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Terrorism, Fundamental Rights | Terrorismo, Diritti fondamentali | Terrorismo, Derechos fundamentales

Abstracts

Despite the growing international concern about State terrorism, there is a lack of consensus regarding its significance and under which assumptions international crimes are set, understanding that human rights are seriously violated. This work offers a perspective from State sponsored terrorism and the actions of parastatal agents and organizations, both in the international law as well as in the domestic one (namely, Chilean Law).

Nonostante la crescente preoccupazione internazionale per il terrorismo di Stato, manca il consenso sul suo significato e sui presupposti su cui si basano i crimini internazionali, sottintendendo che i diritti umani sono gravemente violati. Questo lavoro offre una prospettiva dal punto di vista del terrorismo sponsorizzato dallo Stato e delle azioni di agenti e organizzazioni parastatali, sia nel diritto internazionale sia nell'ordinamento interno del Cile.

A pesar de la creciente preocupación internacional sobre el terrorismo de Estado, existe una falta de consenso con respecto a su alcance y bajo qué supuestos se configuran los crímenes internacionales, entendiendo que los derechos humanos son seriamente violados. Este trabajo ofrece una perspectiva del terrorismo amparado por el Estado y las acciones de los agentes y organizaciones paraestatales, tanto en el derecho internacional como en el interno (derecho chileno).

*My thanks to German Acevedo, researcher of the Center of Criminal Law Studies Universidad de Talca (Chile).

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1. Problem Statement.

The concept of terrorism presents serious complexities, especially when classifying specific behaviors and identifying the actors involved. This includes confronting groups of other nations, or challenging terrorist acts executed by State agents within their own nation, which is referred to as *State terrorism.* This term has not yet been officially defined by any international instrument; however, it expresses the context wherein violence is used by the State against its own people, through its organizations or parastatal groups, which often cooperate even if they are not part of the institution[1].

These actions do not fall under any previously defined legal concept, given that a democratic State will rarely claim itself a terrorist State, as the concept of terrorism inherently undermines democracy[2]. Neither an authoritarian nor a dictatorial government will arrange precepts in this way, especially if power was achieved through violence.

However, it is perfectly possible for State agents to commit criminal activities that strike terror among their own people or those of another nation. Subversive groups that challenge this may be met with terroristic methods, or violence protected by the State.

This is not an easy subject to explain, given that international crimes, such as crimes against humanity or war crimes are regulated by internal laws. It can be estimated that there is a higher degree of wrongdoing when State leaders take advantage of their power to systematically terrify their people or the people of another nation[3]. This is illustrated by Latin-American dictatorships during the 1970s and 1980s. Human rights were commonly violated because State actors had ultimate power, were not confronted by their counterparts, and victims could not use internal petitions for protection. Therefore, these are crimes against humanity, overseen by international law regulations[4].

This situation might be different if these parastatal groups worked under a democratic regime and committed crimes that can be considered *state sponsored terrorism.* Perhaps the most symbolic example is the events that took place in Spain during the 1980s. GAL (*Grupos de Antiterroristas de Liberación*- Antiterrorist Liberation Groups) were formed by government agents, policemen and mercenaries, and fought against the Basque separatist group ETA, using illegal methods such as torture and murder[5].

Divergent positions can be observed within the latter issue. Some may declare that terrorism would be predicable according to those who confront the State, but not according to those that act "by" the State, no matter how atrocious their behaviors are. Criminal Law regulations may be applied in these cases[6]. However, considering the evidence, it is perfectly possible that these are terrorist crimes, as parastatal groups can *undermine the constitutional order,* seriously disturbing public security and peace[7]. This threatens the cornerstone of any democratic State: the justice system, by making their own decisions and punishing those they consider guilty[8].

[1] Llobet Anglí (2010), 109 ff.; Cancio Meliá, (2010), 187 ff.; García Rivas, (2007), pp. 302-303.
[2] In this regard, terrorism "is a social construction, albeit one that is shaped and constrained by collective perceptions of legitimacy." Chou (2016), pp. 1129-1152.
[3] State terrorism is the worst, most dangerous and most immoral form of terrorism according to Aliozi, (2012-2013), pp. 54-69.
[4] Bartoli, (2008), 170-172 is based on the article 19 of the International Convention for the Suppression of Terrorist Bombings, 1997; and on the article 4 of the International Convention for the Suppression of Acts of Nuclear Terrorism, to highlight that these conventions do not apply to acts performed by states. Nevertheless, these conventions are regulated by International Law; Hmoud (2006), pp. 1039 ff.
[5] In fact, as Nandan states, there is a "vital interrelation between State sponsored violence and the abuse of power". Nandan (2016), p. 181.
[6] Waldmann, (1998), pp. 181 ff. :"In this way, we consciously take distance from those authors that also talk about state terrorism, at least in the sense of a direct coercive state strategy (influential state elites can establish a terror regime, however, they cannot pursue a terrorist strategy against their own population). Terrorism is a determined violent form of procedure against a political order." González Cussac (2006), pp. 57-127.
[7] Among others, Cancio Meliá (2010), pp. 190-191; Portilla Contreras (2001), pp. 501-530; Bacigalupo Zapater, (2001), pp. 199-223; Llobet Anglí (2010), p. 109; Gómez Martín (2010), pp. 47-48; Carbonell Mateu and Orts Berenguer (2005), pp. 181-194; Asúa Batarrita (2002), p. 84-85; Muñoz Conde, (2013), p. 842; Campos Moreno, (1997), p. 30-31.
[8] Llobet Anglí (2010), p 115.

This analysis will examine the concept of State terrorism and the premises that classify it as an international crime due to serious violations of human rights. As stated, terrorism will not be examined as a crime established as National Law, specifically the Law of Terrorist Behavior, unless it is necessary to support the main objective of this work.

In order to clarify some issues, the present article will expose what can be understood as State terrorism in an international context, and the importance of State sponsored terrorism on the matter.

2. Some Considerations Regarding Terrorism.

Although terrorism has been a topic of discussion for years, a consensus has not yet been reached at an international level[9]. This is evidenced by the Inter-American Convention against Terrorism of 2002, which urged States to adopt cooperative measures to address terroristic crimes[10]. Rather than establishing a definition, however, the path has veered towards individualization and classification of certain behaviors as terrorism.

To date, there have been fourteen treaties created with the intention of preventing terrorism (the first in 1963, regarding acts committed on airplanes)[11]. Clearly this is a difficult goal, given the mixture of political, ideological and religious considerations that muddle any chance of conceptual unification[12]. Negative connotation is also unavoidable, as no organization would self-identify as a terrorist organization and naturally, groups will always find justifications for their actions[13].

