International Law: Blaming Big Brother: Holding States Accountable for the Devastation of Terrorism

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International Law: Blaming Big Brother: Holding States Accountable for the Devastation of Terrorism

*If you harbor terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If you feed a terrorist or fund a terrorist, you’re a terrorist, and you will be held accountable by the United States and our friends.*

— President George W. Bush

1. Introduction

Following the September 11 terrorist attacks, the United States recognized a growing concern with holding terrorists accountable for the massive losses they inflict through indiscriminate violence. President George W. Bush’s War on Terror immediately focused on holding the involved terrorists accountable for the September 11 attacks. While other members of the international community responded to September 11 within their own domestic justice systems to punish terrorists, the Bush Administration responded to this pressing need by creating military tribunals to mete out punishment. In

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addition, the United States launched a military campaign in Afghanistan to root out al Qaeda, the group deemed responsible for September 11.4

However, despite the world focus on the terrorists themselves, the Bush Administration’s War on Terror developed a secondary goal of holding State sponsors of terrorism accountable for their assistance.5 Foreign States (States) have long used terror as an element of both domestic and foreign policy, and since the 1980s governments have even adopted terrorism as a means to carry out foreign policy without detection.6 Although the role of State sponsors has actually declined over the past decade, States nonetheless continue to provide terrorist groups with substantial assistance.7 Consequently, there remains a significant need to target foreign States as sponsors and supporters of terrorist groups.8

Historically, without the support of States, terrorist cells lacked the necessary power and resources to maintain an effective and capable organization.9 As Abraham Sofaer, former U.S. State Department advisor, has stated, “States have the resources to provide [terrorist] groups with the training, equipment, support, and instructions that enable them to inflict far greater damage than would be possible by independent agents.”10 Indeed, the 1980s demonstrated that state-sponsored terrorists achieved destruction eight times more deadly than attacks perpetrated by independent terrorist groups.11

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7. NSCT, supra note 2, at 6-7.

8. LEVITT, PATTERNS OF TERRORISM, supra note 5; MEGHAN L. O’SULLIVAN, SHREWD SANCTIONS: STATECRAFT AND STATE SPONSORS OF TERRORISM 6 (2003).


10. Sofaer, supra note 9, at 98; see HOFFMAN, supra note 6, at 186.

11. HOFFMAN, supra note 6, at 189; see also JOHN F. MURPHY, STATE SUPPORT OF INTERNATIONAL TERRORISM 31 (1989) [hereinafter MURPHY, STATE SUPPORT]. Terrorists can cause more deaths, injuries, and destruction with state support than without it. Id.
However, as September 11 proved, terrorist cells may no longer require funding and supplies from States to achieve total destruction. In fact, the September 11 terrorists murdered close to 3,100 people with only box cutters and four hijacked airplanes. The al Qaeda network, responsible for more terrorist attacks in the last five years than any other terrorist group, has established both legal and illegal businesses throughout the world to fund its terrorist activities. Therefore, States may no longer serve as the prominent source of life for terrorist cells. Nonetheless, as the U.S. National Security Council noted in its National Strategy for Combating Terrorism, although terrorist organizations have begun to rely more on criminal activity for funding and support, they still require the sanctuary of States to effectively operate. As a result, States remain an important focus in responding effectively to terrorism.

While September 11 confirmed the social need to hold terrorists and their State sponsors accountable after the fact, the attacks also reminded the United States and the international community of the additional need to deter future terrorist activity. However, the international community faces significant difficulty in punishing individual terrorists and groups because terrorist cells are unreachable as long as States continue to provide a safe haven for them. And where States actually have the authority and desire to exercise jurisdiction over individual terrorists, they often have difficulty locating the suspects. As a result, the threat of harsh punishment often has little influence on deterring terrorists.

Deterrence also often fails to dissuade terrorist actors because of the ideological convictions and determination to affect social change that lie at the


13. *Hearings*, supra note 2, at 153, 156 (statement of James Caruso, Deputy Executive Assistant Director for Counterterrorism, Federal Bureau of Investigation); LEVITT, PATTERNS OF TERRORISM, supra note 5.


15. NSCT, supra note 2, at 8; see O’SULLIVAN, supra note 8, at 6, 322 n.9; Schmitt, supra note 9, at 377, 379.


19. *Id.*
heart of modern terrorism.\textsuperscript{20} Indeed, the inherently secret nature of terrorism serves to protect terrorists from punishment. Consequently, it is necessary to focus not on deterring the terrorist organizations that actually carry out attacks, but on holding their State sponsors and supporters accountable.\textsuperscript{21}

Unlike individual terrorists or terrorist cells, States have incentive to desist from sponsoring or supporting terrorism. Most States recognize that the international community will avoid strong diplomatic relations with States that sponsor or support terrorism.\textsuperscript{22} Accordingly, the need to maintain an untarnished reputation provides sufficient reason for most States to avoid ties to terrorism.\textsuperscript{23} Nonetheless, the diplomatic threat remains insufficient for other States.\textsuperscript{24} The international community must therefore effectively respond to state-sponsored terrorism to achieve any significant results in the War on Terrorism.

Because States are more visible than individual terrorist groups, the international community can more easily counteract a terrorist State than a terrorist cell located within the sovereign territory of a State.\textsuperscript{25} The international community and individual States also have a wider range of options with which to respond to terrorist States than to independent terrorist organizations.\textsuperscript{26} Because States are the primary subjects of international law,\textsuperscript{27} the international legal framework provides numerous means to hold States accountable for violating international legal standards.\textsuperscript{28} States may face

\textsuperscript{20} Id.; see also MurpHy, State Support, supra note 11, at 37; Joe Kendall et al., The Diligence Due in the Era of Globalized Terrorism, 36 Int'l. Law. 49, 57 (2002). See generally Louis P. Pojman, The Moral Response to Terrorism and Cosmopolitanism, in Terrorism and International Justice 135, 138-41 (James P. Sterba ed., 2003). In particular, religious terrorist groups hold such ideological convictions that they are willing to sacrifice their own lives for their cause. Such groups include al Qaeda, which claims the need to reestablish a Muslim State through the entire world and wage religious war on the United States. Patterns of Global Terrorism: 2002, supra note 14, at 118; Cohan, supra note 1, at 98.

\textsuperscript{21} Abbott, supra note 18, at 298-99.

\textsuperscript{22} Id. at 299.

\textsuperscript{23} Id.

\textsuperscript{24} Id.

\textsuperscript{25} Issues of territorial sovereignty arise where States intervene in the exclusive jurisdiction of another State. Ian Brownlie, Principles of Public International Law 287 (4th ed. 1990). However, a State may legally violate another State's territorial sovereignty to employ the use of force in self-defense. Id. at 377. Where the sovereign State is accountable for terrorism, the use of force in self-defense may be valid. See infra Part V.C.

\textsuperscript{26} MurpHy, State Support, supra note 11, at 32.

