the Greeks had an equivalent term for describing what today we call terrorism, and surprisingly it was meant to represent State-terrorism. Interestingly, and similarly, the term terrorism when constructed in France, was

inspired by the State-terror that was imposed on the French people, and was originally constructed to signify and mean State-terrorism. Just as the ancient (and modern) Greek term which etymologically and by definition, has the meaning of State-terrorism, but as my analysis established it was intended to refer to a political system. Since, after my examination of the Greek term referring to terrorism, (τρομοκρατία), which if transliterated in English would look like: tromocracy, or "terrorcracy", bearing in mind the fact that political terms constructed with the suffix –kratos (cracy) refer by definition to forms of government and political systems; I advanced with the intention of recovering the original meaning of terrorism, by making the case that the original terminological construction by the ancient Greeks which preceded the modern term terrorism for approximately 3000 years, may have still "aletheia" (truth) undiscovered, that could be uncovered through this methodological challenge.

My hypothesis has taken the dimension of a theory that is based on the fact that, in the Greek language, where the term democracy originates from, the word democracy and the word terrorism have the same root and belong to the same family of words, since both terms share their second synthetic "kratos", which can be translated as power, holder of power or State. Having in mind that the terms describing political systems in Greece, were mainly consisted by –kratos or –arche. Kratos being by far the worst and customarily was signifying abusive forms of political power. By looking into the relationship of Democracy and State-terrorism or Terror-cracy, I have identified the most relevant connecting link that directed my hypothesizing into recognizing this "blood" or family relationship.

Through a linguistic analysis of these two relative terms, (it would also be helpful to re-visit the table in page 90), the Greek politically fuelled terms, "Δημοκρατία - Τρομοκρατία" transliterates in English as "**Democratia** – **Tromocratia**." So,

"democratia" is in the English language the term democracy, and "tromocratia" is what could be termed "terrorcracy" which is the equivalent term of the modern word terrorism, with "tromo" translating as terror, and the substitution of the suffix –kratos by the suffix -ism.

Tromocratia (terrorism), then etymologically means the "tromo-cratia" or allow me the construction "terror-cracy", in which the governmental power is the "kratos" (the State), and keeps this power under control through the tool of terror; terror who is the holder of power. Since we are dealing with a polysynthetic term, which is comprised by two synthetics from which the first signifies the "who", like in our case the terror, and the second synthetic and suffix indicates the "what" which is the power or State. Under this logic, if we use an analogy with democracy, we could say that, in "terrorcracy" the people are no more the possessors and controllers of governmental power, 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-kratia, and the "tromo" (terror) in the term tromo-kratia. The second part is the same (and is defined as the power and control, and the holder of power, or State), then the first part of the terms constitutes who is the holder, indicates who has the power, the control and in the case of democracy is the people, the demos, in the case of terrorism: "tromokratia → tromocracy or → terrorcracy", the holder of power is the terror. According to this reading, terrorism is dictating its lexical meaning<sup>245</sup> and it seems to me, that this new interpretation could serve as a vehicle for our better and further understanding of the phenomenon of terrorism, and State-terrorism in particular.

I attempted to utilize democracy since the majority of the readers have some basic

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<sup>245</sup> In semantics, the message conveyed by words, sentences, and symbols in a context. See: [www.britannica.com/EBchecked/topic/329791/language/27173/Lexical-meaning](http://www.britannica.com/EBchecked/topic/329791/language/27173/Lexical-meaning) [Retrieved on 21 June 2012].

understanding of the term and its functions, while it should be noted that for that particular exercise I could use any other sister term of the same family of words with the same desired outcomes, like aristocracy, autocracy, androcracy, theocracy and so on and so forth. I progressed therefore, in the intellectual Aristotelian exercise of dissolving democracy to its basic elements, without which it would cease to be what it is, and through the expression of the questioning scheme guided by the *ti esti* trigger, I reached the conclusion that democracy in its basic character is the "people's State"; its essence, basic substance or nature could be held to be the "power to the people"; So, if the essence of democracy could be held to be the 'power to the people', then following the same logic the essence of "terrorcracy" could be suggested to be the 'power to the terror'. It seems to me that this analysis may have more truth in it, or "aletheia" than most of the definitions of terrorism reviewed so far in this thesis.

By advancing in my dissertation, given that terrorism is an integral part of the term and concept of State-terrorism, and since terrorism apart from its political nature, is treated as a crime, it was inevitable to make the same case for State-terrorism, since in my thesis, I view State-terrorism as another form or type of terrorism, and as such a criminal legal elaboration was inevitable.