In this context, the ambiguous expression *war against terrorism* has strong rhetorical force and is often used as a political tool[14]. This phenomenon triggers emotional factors, such as anxiety and fear, which can diminish rational analysis of the potential devastation and "global" significance[15]. These conditions may interfere with conflict jurisdiction and the path of law enforcement. Certain actors, namely in politics and public opinion, believe these situations require war or military force. Despite the impact of terrorist attacks on society that may seriously upset democratic coexistence, the law cannot be refused[16].

[9] The concept of terrorism first appeared during the French Revolution, in the XVIII century. Back then, terror was considered a form of reign necessary for ideas of the revolution to triumph. Robespierre pointed out: "If the spring of popular government in time of peace is virtue, the springs of popular government in revolution are at once virtue and terror: virtue, without which terror is fatal; terror, without which virtue is powerless. Terror is nothing other than justice, prompt, severe, inflexible; it is thus an emanation of virtue; it is less a principle in itself, than a consequence of the general principal of democracy, applied to the most pressing needs of our country." See Roberspierre (2010) p. 220. See also, Laqueaur (2003), p. 36-37. The term terrorism is stated on the Direction of the French Academy of 1798 as a terror regime and system. Jacobins utilized it to place themselves in a positive context. The author states that prior terrorist acts appeared as an expression of social or religious movements. An example of this is the *sicarii* in Palestine in the 1st century A.D. or with the *assassins* that arose in the 11th century. Also Chaliand and Arnaud (Dir.) (2007), pp. 148 ff. The concept became known in the second part of the 19th century. In fact, the formation of more radical fight groups in Ireland or Serbia, Russian revolutionaries or Italian and Spanish anarchists used violent methods to confirm and broadcast their positions (violence as propaganda), although they were not based on systematic strategies. An example of this was the assassination of Archduke Franz Ferdinand of Austria by the nationalist group Black Hand. For further detail, Burleigh (2008); Moral de la Rosa (2005), p. 16 ff.; Miller (2019), pp. 101 ff.; Martin (2019), pp. 2 ff. In relation to Italy, Ventura (2010).

[10] Inter-American Convention against Terrorism, approved on June 3rd, 2002. See on http://www.oas.org/xxxiiga/espanol/documentos/docs_esp/AGres1840_02.htm (retrieved on October 18th, 2019).

[11] Details can be found on http://www.un.org/es/terrorism/instruments.shtml (retrieved on October 18th, 2019). The first International Convention against Terrorism was in 1937, due to the assassination of King Alexander of Yugoslavia and the French Minister of Foreign Affairs in 1934. France presented an initiative to the League of Nations to judge terrorist crimes. The Convention stated that the judgment should be suitable for an International Criminal Court. However, this was never established, as it was signed by just thirteen states and never took effect. See Convention on http://www.wdl.org/es/item/11579/view/1/1/ (retrieved on October 25th, 2019). Jiménez de Asúa (1950), p. 962 ff. Regarding Europe, see the Council of Europe Convention on the Prevention of Terrorism, http://conventions.coe.int/Treaty/en/Treaties/Html/196.htm (retrieved on October 25th, 2019). Regarding the European Union, refer to Framework Decision 2017/541JAI Related, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0541&from=ES (retrieved on October 25th, 2019).

[12] Abad Castelós (2012), pp. 105 ff.; Fisher and Dugan (2019), pp. 163 ff.

[13] On this point, Corlett (2003), pp. 112 ff., analyzes how certain acts would be morally justified; Horgan (2006), p. 125, in an interview to a IRA leader, declares that he is not a terrorist, but a republican activist; Dershowitz (2002), pp. 36 ff., analyzes acts referred to Palestinian terrorism and the reasons; de la Corte Ibáñez and de Miguel (2008), pp. 325-355 contains principles and beliefs of terrorism.

[14] Kapitan and Schulte (2002), pp. 172 ff.; Begorre-Bret (2005-2006), pp. 1987 ff.

[15] Fernando Reinares (2003), pp. 33 ff. examines terrorism of Islamic origin; Horgan (2006), p. 28, states that one of the characteristics of terrorism is to cause feelings of extreme anxiety in society, although the actual danger is lower.

[16] Generally, there are three positions that support Laws governing terrorism: a) Criminal Law is not useful in these cases; therefore, there is only room for political decisions. Quoting Carrara, in the field of crimes against State security, Criminal Law does not exist; b) considering better efficiency, there are certain rules that are established that can lead to guaranteeing flexibility and c) criminal laws remain the same, and these acts are penalized as common crimes. There is the risk of distortion and the chance to be in front of an authoritarian type of Criminal Law. See Carnevali (2010a), pp. 113 ff.

Although jurisdictionalization has been the *iter* to face the most atrocious crimes against humanity, especially following the Nuremberg Trials, it has not been free from highs and lows. Even then, instruments such as the Geneva Conventions and the Rome Statute for the International Criminal Court[17] have clearly stated an unequivocal message to the international community: when there are acts wherein human rights have been violated and serious crimes have been committed, social peace can only be reestablished through justice and punishment. In this sense, terrorism in every way, shape and form is an expression of a crime against humanity[18].

Nevertheless, there has been an inadequate presence of Law in the face of terrorism, and a normative reaction must be determined, given that punitive exacerbation may be ineffective or counterproductive. Certain strategies can empower terrorist organizations while undermining the guarantees of citizenship, such as unreasonable preventive police regulations, providing prosecutors with broad faculties for investigation or the appeal to military jurisdiction. Some terrorist organizations may push States to adopt regulations or grant authoritative powers. Considering that most organizations do not have the military capability to overcome the State, they often resort to terroristic methods as functional equivalents of military force[19].

In a previous article, I stated that Criminal Law against terrorism is an exceptional form of Law. It guarantees flexibility, but it must be understood within a space of rationality that prevents its use for purely utilitarian reasons. I also examined the assumptions underlying its establishment[20]. In general, terrorist acts represent the execution of serious crimes for the purpose of destabilizing the institutional order. They result in a serious disturbance of public order or generalized fear among populations when fundamental rights are affected through the execution or abstention of certain acts[21]. The following pages will address whether these assumptions intercede, and in which cases they are considered international crimes.

3. What can be understood by State sponsored terrorism.

As mentioned, during the 1970s and 1980s, several Latin-American countries were ruled by military dictatorships that systematically violated human rights. During Argentina's "dirty war", political motives were avoided with the intervention of State agents and parastatal groups[22]. Moreover, some of these criminal policies were organized under "Operación Cóndor"[23], which provided transnational logistical support[24].