\textsuperscript{27} Brownlie, supra note 25, at 59.

\textsuperscript{28} U.N. Charter arts. 41-42.
diplomatic and economic sanctions, the use of force in self-defense, and international and domestic lawsuits.\textsuperscript{29}

In contrast, terrorists have no political status and occupy no specific territory.\textsuperscript{30} As a result, the international community has difficulty imposing accountability on these groups. Because they lack the attributes of statehood, terrorist groups cannot be subject to sanctions. In addition, States often have difficulty identifying the specific terrorists responsible for an attack,\textsuperscript{31} which prevents the imposition of individual legal liability.\textsuperscript{32} Consequently, the flexibility involved in holding terrorist States accountable has also provided a significant basis to shift the international community's focus away from terrorists to their State sponsors.

Although the international community should remain focused on holding States accountable for terrorism,\textsuperscript{33} the international legal system lacks a structured framework with which to do so. State accountability is a well-recognized principle of international law.\textsuperscript{34} However, State responsibility "is not regulated by any well-established precepts,"\textsuperscript{35} and thus lacks a cohesive structure in which to examine violations of international law. Because of this haphazard organization, it remains uncertain whether the international community or an individual State can legally hold another sovereign State accountable for sponsoring or supporting terrorist activity. Despite the fact that the system governing terrorism law is disorganized, a significant legal basis nonetheless exists to hold States accountable for terrorist activity.

In an attempt to outline the legal framework establishing State accountability, this comment examines both the history of terrorist law and legal developments following September 11. Part II provides an overview of terrorism: its definition, elements, levels and types of State-supported terrorism, as well as historical examples of the varying levels of State involvement in terrorism. Part III explores the various primary sources of international law that impute accountability to States for sponsoring or supporting terrorism.\textsuperscript{36} This part also analyzes the application of these sources

\begin{itemize}
\item \textsuperscript{29} See infra Part V.
\item \textsuperscript{30} Cohan, \textit{supra} note 1, at 85.
\item \textsuperscript{31} \textit{Murphy, State Support, supra} note 11, at 37.
\item \textsuperscript{32} In the unusual case where terrorists are identified and captured, they may face prosecution in either domestic courts or the new International Criminal Court.
\item \textsuperscript{33} See \textit{supra} notes 6-11 and accompanying text.
\item \textsuperscript{34} Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4, 43 (Apr. 9) (Alvarez, J., concurring).
\item \textsuperscript{35} \textit{id. at 44} (Alvarez, J., concurring).
\item \textsuperscript{36} International law encompasses both primary and secondary rules of State obligations. Primary rules provide the substantive law governing State responsibility. Secondary rules govern the attribution of primary rule violations to a State and the resulting legal consequences. See \textit{James Crawford, The International Law Commission's Articles on State
to terrorist States in light of modern terrorist techniques. The practicalities of holding States responsible for terrorism are addressed in Part IV. Finally, Part V provides a brief overview of the potential means to hold States accountable for supporting terrorism as well as historical attempts to do so.

II. Overview of Terrorism

A. Defining a Complex Term

Although scholars, jurists, and politicians have made numerous attempts to define “terrorism”, the term continues to evade a comprehensive, yet precise, definition.37 International Court of Justice Judge Baxter has stated, “We have cause to regret that a legal concept of ‘terrorism’ was ever inflicted upon us. The term is imprecise; it is ambiguous; and above all, it serves no operative legal purpose.”38 Indeed, the international community’s failure to create a comprehensive terrorism treaty exemplifies its correlative failure to define terrorism.39

The definition of terrorism varies among the States of the international community, as each foreign State views terrorism from its own paradigm.40 The failure to define terrorism lies partly in the fact that terrorism is a political concept.41 Culture and politics, which vary greatly among States, lead to definitions of terrorism ranging across a broad spectrum. Even the U.S. government lacks a single definition for “terrorism”, as each agency of the government utilizes its own variation of the same basic elements.42 Ironically,


37. Flatow v. Islamic Republic of Iran, 999 F. Supp. 1, 12 (D.D.C. 1998); Cohan, supra note 1, at 78; Vogelson, supra note 5, at 73 (noting that the U.N. Working Group, developed to eliminate terrorism, failed to concur on a definition).


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according to several definitions adopted by U.S. agencies, "the United States War for Independence, the Gulf War (Desert Storm), the Contra insurgency in Nicaragua, and the anti-Castro insurgency supported by the United States are all examples of terrorism." The variation in terrorism definitions creates substantial confusion when the definition must be subsequently applied to more complex issues of international law. Nonetheless, terrorism encompasses certain basic elements, which lend themselves to a workable definition for purposes of examining State accountability within this comment.

Legal scholars and politicians generally agree that international terrorism incorporates four elements: (1) use of force or threat of force (2) in an attempt to cause fear (3) to bring about a political objective and (4) achieve global attention. Some scholars further limit this definition to the targeting of civilians or other targets selected for their ability to achieve a political objective. Indeed, the international community often identifies terrorists by their selection of targets not normally pursued in traditional warfare. Unlike domestic terrorism, international terrorism targets foreign subjects, takes place in foreign States, or attempts to affect foreign political policy. Most importantly, as compared to domestic terrorism, international terrorism often involves the support of States.

B. Levels of Sponsorship

While State action itself often encompasses the basic elements of terrorism, allowing States to be classified as terrorists themselves, a fundamental distinction exists between "State terrorism" and "State-sponsored terrorism." Unlike "State terrorism," in which the terrorist actors are representatives of the State, non-State actors carry out "State-sponsored terrorism" with the support or sponsorship of a State government. Under international law, "[a] state official who commits an act of terrorism in his official capacity is involving citizens or the territory of more than one country." Id. § 2656f(d)(2).

43. Beres, supra note 42, at 240 (citation omitted).
44. Robert J. Beck & Anthony Clark Arend, "Don't Tread on US": International Law and Forcible State Responses to Terrorism, 12 Wis. Int'l L.J. 153, 162 (1994); Cohan, supra note 1, at 80, 84.
46. Terry, supra note 40, at 161.
47. Id.
49. Gross, supra note 12, at 444; Lohr, supra note 48, at 5.
51. Bassiouni, Legal Control, supra note 39, at 84.
presumed to have acted with the authority of the [S]tate, rendering the [S]tate itself liable."

Consequently, because State terrorism does not raise questions of State liability, this comment instead focuses on State-sponsored terrorism.

Within the scope of State-sponsored terrorism, a further division by the level of State involvement in the terrorist group pervades the relationship between a State and non-State terrorist actors. While scholars disagree as to how many levels of State support exist, the levels are generally condensed into three categories: "(1) terrorist actors with state sponsorship; (2) terrorist actors with state support, but without immediate state sponsorship; [and] (3) terrorist actors with state toleration, but without state support or sponsorship."