Terrorism is a tool in politics, because as it has been proven throughout the centuries, violence is an effective and persuasive tool in the political terrain, however the times have changed, and with the introduction and establishment of human rights, which amongst other things managed to shaken and challenge the impunity of State-actors or the illegal governmental practices, since as they say, were first of all introduced to protect the individual of the unlawful interference of the State, so the utilization of human rights, has rendered the legitimate user of violence as the State is called, to be

legitimate no more in using unlawful and unjustified violence no matter in what form this violence may be manifested.

However, although human rights are well established, the practice of violence and State-terrorism is still a functioning phenomenon today. While it seems to me, that human rights have signaled the initiation of a new era in international law, and managed together with humanitarian law, to find the "golden point" where all States have interest in agreeing and guaranteeing certain fundamental principles. Maybe it is even so, that the creation of international law dealing with these issues, has played a dual role, and that is, apart the obvious function of IL in regulating the States and their international conduct, might have also prepared the soil for more radical international legal agreements to come into force, and oblige the States to reach consensus, since it is a given that States would not willingly enter in an agreement of a legally binding rule, that would be most likely to be turned back against them as boomerang, and for instance find them guilty of criminal liability, as would be the case with State-terrorism.

By closing this thesis, I feel the need to ask, whether I have been biased in my choice of the information reviewed and the reasoning applied. I have tried to include all relevant arguments, scholarly works and findings. Views from the right and the left as well as from the developed world and the developing. I should yet, acknowledge the fact, that I come from a human rights theoretical and practical background, which inevitably places me in the side of protecting and advocating for human rights. However, if striving for ideals such as equality, freedom, human rights and global justice makes me biased, then I have to admit that I am.

It seems to me, that human rights are the stronger tools for ensuring justice, domestically and internationally, for the future generations and ours. However, it is

crucial that certain inderogability should be solidified in order to avoid re-negotiating fundamental rights, every time is in the interest of a government to do so, like in the case of torture and the United States. Irrefutably, the human rights theory has been successful to a great extent into being manifested through law, yet the constant attacks on their utility, applicability and jurisdiction due to the unsecure and dangerous world of terrorism and war, it is my belief that at the end of the day will benefit them, since these criticisms are essential in making them better and solider.

Furthermore, it is also equally important, to recognize that criminal law, has the capacity and tools, to deal with all the different actus reus, that a terrorist may employ to achieve her ends. This is the main objection by scholars and practitioners of international law, since they argue that we don't really need a new crime, referring to State-terrorism, given that whatever the criminal act, there is an equivalent law to render it punishable.

However, as it has been proven to-date, these attempts to fit this extremely long list of actus reus, and the problematic relevant mens reas, under the umbrella of the term terrorism, is rather an impossible task, and it seems to be misleading as an approach, since it creates more legal problems than it solves.

Hence, as I have emphasized within my dissertation, there is a legal detail that makes the difference, and that is that the weight of a crime classified as terroristic, is automatically significantly increased. Its immorality and severity reflects even in the practical terms of sentencing and punishment. Similarly important is the fact that the international legislation, has been working over-time into creating a better-organized justice system to deal with these crimes more efficiently. Also, the fact that, by making a case in a court of law, as soon as the term terrorism can stand in front of a Judge, then we have the initiation of an automatic procedure with a number of legal

doors opening simultaneously for the better, faster and more effective functioning of the legal process and system. That is to say for instance the immediate consideration of the highest possible sentence, amongst other legal tools and procedures available only to terrorism cases. Not to mention the negative side of that coin, through this high-speed over-production of legal tools which led to grievous violations of human rights, secret prisons, illegal secret extraditions and unconstitutional custodial procedures, that have mainly damaged any justice system that have adopted them, yet, it is still an indicator of the legal back doors that a terrorist case may open inside a criminal legal system, an illustrating example is the case of the Guantanamo bay illegal detaining facility.

Criminal law-making, is in constant need of re-evaluation and assessment, since the mere existence of the codification of a phenomenon, or practice or behavior, into the language of criminal law, is not a strong enough reason to uphold its actual legality as a rule, or better put, its constitutionality. If a law is proved to be unconstitutional, then the only step forward would be to change the law, or declare it void, since it is not a law at all, and the people are not bound to obey it. Acts that are not in accordance with the rules laid down in a constitution<sup>246</sup> are deemed to be *ultra vires*<sup>247</sup> and therefore void. If one distils the rules from the above statements, and apply them in relation to counter-terrorism legislation, could arguably find a lot of examples of *ultra virus* or in simple English: illegal and unconstitutional rules.

There has been a plethora of drafts and pieces of international and national legislation regulating terrorism, yet, little and inadequate expansion on State-terrorism, except in the case of State-supported terrorism, or State terror. This information can be better

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<sup>246</sup> There are similar procedures that seek the same end, both in the common law and civil law countries.