This political context incited terrible consequences of State decisions for human rights. Terror was promoted internally by the State and spread with absolute impunity. This was demonstrated through two symbolic sentences from the Inter-American Court of Human Rights (IACHR): *Almonacid Arellano et al.*, September 26th, 2006, and *Goiburú et al.*, September 22nd, 2006[25]. The latter case involved illegal and arbitrary arrest, torture and disappearances of people during the rule of Paraguayan president Alfredo Stroessner 1974-1977. The decision stated that these acts were committed in violation of essential rights, perpetrated by civil servants[26]. Judges Sergio García Ramírez and Antônio Cançado Trindade declared the full scope

[17] About the role of the International Criminal Court against terrorism, Arnold (2004).

[18] Beck (2003), p. 35, states that the pact against terrorism has to be based on Law, where an international convention must be established in order to clarify concepts and set a legal basis for interstate persecution, thus turning it into a crime against humanity.

[19] Specifically, Cancio Meliá (2010), p. 70; Horgan (2006), p. 51, states that success cannot be measured by military objectives, but it is psychological because it causes anxiety responses.

[20] Carnevali (2010a), p. 117 ff.; Silva Sánchez, (2012), p. 186: "Hence, in these areas, where criminal behavior does not only unsettle a specific regulation, but the Law itself, can be considered an extension of imprisonment, as well as the relativization of substantive and procedural guarantees."

[21] Carnevali (2010a), p. 125 ff.

[22] In relation to Chile, Mañalich Raffo, (2010), p. 23 ff.; Mañalich Raffo (2018), pp. 75 ff.; Hernández Basualto (2013), pp. 189 ff.; Guzmán Dálbora (2008), 131 ff.

[23] "Operation Condor was a transnational network of organized state-sponsored terrorism that targeted Communist "subversion." It was operational in the second half of the 1970s. The key member countries were Chile, Argentina, Uruguay, Bolivia, Paraguay, and Brazil (Peru and Ecuador joined the network later on, with a more marginal role)." Zanchetta (2016), pp. 1084 ff.

[24] In relation to the Inter-American Court of Human Rights *Almonacid Arellano and others,* from September 26th, 2006. See http://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf (Retrieved on September 2nd, 2019)

[25] Sentence of the Inter-American Court of Human Rights Goiburú and others, September 22nd, 2006. See http://www.corteidh.or.cr/docs/casos/articulos/seriec_153_esp.pdf (Retrieved on September 2nd, 2019).

[26] *Goiburú* sentence, already quoted: "[…] While State, its institutions, mechanisms and powers should have functioned as a protective guarantee against criminal actions of its agents. However, a state power instrumentalization was verified as a means and resource to commit

of the acts as State terrorism. Judge García referred to the risks associated with the use of certain expressions, and that the term State terrorism alludes to the fact that the State *commits* the crimes[27]. The judge argued that those who committed these crimes were State agents or individuals that compromised the international responsibility of the State. For this reason, it is more appropriate to refer to crimes committed *by the means of the State* or terrorism *sponsored by the State*, as State terrorism, as these crimes are committed using the inherent powers of the State[28]. On his behalf, Judge Cançado Trindade pointed out that it is perfectly possible for the State to commit crimes. He also stated that the "war against terrorism" represents a risk to fundamental rights. This is similar to Cóndor *Redivivus*: history repeats itself[29].

State terrorism presents conceptual problems and obstacles that prevent a sense of clarity[30]. It is not currently a legal term and has not been defined by any international instrument[31]. This can lead to confusion, and it could be conceived that the crime of terrorism is regulated by Internal Law.

Nevertheless, it cannot be denied that crimes can be committed *through* the State (see quoted sentences). For example, the State may use its platform to spread fear among a population. Parastatal groups that act without institutional counterbalance (assuring impunity) impose authority to the population through acts that violate human rights, as even *populations* can be considered a risk factor that need to be controlled. Although this phenomenon may be easy to comprehend, a problem emerges regarding the precise classification of a crime. In fact, *even when the word terrorism is used, it does not necessarily mean a crime of terrorism governed by Internal Law*, but includes international crimes such as genocide, crimes against humanity or war crimes[32]. Crimes committed through the use of State policies, without preventative measures, are a violation of human rights, as stated in several sentences of the IACHR[33]. For this reason, there is interest in persecuting them through International Law, as the fundamentals of coexistence are at stake. Nations can no longer be indifferent in the face of certain crimes, as exemplified by the establishment of the International Criminal Court and

rights violations that should be obeyed and guaranteed, executed through the mentioned interstate collaboration. This means, the State considered itself a main factor in relation to the severe crimes committed, configuring the clear condition of 'State terrorism'." See Burgorgue-Larsen and Úbeda de Torres (2010), pp. 129 ff.

[27] Judge García's concurring opinion on *Goiburú* case: "20. State Terrorism means that the *State* becomes a terrorist, spreads fear and concern to citizens; it causes anxiety that seriously disturbs peace within society. State policy implies that the State itself –a complex and diverse entity, clearly not a physical person, an individual, or a criminal gang– accepts a plan and develops it through certain behaviors that discipline according to the purpose and strategies designed by the State. Equally, the idea of a state crime, if we remain close to the literal meaning, underlines the assumption that the state commits crimes."

[28] Judge García's concurring opinion on *Goiburú* case: "22. It is evident that isolated or massive violations are committed by state agents or by other individuals whose behavior compromises the international responsibility of the state, formal and tangible, on the international judgments of human rights, which can receive, under this title and according to the responsibilities confirmed, the declarations and sentences of the Court. Human rights violations, especially those more intense to fundamental legal rights (life, integrity, freedom), are considered crimes according to national and international regulations and produce, besides responsibility of the state, a specific legal responsibility of individuals. 23. That is the reason I prefer to talk about crimes committed by the means of the State or State sponsored terrorism. This is in reference to crimes and terrorism performed through the power and means of those who holds it unlawfully, aimed to commit it. In a similar way, the expression 'State policy' can be examined. This concept represents an agreement, a social and political participation, a generalized admission, even unanimous, that is generated through democratic purposes, goals and agreements, which do not possess and never have had criminal plots, entourage covenants disguised as State motives, common good considerations, and reasons of public peace that only would have a place in a democratic society."

[29] Judge Cançado Trindade's concurring opinion on *Goiburú* case: "55. During the 1970s, there was the 'war against subversion' and nowadays it is the 'war against terrorism.' In both cases, perpetrators of violations to human rights state that the end justifies the means, and everything is allowed outside the law. Recently, a spokesman of the current 'war against terrorism' declares: 'whoever is not with us is against us'. This is exactly the kind of message that military men of the *Operación Cóndor* delivered during the Seventies, all of them Heads of the State, in order to spread fear and to justify state crimes. 56. In fact, State crimes have always existed, as stated nowadays by recent reports (for example, the Parliamentary Assembly of the Council of Europe) about systematic torture practices in prisons –even secret ones- in other continents, and actual concentration camps in the 'war against terrorism'. Currently there is dispersed news about torture practices (euphemistically called 'intensive interrogation'), illegal or arbitrary detentions, kidnappings, secret flights and forced disappearance, possible extrajudicial executions, as well as on an interstate level."