"State sponsorship" involves "‘active planning, direction, and control’" of terrorist activity. "State support" requires a less significant level of assistance than sponsorship, but includes supply of "‘intelligence, weapons, diplomatic assets, funds, or rhetorical endorsement.'" "State toleration" recognizes an even weaker level of involvement, existing when the State acquiesces to the terrorist group's presence without providing sponsorship or support.

Regardless of the extent of the State's involvement with a terrorist organization, all terrorist groups "have some state association, for terrorist actors must act within a system of sovereign states and virtually always have bases within states." Accordingly, it is logical that more States merely tolerate terrorist organizations than actively participate in State-sponsorship of terrorism.

In addition to the general variation in levels of assistance, the types of assistance also differ among state-terrorist relationships. Historically, assistance has involved the provision of direct support, intelligence, training, diplomatic assets, advanced technology, weapons and explosives, transportation, territory, funding, tacit support, or propaganda and political support. These categories are neither exclusive nor dispositive, as many

52. Sara N. Scheideman, Note, Standards of Proof in Forcible Responses to Terrorism, 50 Syracuse L. Rev. 249, 261 (2000); see also Davis Brown, Use of Force Against Terrorism After September 11th: State Responsibility, Self-Defense and Other Responses, 11 Cardozo J. Int'l & Comp. L. 1, 7-8 (2003).
54. Beck & Arend, supra note 44, at 164; accord Cohan, supra note 1, at 90-91; Gross, supra note 12, at 446.
55. Beck & Arend, supra note 44, at 165 (quoting Murphy, State Support, supra note 11, at 34); see also Abbott, supra note 18, at 294.
57. Id.
58. Id. at 163; see also Brown, supra note 52, at 4; Gross, supra note 12, at 444.
59. See Beck & Arend, supra note 44, at 163-64; Terry, supra note 40, at 161; John-Alex
States offer numerous types and combinations of assistance to terrorist organizations. Often, State sponsorship or support involves training, financing, and tacit support, among other combinations of assistance.

C. Examples of State Support and Sponsorship of Terrorism

The level of State involvement in terrorist activity varies significantly, as a comparison of the governments of Iran, Libya, Syria, and the Sudan demonstrate. According to the U.S. State Department, Iran provides the most active sponsorship of terrorism in the world. Iran has funded and provided training and weapons to numerous terrorist organizations, including Hezbollah, Palestine Islamic Jihad, and Hamas. In 1996 alone, Iran provided Hezbollah with enough weapons to fill three 747 cargo jets every month. The Iranian State also funded and created several terrorist training camps in Syrian territory to train these groups as well as the Popular Front for the Liberation of Palestine — General Command (PFLP-GC). Iran not only provided close to $50 million for the camps, it also supplied Islamic Revolutionary Guard Corps (IRGC) soldiers to run their operations.

Iran's budget allows for a significant financial contribution to terrorism each year. Between the IRGC and Iran's Ministry of Intelligence and Security (MOIS), approximately $100 million goes to support Hezbollah alone each year. Hamas also receives $15 million from Iran each month. As noted, Iran provides territory used to train terrorists and to serve as protection and a base for further operations. In 2002, the State Department also reported that al Qaeda utilized transit routes through Iran to access entry to Afghanistan.

60. See infra Part IIC.
63. HOFFMAN, supra note 6, at 193.
65. Id.
67. Romano, supra note 59, at 1029.
Most significantly, Iran provides substantial assistance to terrorists, in effect controlling their activities, by developing their attacks and designating the actors for each assault. The IRGC and the MOIS also assist in the planning of terrorist activity. Through the exercise of control, Iran actively sponsors terrorist activity.

In Libya, leader Moammar Kaddafi’s support has involved the provision of money and weapons both within the State and outside of Libyan borders. He has provided numerous terrorist groups, including the PFLP-GC and the Abu Nidal organization with protection, weapons, and money. In addition, Kaddafi provides terrorist training, which, as early as 1986, had already educated over 7000 terrorists. In the mid-1980s, Libyan financial support for terrorist training camps amounted to approximately one hundred million dollars per year. Kaddafi also clearly demonstrated propagandist support when he claimed the right of Libya to carry on terrorist activity in the United States. Evidence acquired by the United States has additionally shown direct Libyan support of, and even control over, the bombing of a German disco in 1986. Finally, while Kaddafi has denied supporting the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland, a Scottish court has convicted a Libyan state employee of the attack. The perpetrator was allegedly an agent of the Libyan Intelligence Service. Although Libyan actions generally include only state support, the Libyan government’s involvement rises to the

69. Terry, supra note 40, at 165; see also HOFFMAN, supra note 6, at 194.
71. Terry, supra note 40, at 165.
72. The PFLP-GC supports the Palestinian movement and uses terrorism to attack Israeli targets. PATTERNS OF GLOBAL TERRORISM: 2002, supra note 14, at 118.
73. Abu Nidal, also known as Fatah, targets the PLO and carries out attacks on the United States, Europe, and the Middle East. Id. at 101.
75. Terry, supra note 40, at 165.
76. Intoccia, supra note 74, at 181.
77. Id. at 182.
78. The Libyan People’s Bureau actually carried out the attack on orders from Tripoli, which implicates Libyan control over the operation. Id. at 196-97.
80. Marcella David, Passport to Justice: Internationalizing the Political Question Doctrine for Application in the World Court, 40 HARV. INT’L L.J. 81, 94 (1999); Libyan Convicted in Bombing, supra note 79, at 1. Despite Kaddafi’s continued denial of Libya’s direct role in the bombing, Libya has accepted responsibility based on the perpetrator’s status as a State employee. Alan Sipress & John Mintz, Libya Accepts Responsibility for Bombing over Lockerbie, WASH. POST, May 1, 2003, at A12.
level of sponsorship when it encompasses control over the terrorist acts, as allegedly it did during the German disco and the Pan Am bombings.

In a similar manner, Syria remains actively involved in both supporting and sponsoring terrorism. In the past, Syria directed terrorism and used its own agents to carry out numerous attacks. More recently, the use of Syrian territory to harbor terrorists provides some of the State’s most substantial support to terrorism. The PFLP operates terrorist training camps south of Damascus, where other terrorist organizations also train. At one camp, Syrian officials actually observe the operations to ensure the safety of the trainees. Arms, training, and diplomatic assistance are also given to terrorists whose headquarters are in Damascus. From their Syrian command centers, the terrorist organizations “incite, recruit, train, coordinate, and direct terrorism.” In addition, Damascus has promised to provide direct financial aid to Hamas to promote suicide bombings. Recently, al Qaeda has spread into Syrian territory, where it finds parties willing to support it.

Most significantly, Syria’s president, Bashar al-Assad, controls much of the terrorist activity emanating from Syria by approving suggested attacks and ruling the terrorist bases from which they originate. Moreover, reports indicate that the Syrian army has incorporated the Hezbollah’s military units into its structure. Thus, the Syrian connection to terrorism also involves a significant level of control over the terrorist activities. Syrian involvement rises to the level of sponsorship as a result of the State’s ability to dictate terrorist activity.