<sup>247</sup> 'Beyond the powers'. Latin meaning, for without authority in the Anglo-Saxon legal tradition.

evaluated, by the mobilization of techniques that Comparative Law has to offer.

In this line of reasoning, 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."<sup>248</sup> 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, must "not commit terrorist acts". The crime of State-terrorism, exists in national and regional legislation, but does not enjoy a universal applicability and actual international legal consensus. Conversely, its existence in a legally binding document, as the Convention mentioned, as well as in the Organization of African Union's Convention<sup>249</sup>, could be plausible to say that it proves its actual existence as a crime.

Yet, it seems as if these phenomena have developed through time and practice an immune system against their legal analysis and criminal coding. Legal experts, lawmakers and academics have failed repeatedly to efficiently deal with the criminal analysis of the act itself, just as philosophers failed to theorize. The concept of terrorism travels around linguistics, political science, philosophy and law, without a nuisance, and even the International Criminal Court failed till now to include the crime of terrorism in its jurisdiction.<sup>250</sup> Irrefutably, consensus on a legal definition of terrorism or State-terrorism within international law is yet to be reached<sup>251</sup>.

In advancing, it seems interesting to consider the Preamble of the Universal Declaration of Human Rights<sup>252</sup> which refers to fear and states: "...freedom from fear".

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<sup>248</sup> 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.

<sup>249</sup> Organization of African Union Convention on the Prevention and Combating of Terrorism, 1999.

<sup>250</sup> [www.un.org/law/icc/statute/iccqanda.htm](http://www.un.org/law/icc/statute/iccqanda.htm) [Retrieved on 17 Sep. 2012].

<sup>251</sup> [www.icc-cpi.int/home.html#en](http://www.icc-cpi.int/home.html#en) [Retrieved on 04 May 2012].

<sup>252</sup> Universal Declaration of Human Rights 1948, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.



While the drafters of this pioneering document explicitly condemn fear, they say nothing on State-terrorism, although it would be rational to expect a condemnation of the phenomenon, in a document that was drafted in the aftermath of the worst form of State-terrorism the world has ever faced, under the Nazi's atrocious violence. I have not met a satisfying answer, to justify the neglected by legal experts, State-terrorism. Politics are being ruled by different ethics than law, therefore the marriage of law and politics under the need to give birth to international law, has produced more suspicious paradoxes than it actually solved.

In my view, irrespectively of means and perpetrators, we are facing at an interference with the individual's enjoyment of fundamental rights, necessary for the fulfillment of the person's natural desire and need for freedom, and all the conditions that may contribute to the self-fulfillment, autonomy, and the development of her capabilities<sup>253</sup> in order to render possible the individual's unique blossoming into a society.

From a human rights perspective, facing all this terror-phobia triggered by the counter-terrorism measures, and the total security obsession of the Western governments, it is apparent that we are witnessing an unnecessary diminishment of the value of human rights.

Humanity has made big steps towards the realization of a universal system of rights that every human being should be entitled, and minimum standards and procedures for their protection. Certain human rights, such as the right not to be tortured, are inderogable, meaning that under no circumstances are to be waived, and this ought to be treated as sacred in any justice system. Contrary to that, in the name of National Security, and through the mobilization of total control's theories, as in the "War on

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<sup>253</sup> Nussbaum, Martha, 'Women and Human Development: The Capabilities Approach', Cambridge: Cambridge University Press, 2000.

Terror"<sup>254</sup> democracies are pushed from protection to suppression of rights agenda, while as I have discussed in the previous chapters, hypocritically in cases assume the tool of fear to achieve their political ends, as is the case with many counter-terrorism practices.

Still, a law with universal applicability, explicitly forbidding State-terrorism, do not exist. A law with the legitimation that organizations such as the United Nations can provide, or with enforceability in the International Criminal Court. The postponing international legal setting, cannot serve as an excuse for the neglected issue of criminalizing State-terrorism, or for the diplomatic denial to bring it on the table, when discussing terrorism legislation.

The urgency for scholarly engagement with the phenomenon have been advocated by some of the greatest minds of our times, and the screaming necessity for legal recognition of terrorism committed by State actors cannot be silenced no more. Under this logic, one should be able to claim that the establishment of a proven act of terrorism committed by a State-actor ought to formulate State-terrorism, while trumping over the curtain of immunity and impunity of the perpetrators, whilst the possibility to bring a case in a court of law, in order for justice to be restored, should always be available.

Finally, scholars to date have been talking about the instrumentalization of terror as defining terrorism. In my view, the time has come to talk about, the instrumentalization of terrorism as defining State-terrorism.

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<sup>254</sup> Coined by the Bush administration, primarily to refer to operations against Al-Qaida, while its meaning was expanded to cover anything remotely connected to terrorism.

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