[30] Garzón Valdés (1989), pp.38 ff. establishes a concept of State terrorism; Wilson (2019), pp. 331 ff.; Martin (2019), pp. 82 ff.

[31] According to Carmen Lamarca Pérez (2001), p. 1107, it is a journalistic notion and not a legal notion.

[32] Although it is State terrorism itself, today it is still discussed if certain acts of international terrorism, such as the September 11 attacks on New York, could be part of the competence of the International Criminal Court. Proulx (2003), pp. 1010 ff.; Jodoin (2007), pp. 77-115; Chesterman (2000), pp. 307-343; Olásolo Alonso and Pérez Cepeda (2008), pp. 171 ff.

[33] Apart from the mentioned *Goiburú* and *Almonacid Arellano* sentences, there are other sentences that can be quoted, such as the sentences of the Inter-American Court of Human Rights *Myrna Mack Chang*, from November 25th, 2003 (http://www.corteidh.or.cr/docs/casos/articulos/seriec_101_esp.pdf, retrieved on June 5th, 2019); *Barrios Altos*, from March 14th, 2001 (http://www.corteidh.or.cr/docs/casos/articulos/Seriec_75_esp.pdf, retrieved on June 5th, 2016); *Masacre Plan de Sánchez*, from November 19th, 2004 (http://www.corteidh.or.cr/docs/casos/articulos/seriec_116_esp.pdf, retrieved on June 5th, 2019).

the configuration of the principle of complementarity[34]. If the State does not or cannot judge these serious crimes, they may be turned over to the international body.

We will now examine how international crimes can be instituted. To answer this question, both international law and national law will be analyzed.

3.1. *International Law.*

The intervention and punishment associated with terrorist activities is not a new subject in criminal literature. Following World War I, the *Bryce Committee* concluded that Germany used a deliberate and generalized system of terrorism during the invasion of Belgium in order to control the region. Mass murders and destruction of property were previously planned and executed by German forces to reduce Belgian defenses[35]. In March 1919, a list of war crimes was produced by the Commission of Responsibilities established at the Paris Peace Conference, which included systematic terrorism against a civilian population. Despite the existence of records to support accusations against German forces, convictions were scarce. The memorable article 227 of the Treaty of Versailles positioned the establishment of a special court to arraign Emperor William II for a supreme offence against international morality and the sanctity of treaties[36]. Nevertheless, the *Kaiser* could never be prosecuted, as the Netherlands (where he inhabited), and other important German leaders would not allow his extradition. Although the *Reichsgericht* (Imperial Court of Justice) on Leipzig arraigned war crimes committed by Germans, it was without significant consequence[37].

It is well established that the events following World War II determined the *iter* in relation to the protection of human rights and the State's role in their enforcement. In this way, the International Military Tribunal at Nuremberg declared that the terror policies carried out by Germany against civilian populations were considered war crimes, according to article 6 (b). Sentences specifically stated:

> "The territories occupied by Germany were administered in violation of the laws of war. The evidence of a systematic rule of violence, brutality and terror is quite overwhelming."[38]

On the other hand, different military tribunals specifically confirmed terrorism as a crime on their statutes[39].

Later, the Geneva Convention of 1949 set regulations regarding terrorist methods (specifically the fourth and additional protocols I and II), as instruments to handle serious infractions during war, as covered by International Humanitarian Law. In fact, article 33 of the fourth Convention, regarding protection of civilians in times of war, declares:

> "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and all measures of intimidation or terrorism

[34] About the principle of complementarity, see Raúl Carnevali (2010b), pp.181 ff.
[35] Jodoin (2007), p. 100.
[36] Art. 227: "The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties."
[37] Meron (2006), pp. 553 ff.; Kittichaisaree, (2001), p. 15; Jescheck (2001), pp. 53-54; Etcheberry (1998), pp. 129 ff.; Quintano Ripollés (1955), p. 401; Jiménez de Asúa (1950), pp. 982-983; Gil Gil (2000), pp. 36-37.
[38] Extract of the sentence: "The territories occupied by Germany were administered in violation of the laws of war. The evidence is quite overwhelming of a systematic rule of violence, brutality and terror. On the 7th December, 1941, Hitler issued the directive since known as the '*Nacht und Nebel Erlass*' *(Night and Fog Decree)*, under which persons who committed offences against the Reich or the German forces in occupied territories, except where the death sentence was certain, were to be taken secretly to Germany and handed over to the SIPO and SD for trial or punishment in Germany. This decree was signed by the defendant Keitel. After these civilians arrived in Germany, no word of them was permitted to reach the country from which they came, or their relatives; even in cases when they died awaiting trial the families were not informed, the purpose being to create anxiety in the minds of the family of the arrested person. Hitler's purpose in issuing this decree was stated by the defendant Keitel in a covering letter, dated 12th December, 1941, to be as follows: Efficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal. This aim is achieved when the criminal is transferred to Germany."
See full text on *American Journal of International Law* 41, 1947, pp. 172 ff. Also http://avalon.law.yale.edu/subject_menus/judcont.asp (retrieved on June 5th, 2019).
[39] In detail, Jodoin (2007), pp. 101-102.

> are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."[40]

Article 50 of The Hague regulations (1907) is the most direct precedent of laws and customs of war on land[41]. Article 33 must be understood according to the terrible practices that took place in occupied territories during the second great conflagration[42]. Both article 51 of Protocol I and article 13 of Protocol II also prohibit, during war, the use of means that terrorize civilian populations[43]. The article 4.2. D of the same Protocol also prohibits terrorist acts against civilian populations.

Although none of these regulations define the concept of terrorism, they refer to those cases that cause terror among civilian populations during either national or international war[44]. It must be noted that not all acts that affect civilians can be considered a crime, as any war generally results in causing terror among civilians. For example, legal military interventions may incite terror, but are not be forbidden by laws of war[45].

It is necessary to articulate when a violation of the International Humanitarian Law regulations occurs, and whether it is a war crime. Also, *jus ad bellum* and *jus in bello* must be considered, determining in which cases force can be used and what rules should be applied in armed warfare, respectively. This set of rules is derived from the just war theory[46], and aims to regulate behavior during a conflict. Still, there are complications; for example, how to distinguish certain military strategies that, while committed in the context of war, may be classified as war crimes when they would otherwise be terrorist acts. In other words, from what exact moment do behaviors violate *jus in bello* and *jus ad bellum*? This becomes more complex with the intervention of resistance groups against dictatorial governments, or in cases where States support certain groups based on political affinity. There is much temptation to classify these groups as terrorist, especially if this classification comes from actors who are in power and feel threatened[47].