The Sudan does not participate in terrorist activity as pervasively as Iran, Libya, or Syria. Instead, the Sudan primarily provides territory for al Qaeda,

81. Levitt Statement, supra note 64, at 60.
82. Abbott, supra note 18, at 296.
83. See generally Hoffman, supra note 6, at 195.
84. Levitt Statement, supra note 64, at 58.
85. Id.
86. Terry, supra note 40, at 166; see also Patterns of Global Terrorism: 2002, supra note 14, at 81; Patterns of Global Terrorism: 2001, supra note 61.
87. Levitt Statement, supra note 64, at 55. However, Syria denies involvement of the Damascus groups in terrorism. Instead, it claims that the groups “undertake only political and informational activities.” Patterns of Global Terrorism: 2002, supra note 14, at 81.
88. Levitt Statement, supra note 64, at 56.
89. Id.
90. Terry, supra note 40, at 165.
91. Hezbollah focuses on the liberation of Israel and the establishment of Islamic rule. It has carried out numerous terrorist attacks against the United States and Israel, including the bombing of the U.S. Embassy and Marine Barracks in Beirut, Lebanon. Patterns of Global Terrorism: 2002, supra note 14, at 108.
92. Levitt Statement, supra note 64, at 56.
Egyptian al-Gama'a al-Islamiyya, Egyptian Islamic Jihad, the Palestine Islamic Jihad, and Hamas. From their Sudanese bases, these groups principally provide support and logistics to their main operations in other States. However, some sources claim that these groups use Sudanese territory to run terrorist training camps. Thus, Sudanese support for terrorist groups does not rival the substantial involvement of Iran, Syria, or Libya. The Sudan is therefore properly labeled a State tolerant of terrorist groups.

As these examples demonstrate, States provide significant levels of sponsorship and support for some of the most active and destructive terrorist groups in the world. Nevertheless, because of the historically varying levels of State assistance, the international community and other States have responded inconsistently with attempts to hold States accountable for sponsoring or supporting terrorist activity.

As this comment explains, numerous sources of international law impose a duty on States to refrain from supporting or sponsoring terrorism, thus, a State assumes accountability for providing such sponsorship or support. However, State accountability becomes less clear as the relationship between the State and the terrorist cell weakens, and the evidence to prove the existence of such a relationship disappears. Therefore, State sponsors should logically assume greater accountability than States that merely acquiesce to the presence of terrorist groups within their borders.

Under international law, States do not assume complete responsibility for the conduct of individuals within their borders. Instead, a State’s accountability depends on the individual’s or the organization’s relationship to the State. Therefore, as the State’s connection to terrorist activity grows stronger, more evidence normally exists to connect the State to terrorism, allowing the international community or another State to more easily impose accountability.

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95. Rubin, Sudan, supra note 93, at 12.
97. See Scheideman, supra note 52, at 261.
98. Id. at 260.
99. Id. at 261.
At the same time, serious security implications exist for holding States accountable only for high levels of terrorist support. Even a State that provides minimal support, acquiescing only to the presence of terrorist groups within its territory, allows terrorism to continue unabated and thereby furthers the threat of terrorism to international peace and security. As a result, this comment attempts to determine the lowest level of sponsorship or support that can legally create State accountability under international law.

III. Imposing State Responsibility Under International Law

According to U.S. Marine Corps Lieutenant Colonel James Terry, the difficulty with combating terrorism "is not defining terrorism, or even the conceptual elements of international law condemning terrorism. Rather, it is the vagueness and confusion that cloud the interpretation of the law with respect to the [S]tate support provided." Recognizing this weakness of international law, this comment attempts to explain the relevant international law in the context of State-sponsored and supported terrorism. Each source of international law will be examined to demonstrate its applicability at each level and type of State support. As a result, a framework will develop to allow States and the international community to recognize whether they may legitimately impose accountability based on each type of terrorist support or sponsorship.

A. United Nations Charter

The U.N. Charter provides the strongest foundation for imposing liability on States for sponsoring or supporting terrorism. In the past, the United Nations Security Council has invoked Chapter VII of the U.N. Charter, based on breach of peace, to impose sanctions on States for backing terrorism. Because assistance of terrorist activity results in serious threats to international peace and security, Chapter VII provides the Security Council with the right to respond through either economic and diplomatic sanctions, or to take other necessary action to restore peace and security.

However, while Chapter VII provides the means to hold States accountable, Article 2, section 4 of the U.N. Charter provides the legal justification for attributing terrorism to a State. According to Article 2, section 4, States have a duty to refrain from making threats of or employing force against a foreign
In the realm of terrorism, a State blatantly exhibits force if its agents carry out terrorist attacks because the State itself employs the use of force. Therefore, under a basic interpretation, Article 2, paragraph 4 clearly applies to State terrorism.

Indeed, even direct State sponsorship of terrorism appears to invoke State accountability under the Charter. Because the State controls the terrorist activity, it, in effect, directs the use of force against a foreign State. Therefore, the acts of the terrorists are attributable to the State sponsor itself. As such, a State sponsor of terrorism violates the U.N. Charter.

**B. United Nations Resolutions**

While Article 2, paragraph 4 has created State accountability for terrorism since its inception, the U.N. did not recognize the source of this duty until 1992. In Resolution 748, as a justification for imposing economic sanctions on Libya, the U.N. Security Council stated that

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in \text{accordance with the principle in Article 2, paragraph 4, of the Charter of the United Nations, every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.}\]

Responding to Libya’s ties to terrorism and its protection of the accused Pan Am Flight 103 bombers, the Security Council recognized that State support of terrorism presents a threat to international peace and security. Thus, the Security Council clarified in the Resolution that Article 2, paragraph 4 of the U.N. Charter extends to State sponsorship, support, and toleration of terrorist activity. Therefore, the international community now recognizes that the U.N. Charter applies “to all forms of state involvement, participation, and acquiescence in terrorism.” Additionally, under Article 2, paragraph 4, accountability extends to a State whose involvement is limited to tacit approval of terrorist activity within its borders.

104. U.N. CHARTER art. 2(4).
106. Id. (emphasis added).
107. Id.
108. Beck & Arend, supra note 44, at 172. The United States also invoked Article 2, section 4 and its right to self defense under Article 51 of the U.N. Charter in April 1986, when it claimed that Libya was responsible for the terrorist attack on a German dance club. Specifically, the United States justified this imposition of liability by claiming that Libya had violated Article 2, paragraph 4 of the U.N. Charter. Beard, supra note 96, at 561.
110. Id. at 579.
Prior to 1992, although the U.N. recognized that a duty to refrain from supporting terrorism existed, it failed to acknowledge that Article 2, Section 4 provided such duty. U.N. statements addressing this duty shaped the international community's modern understanding of State accountability for supporting or sponsoring terrorism arising from Article 2, paragraph 4. Consequently, an examination of those previous U.N. statements provides significant guidance for understanding State accountability.

A States' duty to refrain from supporting terrorist activity was originally recognized by the U.N. in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations (Declaration on Friendly Relations). The Declaration on Friendly Relations, considered by many to provide significant guidance to interpreting the U.N. Charter, affirms that a State's demonstration of force, in any form of aggression, violates both international law and the U.N. Charter. It also asserts that the use of aggression by a State breaches international peace and therefore creates responsibility under international law. Applying these principles to terrorism, the U.N. concluded that international law imposes a duty on States "to refrain from organizing, instigating, assisting or participating in . . . terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts." The U.N. employed similar language when it later composed Resolution 748, discussed previously, which explicitly recognized that the source of this duty arose from Article 2, paragraph 4 of the U.N. Charter. The language common with Resolution 748 supports the proposition that a State is responsible for sponsoring terrorism through all means of assistance, from direct support to tacit acquiescence.

Like the Declaration on Friendly Relations, the U.N. Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (Declaration on the Inadmissibility of Intervention) also identified

112. MURPHY, STATE SUPPORT, supra note 11, at 34.
113. Sofaer, supra note 9, at 93.
114. Declaration on Friendly Relations, supra note 111.
115. Id.
116. Id.
117. See Abbott, supra note 18, at 300.
State action supporting terrorism as a violation of the U.N. Charter.\textsuperscript{119} The Declaration on the Inadmissibility of Intervention again recognized the duty of States to refrain from the use or threat of force against another State.\textsuperscript{120} However, the U.N. chose not to employ the same language as the Declaration on Friendly Relations, instead directing States to prevent the use of their territories for terrorist activity. Specifically, the Declaration on the Inadmissibility of Intervention acknowledged the duty of a State (1) to make certain that its territory is not employed to infringe on the sovereignty or stability of another State; (2) to discontinue the use of terrorist tactics; and (3) "to prevent any assistance to or use of or tolerance of terrorist groups."\textsuperscript{121}

The first requirement, that the State prevent the use of its territory as a means to threaten the integrity of another State, indicates that State provision of territory to terrorist organizations creates State accountability. Where a terrorist group uses a State’s territory to further an attack on another State, it has used the territory as a means to threaten the integrity of another State. The second provision expressly forbids State terrorism, and therefore reaffirms a State’s accountability for using terrorist tactics itself. In the third instance, the U.N. outlaws all State support for terrorism, including tacit support, under the U.N. Charter. Because the language encompasses sponsorship, support, and tolerance, activities that span the spectrum of State assistance fall under this prohibition. Like the other declarations, the Declaration on the Inadmissibility of Intervention reaffirms the accountability of States for all forms of terrorist sponsorship and support.

General Assembly Resolution 40/61, commonly referred to as Measures to Prevent International Terrorism,\textsuperscript{122} foreshadowed the conclusions of U.N. Resolution 748. Like Resolution 748, which applied Article 2, section 4 to the duty of States with respect to terrorism, General Assembly Resolution 40/61 also recognized the international legal obligation of States to desist from supporting terrorism by providing supplies or acquiescing to the presence of terrorist groups within the State's borders.\textsuperscript{123} Specifically, Resolution 40/61 provides that States have a duty under international law not to "organiz[e], instigat[e], assist[] or participat[e] in terrorist acts in other States."\textsuperscript{124} Therefore, the Measures to Prevent International Terrorism reaffirms that States assume accountability for all forms of support and sponsorship of terrorism, including tacit support.

\textsuperscript{119} Intoccia, supra note 74, at 195.
\textsuperscript{120} Declaration on the Inadmissibility of Intervention, supra note 118.
\textsuperscript{121} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
General Assembly Resolution 3314, entitled the Definition of Aggression, further reveals the applicability of Article 2, section 4 to State sponsorship of terrorist groups. According to the Definition of Aggression, a State breaches the U.N. Charter by carrying out an act of aggression. Furthermore, Resolution 3314 specifically recognizes that an act of aggression "gives rise to international responsibility." However, the Definition of Aggression not only prohibits States from sending armed units to act in aggression against other States, it also proscribes any "substantial involvement" by States in those armed units. Therefore, any State that supports terrorist organizations through "substantial involvement" violates Article 2, section 4 of the U.N. Charter under the Definition of Aggression.

Nonetheless, the definition of "substantial State involvement" remains open to interpretation. In the Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), the International Court of Justice (I.C.J.) reasoned that the Definition of Aggression did not include "assistance . . . in the form of the provision of weapons or logistical or other support." Although such support may qualify as a threat or use of force or as violating sovereignty, the court refused to define State support as "substantial State involvement" falling under the Definition of Aggression, which would allow target States to respond in self-defense. Therefore, the I.C.J. requires a substantial relationship between a State and a terrorist group before it satisfies the definition of aggression to violate the U.N. Charter.

Nonetheless, the travaux préparatoires to the U.N. Definition of Aggression indicate that substantial involvement includes support of armed bands. While the drafting parties disagreed as to the required level of involvement, the Definition reflects a compromise between requiring a State to actually send armed units and finding accountability for "organising, supporting or directing" armed bands or terrorist activity.

As Julius Stone, a prominent scholar on the law of armed force, concluded, a State would therefore assume accountability for hosting terrorist groups that

125. Terry, supra note 40, at 169.
126. Id. at 168-69.
128. Id.
129. 1986 I.C.J. 14 (June 27).
130. Id. at 104.
131. Id.
132. Preparatory materials.
133. JULIUS STONE, CONFLICT THROUGH CONSENSUS: UNITED NATIONS APPROACHES TO AGGRESSION 74 (1977).
134. Id. at 75.
carry out terrorism against other states. Prominent international law scholar Ian Brownlie reiterated the view that "[t]he concept of armed bands is now well established in the literature of international law, and support for, or toleration of activities of, such bands is a fairly constant feature of enumerative and mixed definitions of aggression." Thus, scholars generally agree that State sponsorship, support, and toleration of terrorism seemingly encompass aggression in violation of Article 2, section 4 of the U.N. Charter.

The U.N. General Assembly reiterated its intent to place accountability on States for supporting terrorists in the 1994 Declaration on Measures to Eliminate International Terrorism. In this Declaration, which followed the 1998 terrorist attacks on U.S. embassies in Africa, the U.N. again declared the duty of its members to "refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activit[y]" within its borders. Like other instruments employing this language, the U.N. indicated that accountability therefore applies to a wide spectrum of State involvement in terrorist activity, from State sponsorship to State acquiescence.

Immediately following September 11, the U.N. Security Council expanded the requirements previously imposed on States to refrain from supporting terrorism. Under Resolution 1373, States now have the obligation to "[r]efrain from providing any form of support, active or passive, to entities ... involved in terrorist acts." According to this language, Resolution 1373 prohibits States from providing terrorists with financial support or protection, and furthermore creates State accountability for acquiescence to a terrorist organization’s presence within a State’s borders. Consequently, as numerous U.N. resolutions and the Charter demonstrate, international accountability exists for State sponsorship, support, or even tacit approval of terrorist organizations.