Considering the above, it could be understood that violations of *jus ad bellum* and *jus in bello* violate International Humanitarian Law and, therefore, are international crimes. It is meaningless to classify certain acts as terrorist crimes in armed warfare because, according to the International Humanitarian Law, they are war crimes. For this reason, the International Committee of the Red Cross has stated that once the threshold of armed warfare has been reached, it would be meaningless to classify violent acts against civilians or civilian property as terrorism, as these acts are already war crimes according to the International Humanitarian Law. As a result, people who have allegedly committed war crimes can be legally prosecuted by States according to the regulations of International Law, as well as the International Criminal Court[48].

Terrorist acts are frequently committed in armed warfare and, as a result, regulations of the

[40] Fourth Geneva Convention: https://www.icrc.org/spa/resources/documents/treaty/treaty-gc-4-5tdkyk.htm (retrieved on July 13th, 2019).
[41] Art. 50: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." See on https:// www.icrc.org/spa/resources/documents/misc/treaty-1907-regulations-laws-customs-war-on-land-5tdm39.htm (retrieved on June 13, 2019).
[42] Kalshoven (1983), p. 74.
[43] Art. 51: "2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." See original on https://www.icrc.org/spa/resources/documents/misc/protocolo-i.htm (retrieved on June 13th, 2015).
Art. 13: "2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." See original on https://www.icrc.org/spa/resources/documents/misc/protocolo-ii.htm (retrieved on June 13th, 2019).
[44] Paredes Castañón (2010), pp. 152 ff.
[45] Jodoin (2007), p. 92.
[46] Sloane (2009), pp. 56 ff.
[47] Pérez González (2012a), p. 15 declares: "In such situations, the line that separates terrorist activities from belligerent acts authorized by Law of the armed conflicts becomes imprecise. Also, when it comes to the situation of occupation (one of the possible manifestations of current asymmetric wars), on one hand, it can be classified as a resistance or insurgent group, and on the other hand as a terrorist group, depending on the subjective position taken of those who confront occupying forces through violent actions. It is indeed a disturbing factor, covered by political colors when it comes time to apply legal characterizations to the facts, in a way that the differences produced come to infect the debate about terrorism, and reveal, as one of the causes, that the states' approach to an agreement about the definition of terrorism continues as a predicament." It is important to keep in mind that insurgent groups have always existed, independence movements are an example. That is why liberation movements are recognized as subjects of international law. The Charter of the United Nations establishes the right of nations to self-determination or the Geneva Conventions when referred to internal armed warfare. Cassese (2006), pp. 127 ff.
[48] International Committee of the Red Cross, 2007, p. 8. See also, Abad Castelós (2012), p. 113. Also, Michael P. Scharf (2004), p. 359 ff. declares that terrorist acts should be considered equivalent to war crimes during peacetime.

International Humanitarian Law should be applied. Limits are not always clear and become even vaguer after the intervention of non-State groups or national liberation armies[49]. Resorting to political considerations may be necessary in order to distinguish certain acts protected by laws of war –*jus in bello*– from the ones that are truly terrorist acts: some call them terrorists, some call them "freedom fighters". This also complicates a global definition of terrorism[50], because the States affected by these groups classify them as terrorists, making it difficult for them to be prosecuted according to the regulations of the International Humanitarian Law. However, these groups may gain recognition because nations have the right to oppose and resist their oppressor, according to article 1.4. of Additional Protocol I[51]. Nevertheless, this must be done by respecting the standards that regulate a conflict, especially if a civilian population is affected. As legitimate as the fight might be, it is not an excuse to resort to terrorist methods[52] as an objective, where military considerations are irrelevant[53].

It is important to highlight that the International Criminal Tribunal for the former Yugoslavia (ICTY), in relation to the *Galic* case, determined the criminal responsibility of the Bosnian Serb Commander Stalisnav Galić on war crimes. Consider that between September 1992 and August 1994, in Sarajevo and surrounding areas, violent acts were committed with the purpose of causing terror among the civilian population, according to article 51 of Additional Protocol I and article 13 of Additional Protocol II. This sentence specifies the crime of terrorism as:

> "133. In conclusion, the crime of terror against the civilian population in the form charged in the Indictment is constituted of the elements common to offences falling under Article 3 of the Statute, as well as of the following specific elements:
> 1. Acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities, causing death or serious injury to body or health within the civilian population.
> 2. The offender willfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence.
> 3. The above offence was committed with the primary purpose of spreading terror among the civilian population."[54]

In the *Blaskic* case, Tihomir Blaskic was prosecuted as an author of war crimes according to article 51 of Additional Protocol I. It was decided the attacks to Bosnian Muslim civilian population were aimed to terrify them, given there was no military motive[55].

[49] Pérez González (2012b), pp. 310-311, refers to the report of the High-level Panel on Threats, Challenges and Change in his report "A more secure world: our shared responsibility" (2004), presented to the Secretary-General of the United Nations, and describes terrorism as: "any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act."

[50] Pérez González (2012b), p. 312.

[51] Art. 1.4.: "The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

[52] Gasser (2002), p. 563: "Any combatant who chooses to engage in guerrilla warfare remains bound to respect all rules on the conduct of military operations and the protection of civilians. There will be no excuse if he combines (legitimate) guerrilla warfare with a (criminal) terrorist campaign"; Pignatelli and Meca (2012), p. 64: "As a result, International Humanitarian Law must be fully respected, in situations of military occupation, by the occupier and resistance groups that fight against it and in conflicts of national liberation by the colonial power and for liberation movements. They must, in any situation, refrain themselves from committing acts of terror". Also, Pérez González (2012b), pp. 321 ff.

[53] Pignatelli and Meca (2012), p. 61-62.

[54] *Galić* judgment on http://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf (retrieved on June 23rd, 2019). Also, the same judgment refers to, according to the intention: "136. 'Primary purpose' signifies the *mens rea* of the crime of terror. It is understood as excluding *dolus eventualis,* or recklessness, from the intentional state specific to terror. Thus the Prosecution is required to prove not only that the Accused accepted the likelihood that terror would result from the illegal acts –or that he was aware of the possibility that terror would result– but that that was the result which he specifically intended. The crime of terror is a specific-intent crime"; Jodoin (2007), p 103 ff. quotes several judgments of the International Criminal Tribunal for the former Yugoslavia.

[55] *Blaskic* Judgment on http://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf (retrieved on June 23rd, 2019): "732. General Blaskic admitted to the Trial Chamber that he knew that civilians were being detained at Dubravica primary school (1644). These included, *inter alia*, the women and children who had been placed around General Blaskic's command post for two weeks. Nonetheless, he announced that he had not made any effort to investigate the circumstances under which people were detained because the civilian authorities and Red Cross

Considering the aforementioned, the following can be stated: presenting certain essential suppositions like context (armed warfare, international or not) and the qualification of victims (mainly civilian populations), behaviors of terrorist connotation might be considered to be war crimes. Refer to the International Criminal Court, article 8 of the Rome Statute[56]. According to this regulation, policies from the State can be classified as war crimes, "… in particular, when they are committed *as part of a plan or policy* or as part of the commission of large scale of such crimes." As Pérez González indicates, terrorist acts can be classified as international crimes[57]. In this sense, the International Criminal Tribunal for the former Yugoslavia concluded that the most atrocious crimes committed during a non-international armed warfare must be considered international crimes. This leads to the supposition that regulations of *jus in bello* can be applied in order to prosecute a person who has been charged with committing a crime during non-international armed warfare, considering terroristic acts as serious violations of the International Humanitarian Law[58]. Specifically within the context of the *ratione materiae*, the competence of the International Criminal Court, it can be recognized that several war crimes are vulnerable to involvement with the legal notion of terrorist acts, on the same level as situations of international and internal conflict. This identical qualification and criminal reproach is established within the line of case law that was opened by the International Criminal Tribunal for the former Yugoslavia[59].

It is necessary to analyze whether certain terrorist acts *by* the means of the State can lead to crimes against humanity, according to article 7 of the Rome Statute. In my opinion, these crimes are most commonly subject to assumptions inside the name of State terrorism[60]. The article states that the crime must be "*committed as part of a systematic or generalized attack against a civilian population.*"[61] Then, it defines the concept of attack against a civilian population: "a line of behavior that implies the execution of multiple acts mentioned in paragraph 1 against a civilian population, according to *the policy of a State or organization* of committing the attack and promoting that policy."[62] Specifically, the multiple, generalized or systematic nature of the attack aimed at the civilian population exemplifies the *atmosphere of terror that a civilian population might be exposed to*. The same can be expressed regarding whether the attack is systematic, as it reveals planning or organization with certain objectives[63].

To constitute a crime, it is not necessary for actions to include armed warfare in a special discriminatory spirit. In any case, the persecution of a group or community with its own identity based on political, or racial, national, ethnic, cultural, religious or gender reasons is considered actions against humanity(article 7 1) h of the Rome Statute). The violator must guide his conduct in relation to such motivations. The same occurred with *apartheid* (article 7 1) j) of the Rome Statute), which requires that the perpetrator has committed a crime in the context of an oppressive institutionalized regime and systematic domination of one racial group over one or more racial groups.

It is fundamental to determine the meaning of committing an act as part of a *generalized or systematic attack against a civilian population*, as well as the *mens rea*, namely, if a complete

were dealing with the matter (1645). In addition, the Trial Chamber points out that the school also served as the billet of the Vitezovi. As a result, in the opinion of the Trial Chamber, General Blaskic could not have been unaware of the atmosphere of terror and the rapes which occurred at the school (733). The Trial Chamber accordingly concludes that General Blaskic did know of the circumstances and conditions under which the Muslims were detained in the facilities mentioned above. In any case, General Blaskic did not perform his duties with the necessary reasonable diligence. As a commander holding the rank of Colonel, he was in a position to exercise effective control over his troops in a relatively confined territory (1646). Furthermore, insofar as the accused ordered that Muslim civilians be detained, he could not have not sought information on the detention conditions. Hence, the Trial Chamber is persuaded beyond all reasonable doubt that General Blaskic had reason to know that violations of international humanitarian law were being perpetrated when the Muslims from the municipalities of Vitez, Busovaa and Kiseljak were detained."

[56] Pignatelli and Meca (2012), p. 62.

[57] Pérez González (2012b), p. 325.

[58] Pérez González (2012b), p. 325.

[59] In these terms, Pérez González (2012b), p. 325.

[60] About the differences between terrorism and crimes against humanity, Llobet Angli (2010), p. 100 ff.

[61] The reference of a generalized or systematic attack on crimes against humanity is not found in the Statute of the International Criminal Tribunal for the former Yugoslavia; on the contrary, they are in the Statute of the International Criminal Tribunal for Rwanda.

[62] The italics are mine. Dealing with the elements of crime, an "attack against a civilian population" is described as: "a line of behavior that implies the execution of multiple acts mentioned on paragraph 1 of article 7 of the Statute against civilian population, in order to achieve and promote the state policy or organization for committing this attack. It is not necessary that the acts constitute a military attack. It is understood that the 'policy of committing that attack' requires that the state or organization promote and actively encourage an attack of this kind against the civilian population." See on http://www.icc-cpi.int/NR/rdonlyres/A851490E-6514-4E91-BD45-9A216CF47E/283786/ElementsOfCrimesSPAWeb.pdf (retrieved on June 23rd, 2019).

[63] Pignatelli and Meca (2012), p. 55.

notion is required regarding the policy that the State expects to accomplish. In relation to the first point, it is necessary that these acts are performed within a context where mass or systematic attacks are organized, conducted or tolerated by political power. The same applies to organizations that control territorial areas.

On the other hand, it is necessary to clarify that the demand of a generalized or systematic attack constitutes alternative requirements, meaning consideration of qualitative and quantitative issues that configure a crime[64]. It is essential that both cases are of a collective nature, or multiple commissioned attacks aimed at a civilian population. It is equally fundamental to demand a *concrete policy* that includes individual behaviors. Here arises the question of subjective demand, regarding whether the intention of the author included the context of execution, caused the deaths of one or more people, and whether the author was aware that his behavior was part of a systematic attack. In addition, the author may have intended that the conduct was part of such an attack and was aware of details of the State policy. Given the complexity of this configuration, it is important to contemplate how it was understood at its conception[65]. Consequently, it is sufficient if the author is aware that their behavior –any of the modalities specified in the article 7 of the Rome Statute– was part of a wider statement, where already examined suppositions were gathered[66]. For example, the first form of execution that constitutes a crime against humanity established in article 7, or murder, it is not only required that the authors intention comprehended the deaths of one or more people, but also that the author was aware that their behavior was part or was intended to be part of a generalized or systematic attack aimed against a civilian population.Finally, when dealing with international crimes, it is also possible to comprehend the assumptions of State sponsored terrorism in terms of genocide. In fact, the information already presented in relation to crimes against humanity can be applied in this case, considering that genocide generally refers to *discriminating* actions against a specific population. However, crimes against humanity point to *indiscriminate* actions against civilian population[67] (except the cases mentioned, from article 7 1) h and j of the Rome Statute). It is difficult to understand genocide without conceiving the terrorizing effect it has on the population, especially when it focuses on a certain group, searching for the group's destruction on the basis of belonging.