C. Terrorism Treaty Law

Although no comprehensive treaty has yet addressed terrorism, thirteen different multilateral treaties address the legal responses to attacks on specific terrorist targets. In addition, regional organizations have also tried to

135. See id. at 76.
138. Id. annex art. 5(a).
140. Hoye, supra note 62, at 106.
141. Bassiouni, Legal Control, supra note 39, at 91; accord Beck & Arend, supra note 44,
combat terrorist activity with regional instruments. However, of these regional agreements, the European Convention on Terrorism is the only agreement enforced by its parties. Hence, little treaty law exists to impose accountability for terrorism. Furthermore, the existing treaties focus on extraditing individual terrorists. Therefore, treaty law lacks a sufficient basis to hold state sponsors and supporters accountable.

D. Judicial Opinions

Despite the substantial support under Article 2, section 4 of the U.N. Charter for the blanket imposition of liability on States providing any form of terrorism assistance, international judicial decisions have limited actual State responsibility for supporting terrorist activity. Early cases, such as the Corfu Channel Case and the Case Concerning United States Diplomatic and Consular Staff in Tehran, held States accountable for supporting terrorism. However, Nicaragua v. United States subsequently placed significant limitations on the ability of the international community to impose liability on States for terrorist support.

1. Corfu Channel Case

In 1949, the I.C.J. held that a State violates international law, and thus assumes responsibility for acts within its territory, if it knows of the existence of a threat and fails to act to prevent the danger. Specifically, the court held Albania accountable for mine damage to British warships on the basis that Albania knew of the presence of the mines within its territorial waters. The I.C.J. found that the source of Albania’s responsibility in the Corfu Channel Case arose from “general and well-recognized principles, namely: elementary considerations of humanity, . . . and every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”

at 169.

142. Bassiouni, Legal Control, supra note 39, at 91.
143. Id. at 92.
144. See Hoye, supra note 62, at 108-09.
145. Reisman, supra note 41, at 28.
146. Although U.N. Resolutions lack legally binding effect, they nonetheless express the sentiments of the international community. Beck & Arend, supra note 44, at 172.
147. 1949 I.C.J. 4 (Apr. 9).
150. Scheideman, supra note 52, at 263.
The conclusion that Albania knew of the minefield's existence was key to the I.C.J.'s decision. However, the court indicated that it could not assume that Albania had knowledge of the mines solely because the minefield lay in Albanian territory. The court reasoned that a State does not assume responsibility for activity emanating from within its borders simply because it exercises control over that territory. Because the mere existence of a threat within a State's borders does not automatically notify the State of its presence, responsibility cannot be imputed under international law without further proof of the State's knowledge.

However, the I.C.J. found that the Albanian government did actually know of the minefield's existence within its territorial waters, because the government closely monitored the waters where the mines were laid. The court examined the practical layout of the territory in question, as well as the requirements of the mining operation, before concluding that Albania must have known of the mines' presence. As a result, Albania's failure to prevent the terrorists from contravening the rights of the United Kingdom imputed accountability to the State.

Applying the authority provided by the Corfu Channel Case to the current international crisis of state-sponsored terrorism, a State cannot knowingly acquiesce to terrorist activity within its borders without assuming liability. Because the I.C.J. held Albania responsible based on its actual knowledge of the danger, modern States therefore only become accountable for failing to act when a terrorist threat is known to them. The facts of the Corfu Channel Case also limit the responsibility of States to the presence of danger within their own territories. However, unlike the Corfu Channel Case, terrorist groups carry out much of the terrorist activity today on foreign soil, not within the boundaries of the State that acquiesces to the presence of the terrorist group. Therefore, under the narrow holding of the Corfu Channel Case alone, a State would not assume international responsibility for acts of groups residing within its territory where those acts are executed outside its territory.

2. United States v. Iran

Thirty years after the Corfu Channel Case, the I.C.J. found a State responsible for openly approving of terrorism, despite the fact that the State

152. Id.
153. Id. However, international law assumes that a state knows or has a duty to know of illegal activity within areas of its territory where local authorities exercise control. Id. at 44 (Alvarez, J., concurring); see also Scheideman, supra note 52, at 264.
155. Id. at 20-21.
156. Id. at 23.

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did not order the terrorist activity. The Iran Hostage Case involved the seizure of the U.S. embassy in Tehran by an armed group that took all parties inside the embassy hostage. At that time, the Iranian personnel assigned to protect the embassy failed to take any steps to prevent the seizure or respond to the embassy’s repeated requests for help.

Subsequent to the hostage standoff and embassy takeover, the I.C.J. held Iran responsible for its role in the event. The court recognized that Iran failed to respond to the crisis despite its obligations under the Vienna Conventions on Diplomatic and Consular Relations. In considering the extent to which the court could hold the Iranian State responsible for the seizure of the embassy, the I.C.J. noted that it could hold Iran liable for the acts of the independent militant group only if that organization had “acted on behalf of the State, having been charged by some competent organ of the Iranian State to carry out a specific operation.”

In justifying its actions, the embassy’s militant attackers had relied on a statement by Iran’s leader, the Ayatollah Khomeini, who called on students “to expand with all their might their attacks against the United States.” Although the Iranian leader urged students to use force against the United States, the I.C.J. refused to find that his statements authorized the militant group to overtake the embassy, noting that the group had taken full credit for the operation without making any attribution to the Iranian State. The I.C.J. also noted that congratulatory remarks made to the terrorists by Khomeini did not make the Iranian State subject to responsibility for the attack.

Despite the I.C.J.’s decision not to hold Iran accountable for the initial embassy attack, the court found that Iran violated specific duties under international law that led to the imposition of State responsibility. The I.C.J. reasoned that the militant group initially responsible for the attack on the embassy became an agent of Iran after Khomeini endorsed the operation and

157. Scheideman, supra note 52, at 262.
159. Id. at 12-13.
160. Id. at 30-31. Unlike many terrorism cases, the Iran Hostage Case involved the explicit breach of an international treaty. Rather than address the substantive primary law of responsibility in the treaty, therefore, the I.C.J. instead addressed the secondary law of State attribution.
161. Id. at 29.
162. Id. at 29-30.
163. Id. at 30.
164. Id.
165. Id.
contributed to its perpetuation. As a result, the I.C.J. ordered Iran to make reparations to the United States after ceasing occupation of the embassy and releasing the hostages.

Based on the plain language of the Iran Hostage decision, only State terrorism imputes responsibility to a State, because only then has an agent carried out a terrorist activity on behalf of the State. However, the court’s reasoning also transformed a terrorist group into an agent of the State when the State publicly supported the terrorist group and provided assistance for its continuation. Under this standard, States may be held accountable for actively supporting terrorism through the provision of propaganda and political support. The Iran Hostage decision, in essence, finds State terrorism where the State provided only support or sponsorship. However, tacit support is seemingly insufficient under this standard to impute State responsibility.

3. Nicaragua v. United States

In Nicaragua v. United States, the I.C.J. reiterated the Iran Hostage Case requirement that terrorists act on behalf of the State for State liability to attach. Nicaragua v. United States involved U.S. support of military and paramilitary activities taken against Nicaragua in an attempt to overthrow the Nicaraguan government. In 1979, armed opposition, namely the Frente Sandinista de Liberacion Nacional (FSLN) overthrew the Nicaraguan government led by President Somoza. In response to the installation of this new government, armed opponents created guerilla forces for the purpose of destroying the new regime. Although the United States originally supported the new FSLN coalition government, it soon opposed the regime and supported the opposition Contra forces.

Among other claims, Nicaragua argued that the United States had violated Article 2, section 4 of the U.N. Charter by “recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Nicaragua.” While the I.C.J. established that the United States had provided support to the opposition forces, the level of support evaded factual

166. Id. at 35.
167. Id. at 45.
168. Beard, supra note 96, at 579 n.70.
170. Id. at 21.
171. Id.
172. Id. at 18.
conclusion. Because of the secrecy of the support, the court had to decide which of the involved parties had performed an established act. The court noted that the difficulty was "not the legal process of imputing the act to a particular State for the purpose of establishing responsibility, but the prior process of tracing material proof of the identity of the perpetrator." As a result, the evidentiary aspects of the case made the imposition of liability nearly impossible.

Despite the difficulties in establishing the actual support provided by the United States to the Contras, the I.C.J. concluded that the United States supplied speedboats, personnel, and weapons used in a number of attacks on the Nicaraguan infrastructure. The court could not determine if the U.S. military played an active role, but it did decide that American agents had "participated in the planning, direction, support and execution of the operations," even if Americans themselves did not execute the attacks. Accordingly, the I.C.J. imposed liability on the United States for its involvement in those specific direct acts involving U.S. personnel.

However, in instances where the United States supplied weapons, intelligence, necessities, such as meals and uniforms, training, financial support for communications and logistics, and organized the paramilitary acts, but did not execute the actions itself, the I.C.J. refused to impute responsibility to the United States. In reaching this conclusion, the court indicated that the Contras must have acted on behalf of the United States in order for the United States to be accountable for their activities.

According to the Nicaragua decision, a terrorist group acts on behalf of the State where the State effectively controls its activity. However, because the United States could not control the paramilitary forces "in all fields" and did not direct or enforce the Contras' activities, it avoided liability for its sponsorship and support. This conclusion remained true despite the fact that

173. See id. at 50-51.
174. Id. at 38-39.
175. Id. at 39.
176. Id. at 50.
177. Id.
178. Id. at 59.
179. Id. at 60.
180. Id. at 64.
181. Id. at 62.
182. Id. at 65.
183. Id. at 62.
184. Id. at 64.
at some intervals the Contras depended entirely on the United States for their survival.185

Under the interpretation set forth by the I.C.J. in *Nicaragua v. United States*, Article 2, section 4 of the U.N. Charter imposes liability only on "[S]tates that are closely affiliated with terrorist organizations, directly support their activities, and assist them in orchestrating devastating attacks against other [S]tates."186 Consequently, if a State is not involved in State terrorism, it must effectively control the actions of the actual perpetrators to be held accountable, regardless of the level of support it provides. Indeed, the *Nicaragua* decision reflects the I.C.J.'s determination that a State incurs liability only for State *sponsorship* of terrorism. Because the I.C.J. refused to impose State responsibility without greater U.S. control over the terrorist forces, the *Nicaragua* decision communicates the message that the I.C.J. will hold few States accountable for supporting or acquiescing to terrorist activity.187 Nonetheless, numerous other sources of international law support the proposition that a State does have a duty not to support terrorism or to acquiesce to terrorist organizations within its borders.188

*E. Human Rights Law*

Because state-sponsored terrorism often targets civilian populations, the Universal Declaration of Human Rights (UDHR),189 the International Covenant on Civil and Political Rights (ICCPR),190 the European Convention for the Protection of Human Rights and Fundamental Freedoms,191 the American Declaration on the Rights and Duties of Man,192 and the American Convention on Human Rights193 apply to protect civilians from terrorist activity.194

185. *Id.* at 63.
188. *Id.* at 102.

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According to Article 3 of the UDHR, "[e]veryone has the right to life, liberty and the security of person."\textsuperscript{195} Similarly, the ICCPR provides for the protection of the life and security of all human beings.\textsuperscript{196} The European and American regional instruments also reflect this fundamental right to life and security.\textsuperscript{197} Indeed, "every instrument or agreement that has attempted to define the scope of international human rights has 'recognized a right to life.'"\textsuperscript{198} As the International Convention Against the Taking of Hostages recognizes, terrorism threatens the fundamental human rights to life and security.\textsuperscript{199} Terrorist activity therefore violates the UDHR, the ICCPR, and other human rights instruments.\textsuperscript{200} By supporting or sponsoring terrorist activity, States thereby contribute to the deprivation of human rights. As parties to these treaties, States have a binding obligation to observe the treaties' provisions.\textsuperscript{201} Even as mere signatories, States have a duty not to defeat the object and purpose of the treaties.\textsuperscript{202} By supporting and sponsoring terrorism, States thereby assume accountability for violating human rights treaty law.\textsuperscript{203}

Several international instruments addressing terrorism also recognize the violation of basic human rights caused by terrorist activity. Despite the fact that it did not directly refer to terrorism’s violation of human rights, General

\textsuperscript{195} UDHR, supra note 189, art. 3, at 72.

\textsuperscript{196} ICCPR, supra note 190, arts. 6, 9, 999 U.N.T.S. at 174-75.

\textsuperscript{197} American Convention on Human Rights, supra note 193, arts. 4, 7, 1144 U.N.T.S. at 145, 147; Convention for the Protection of Human Rights and Fundamental Freedoms, supra note 191, arts. 2, 5, 213 U.N.T.S. at 224, 226; American Declaration on the Rights and Duties of Man, supra note 192, art. I.


\textsuperscript{200} Although the UDHR's provisions are not directly binding on States, the Declaration nonetheless places an obligatory duty on States as a reflection of customary international law. NATALIE KAUFMAN HEVENER, INTERNATIONAL LAW AND THE STATUS OF WOMEN 63 (1983); Karen Parker & Lyn Beth Neylon, Jus Cogens: Compelling the Law of Human Rights, 12 Hastings Int'l & Comp. L. Rev. 411, 442 (1989); see also Richard B. Lillich, Invoking International Human Rights Law in Domestic Courts, 54 U. Cin. L. Rev. 367, 394-96 (1985).