According to article 6 of the Rome Statute, it is possible to distinguish four assumptions about genocide. Note the following *elements*: 1) the author has killed one or many people; 2) those people were part of a specific national, ethnic, racial or religious group; 3) the author had the intention of destroying that national, ethnic, racial or religious group, totally or partially; 4) the conduct has taken place in a pattern of similar behavior aimed at that group, including inherently destructive ideologies against them. This is also the case of elements 3 and 4, already quoted, encountered within other assumptions of genocide. This is explained considering crime with a special intention[68] (third element), as well as the context of development (fourth element). In this regard, it is compulsory that the subject is aware of the existence of these circumstances. In fact, while in the presence of a very complex *mens rea*, it is essential for the offence to have been completed so that the subject realizes the acts affected members of a specific group, as long as *they could be framed in a plan aimed to destroy the group.* This plan can be understood within a State policy. In this sense, it is possible to be faced with a paradigm that focuses on the death of just one person, whenever the intention was the destruction of the victim's group, totally or partially. Therefore, this requires agent attempts against certain individual interests, although it is not necessary that the alleged purpose becomes a reality[69].

[64] Gil Gil (2001), pp. 81-82; Chesterman (2000), p. 307 ff.; Martínez-Cardos Ruiz (1999), pp. 778 ff.

[65] "The last two elements of each crime against humanity describe the context in which the conduct has to take place. Those elements clarify the participation required in a generalized or systematic attack against the civilian population and the knowledge of such attack. However, the last element must not be interpreted in the sense that it requires the proof that the author had knowledge of all the characteristics of the attack, not even the specific details of the plan or the State or organization policy. In the case that a generalized or systematic attack against civilian population is starting, the intentionality clause of the last element indicates that that element exists if the author had the intention of committing an attack of that nature." See on http://www.icc-cpi.int/NR/rdonlyres/A851490E-6514-4E91-BD45-AD9A216CF47E/283786/ElementsOfCrimesSPAWeb.pdf (retrieved on June 23rd, 2019).

[66] As stated by Ambos (2001), p. 52, the knowledge of all characteristics of aggression or the exact details of a policy or a plan must be ignored. This author declares that the intention can be proven via circumstantial proof when the author only wanted to favor an extended or systematic aggression.

[67] Feierstein (2011), p. 577.

[68] Gil Gil (1999), p.178 ff.

[69] Feijoo Sánchez (1998), pp. 2267 ff. As stated by the doctrine, it is a crime that protects supra-individual goods, or certain human groups, constituted as a social unit. Extrajudicial science will be needed, in order to classify these units.

Thus, in the cases of *Musema*[70], *Akayesu*[71] and *Jelisic*[72], it was stated that the defendant must have had the specific intention of destroying certain groups: the victim is randomly chosen because he or she belongs to certain groups[73].

Considering the presented information, it seems there should not be difficulties in estimating terroristic acts committed by State agents or groups protected by the State within international crimes, given the presence of the required elements. This means that in extraordinary situations such as national or international armed warfare or dictatorial regimes based on terror, as established in the sentences of the Inter-American Court of Human Rights, it is possible to apply the regulations of international law. In these cases, although the term *(State) terrorism* is used, it is not strictly a crime of terrorism, according to the established regulations of internal law. These are *more serious facts*, because the civilian population does not have enough independent resources to assert its rights. In an armed warfare, especially of internal nature, the State of law disappears; therefore, it becomes difficult for victims to wait for answers from national authorities. Additionally, in dictatorial or totalitarian regimes, the power is used to subjugate the population, violating their fundamental rights with impunity. In these cases, where the State does not take action, either because it played an active role in the crimes, tolerated them, or even because the national criminal system had disappeared, crimes in this context have an international relevance.

From my point of view, these are crimes that concern the entire international community, as the basic fundamentals of coexistence are affected[74]. The right to judge coexists with the duty of judgment, even more so if the State neglects this responsibility. This is a justification of the international justice system, and the role that the principle of complementarity has in this context. In the cases when the States do not act, it is possible to resort to the International Criminal Court.

3.2. *Internal Law (Chile).*

It is essential to examine internal law in order to support the aforementioned considerations and to determine when State terrorism can be classified as an international crime.

In this context, the most complex issues appear when crimes are committed by State agents or parastatal groups within a democratic regime during peacetime[75]. Is it possible to accurately discuss State terrorism? In other words: are the crimes committed *by the means of the* State, properly speaking, terrorist crimes? We must understand terrorism in the proper sense of the term, namely, as it seeks to discourage public authorities and international organizations from certain actions, including the disruption of public order or generalized fear, wherein fundamental rights are affected.

Can the State itself *subvert* the constitutional order? This concept can be applied to groups that question the State[76]. The general rule is that the coercive power of the State is called into question when an organization pretends to occupy a normative space. This is done when discussing the decision on an internal level, or even when adopting international policies. It must therefore be considered that these acts have a symbolic component that cannot be avoided: the special vulnerability of questioning essential structures that form the basis of the social identity, such as coexistence forms and democratic understanding[77].

[70] *Musema* case ICTR-96-13 in: http://www.unictr.org/sites/unictr.org/files/case-documents/ictr-96-13/trial-judgements/en/000127.pdf (retrieved on June 26th, 2019).

[71] *Akayesu* case ICTR-96-4 in: http://www.unictr.org/sites/unictr.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf (retrieved on June 26th, 2019).

[72] *Jelisic* case IT-95-10-A in: http://www.icty.org/x/cases/jelisic/tjug/en/jel-tj991214e.pdf (retrieved on June 26th, 2019).

[73] Kittichaisaree (2001), p. 72 ff.; Zakr (2001), pp. 263 ff.

[74] In the preface of the Rome Statute, the stipulated issues are confirmed, pointing out that "Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished, and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation". Among others, see Ambos (1999), pp. 44-45; Gil Gil (1999), p. 34; Bassiouni (1985), pp. 1453 ff.

[75] About this point, Bartoli (2008), pp. 211-212, states that according to acts considered to be terrorism, but that are committed during peacetime, internal laws must be applied, or crimes against humanity. However, in war times, these are war crimes against humanity. Carnevali (2010a), pp. 121 ff.

[76] About this point, Terradillos Basoco (2010), p. 281, declares the difference between opposition terrorism and state terrorism. While the first one acts in order to determine or substitute power, the second one does this to consolidate and increase the power that holds.

[77] Llobet Anglí (2010), pp. 70 ff.; Cancio Meliá (2008) pp. 73 ff. On p. 75: "Therefore, it is an arrogation of an organization not only in

Cases such as GAL in Spain during the 1980s propose some questions, because it was not only about police excess, but an organized structuring of the State to fight the terrorism of ETA[78]. In order to preserve democracy, terrorism was fought using terroristic methods. As mentioned, GAL were parastatal groups that tortured and murdered for many years, supported by the Spanish government. The most iconic cases in which they were involved were the murders of Lasa and Zabala, and Marey's kidnapping. Although it was established that it was organized, Spanish courts did not classify it as terrorism, because the objective was to keep the institutional order, instead of subvert it[79].

Nevertheless, when faced with an organization that is supported or at least tolerated by the State, including political connotations or violent "defenses" of the constitutional order, the question is: is it equally a terrorist crime? If the answer is affirmative, is it State sponsored terrorism? All of this indicates that there are no legal obstacles in choosing the affirmative path. Currently, limits are not established within Chilean law or comparative law. It is perfectly possible to classify them as terrorists and prosecute according to Chilean law. These facts are particularly too serious to be considered aggravated common crimes[80]. On the other hand, it can be affirmed that the already mentioned cases *seriously disturb the public order*[81]. In fact, Cancio Meliá stated:

> "Therefore, it seems clear that the *dirty war* groups that arose from the structure of the State –normally, from the armed organizations of the State– exactly for belonging to the State structure, express a political purpose: to change a cornerstone of the State structure, the neutrality of the public administration, to fight certain political or terrorist groups with the violent means of infractions of terrorism."[82].

In the case of terrorist crime, the constitutional order and the democratic decision making mechanisms are questioned, the basis of sovereignty. In others words, this takes the place of the legislator. However, in State terrorism, the practice of the punitive activity of the State is not respected. This is done by attempting to replace the judicial branch[83]. There is no doubt that the public order is seriously disrupted in both cases, because *authority resolutions are illegitimately inhibited* following the intricate terms arranged in article 1 of the N°18.314 Chilean law[84]. As stated, both contexts have a strong political connotation. Not only is the danger stated, but also the exceptional nature: democratic institutionalism and coexistence are seriously affected[85]. Thus, in these cases, within terrorist organizations as well as State agents, terrorist crimes are committed according to internal regulation.

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the sense that arrogates an external organization, but, the one that arrogates is a criminal organization: the criminal organization arrogates the practice of rights that belong to the area of state sovereignty. If the organization emergency is connected with the factual increase of danger, the specific meaning of the collective performance of the criminal organizations is clearly perceived: the monopoly of violence corresponding to the State is called into question."

[78] In detail, Portilla Contreras (2001), pp. 501 ff.

[79] In relation to this, see Cancio Meliá (2010), pp. 188-189.

[80] González Cussac (2006), p. 76.

[81] Expressly, Manuel Cancio Meliá (2010), pp. 190-191.

[82] Cancio Meliá (2010), p. 191. In italics in the original.

[83] In this sense, Llobet Anglí (2010), p. 115; Gómez Martín (2010), p. 48; Garzón Valdés (1989), pp. 38-39, states: "State terrorism is a political system whose recognition and rule allows or imposes illegal, unpredictable and dim application, also to manifestly innocent people, of coercive regulations prohibited by the proclaimed legal system. Block and nullify the legal activity and transform the government to an active agent of the fight for power."

[84] Art. 1 Law 18.314: "Constituirán delitos terroristas los enumerados en el artículo 2º, cuando el hecho se cometa con la finalidad de producir en la población o en una parte de ella el temor justificado de ser víctima de delitos de la misma especie, sea por la naturaleza y efectos de los medios empleados, sea por la evidencia de que obedece a un plan premeditado de atentar contra una categoría o grupo determinado de personas, sea porque se cometa para arrancar o inhibir resoluciones de la autoridad o imponerle exigencias.
La presente ley no se aplicará a las conductas ejecutadas por personas menores de 18 años.
La exclusión contenida en el inciso anterior no será aplicable a los mayores de edad que sean autores, cómplices o encubridores del mismo hecho punible. En dicho caso la determinación de la pena se realizará en relación al delito cometido de conformidad a esta ley". See Villegas Díaz (2018), pp. 501 ff.

[85] As clearly stated by Cancio Meliá (2009), p. 74: "If the reality of the special meaning by effects of wrongdoing of terrorist crimes is recognized, not only for an uncertain judgment of danger, but also based on its communicative meaning in political terms, the key to try to design the immanent limits of the specialty will be revealed, to mark the points in which positive regulation exceeds them."

4. Conclusions.

Despite the fact that terroristic acts are particularly concerning as a global threat, it has not yet been possible to reach consensus. In fact, international instruments as well as important national regulations only serve to individualize certain behaviors and classify them as terroristic. This result is not surprising, since ideological, political or religious considerations impede efforts for a united perspective.

The path becomes more arduous when State agents, or groups supported by the State, intercede, given that they work with enough impunity. Thus is the nature of State sponsored terrorism: it is a difficult concept to articulate, but particularly tangled with cases of a serious nature that violate human rights. Although there is not a legal definition, the Inter-American Court of Human Rights has pronounced itself in several iconic judgments that have allowed a limitation of the phenomenon being analyzed.

The objective of this article was to demonstrate under which circumstances State terrorism can be considered an international crime, considering the serious affront to human rights. It can be appreciated that this form of terrorism is even more serious than the crimes of those who fight against it. In this sense, it must be considered that the State agents have no counterbalance, because the entire State apparatus is at its disposal. These are cases where the State has disappeared or it is just a mask, so the victims are unable to ask for help from its institutions. In a context of this nature, there is room just for international crimes, which have universal jurisdiction.

However, it seems that the situation can be appreciated from a different perspective when the crimes committed by State agents or parastatal groups are performed under a democratic regime during peacetime. Some indicate that it is pointless to speak about State terrorism, because the State cannot be subversive of its own institutional order. Therefore, it is only possible to consider aggravated crimes. However, as I demonstrated, it is also possible that State agents or groups can commit terrorist crimes and subsequently apply internal law. These acts can be qualified the same way as the ones made by the adversary, since the lack of respect to the punitive function of the State is appreciated. It is justice taken in its own hands, seriously disturbing the public order.

There is no doubt that the examined concept is difficult to perfectly define, especially when there is no minimum basis available. In this context, and considering the painful experiences in our countries, it is compulsory to deliver certain elements of judgment that allow a proper legal qualification to address these behaviors.

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