\textsuperscript{202} Id. art. 18, 1155 U.N.T.S. at 336.

\textsuperscript{203} States that are neither signatories nor parties to human rights treaties nonetheless have an obligation under international law to protect fundamental human rights. Because the UDHR reflects customary international law, it is binding on all States, regardless of their status as parties or signatories. See Hurst Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, 25 GA. J. Int'l & Comp. L. 287, 317-51 (1995/1996).
Assembly Resolution 40/61 indicated that terrorism "endanger[s] or take[s] innocent human lives, jeopardize[s] fundamental freedoms and seriously impair[s] the dignity of human beings."\(^{204}\) Furthermore, the U.N. Declaration on Measures to Eliminate International Terrorism specifically acknowledged that the violence carried out by terrorist groups violates principles of human rights.\(^{205}\) As these instruments indicate, States may therefore be held accountable for violating fundamental principles of human rights by assisting terrorist groups. Unfortunately, none of these instruments define the necessary level of involvement to make a State accountable. Therefore, it remains unclear whether support or acquiescence are sufficient to create accountability.

**F. Customary International Law**

Customary international law reflects the widespread and consistent actions of States performed through a sense of legal obligation.\(^{206}\) With respect to terrorism, customary international law imposes a duty on States to "exercise due diligence" to prevent the use of their territory to injure another State.\(^{207}\) The arbitral decision of the *Island of Palmas*, in applying customary international law, noted that territorial sovereignty imposes a corollary duty on States to respect the integrity of other States.\(^{208}\) However, the qualified nature of this duty requires only that a State use due diligence to prevent potential harm.\(^{209}\) As Permanent Court of International Justice Judge Moore noted, a State must exercise due diligence within its borders to protect other States and individuals from criminal acts.\(^{210}\)

Therefore, according to customary international law, a State need not always successfully prevent the use of its territory for terrorist activity. Instead, a State assumes accountability only if it fails to act diligently to eliminate terrorism from its territory.\(^{211}\) In other words, "Only when the [S]tate makes diligent efforts to prevent terrorists from using its territory to plan and prepare for attacks on other [S]tates, but is incapable of

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\(^{204}\) G.A. Res. 40/61, *supra* note 122.

\(^{205}\) Declaration on Measures to Eliminate International Terrorism, *supra* note 137.


\(^{207}\) Romano, *supra* note 59, at 1033.

\(^{208}\) Island of Palmas Case (Neth. v. U.S.), 2 R.I.A.A. 830, 839 (Apr. 1928); see also U.N. CHARTER art. 2(4); Reisman, *supra* note 41, at 51.

\(^{209}\) Romano, *supra* note 59, at 1033; Schmitt, *supra* note 9, at 391.

\(^{210}\) S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 4, 88 (July 9) (Moore, J., dissenting).

\(^{211}\) Sharp, *supra* note 17, at 44.

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accomplishing this objective, will it fulfill its international obligation.”\textsuperscript{212} For that reason, a State lacks culpability under customary international law only if its power is insufficient to fully respond to or eradicate terrorist groups within its borders.

G. Criminal Law

No source of international law imputes criminal liability to a State for sponsorship or support of terrorist activity.\textsuperscript{213} As Professor M. Cherif Bassiouni has remarked, “The area of state criminal responsibility is an area of international law that has not so far been adequately developed . . . ”\textsuperscript{214} Furthermore, the international community has yet to impose criminal liability on a State for sponsoring or supporting terrorism.\textsuperscript{215} As a result, attempts to hold States criminally liable for terrorist acts have not produced effective results.\textsuperscript{216}

Nonetheless, international law does have the potential to impose criminal liability on States in the future. General principles of international law provide a source of criminal responsibility for State-supported terrorism. Pursuant to Article 38 of the Statute of the International Court of Justice, a law generally recognized by States in their domestic legal systems becomes international law applicable to all States.\textsuperscript{217} With respect to State sponsorship and support of terrorism, the world’s domestic legal systems recognize criminal liability for a person who aids or abets in the commission of a crime through provision of supplies, facilities, or training.\textsuperscript{218} As Professor Tom Franck discovered from a survey of the world’s legal systems, the “civilized”\textsuperscript{219} States impose criminal liability for aiding and abetting the commission of a crime.\textsuperscript{220} Under general principles of international law, then, an individual faces criminal liability if he sponsors or supports acts of terrorism because he has effectively aided and abetted their commission.

Although the criminal law has never been applied to a State, States may

\textsuperscript{212} Romano, supra note 59, at 1034.
\textsuperscript{213} Hoyer, supra note 62, at 111.
\textsuperscript{214} Bassiouni, Legal Control, supra note 39, at 97.
\textsuperscript{215} Id. at 96.
\textsuperscript{216} Dellapenna, supra note 41, at 13.
\textsuperscript{217} Statute of the International Court of Justice, June 26, 1945, art. 38, 59 Stat. 1055, 1060, 3 Bevans 1179, 1187.
\textsuperscript{218} Sofaer, supra note 9, at 99.
\textsuperscript{219} Although the notion of “civilized” States lacks a clear definition, the international community continues to use the term. Most likely, it refers to western States. Mimi E. Adjami, African Courts, International Law, and Comparative Case Law: Chimera or Emerging Human Rights Jurisprudence, 24 MICH. J. INT'L L. 103, 130 n.134 (2002).
\textsuperscript{220} Id.
also potentially be liable for the sponsorship and support of terrorism pursuant to general principles of international law. According to international law, States are no less liable than individuals for breaches of international obligations.\(^{221}\) By aiding and abetting terrorist activity, States assume the same responsibility as individuals for their actions.\(^{222}\) General Assembly Resolution 40/61 specifically states that criminal liability results from all acts of terrorism, regardless of the responsible party's identity.\(^{223}\) Therefore, the potential, although undeveloped at this time, does exist to hold States criminally responsible for supporting, sponsoring, or acquiescing to terrorism. However, unless a State actively sponsors terrorist acts, terrorism will likely remain an individual criminal activity, subjecting only the terrorists themselves to criminal liability.\(^{224}\)

**H. Jus Cogens Peremptory Norms**

Civilian targeting by state-sponsored terrorists also implicates a *jus cogens* peremptory norm of international law.\(^{225}\) *Jus cogens* principles are fundamental norms of international law from which no State may derogate\(^{226}\) and, as such, are the highest rules of international law.\(^{227}\) Traditionally, *jus cogens* norms encompass piracy, slavery, genocide, crimes against humanity, war crimes, and torture.\(^{228}\) The Restatement (Third) of Foreign Relations Law indicates that both "the murder or causing the disappearance of individuals" and "torture or other cruel, inhuman, or degrading treatment or punishment" fall within *jus cogens* norms.\(^{229}\) As terrorism often involves extrajudicial killing, torture, or hostage taking, *jus cogens* may thereby also prohibit various terrorist acts.


\(^{222}\) *See* Cohan, supra note 1, at 95.

\(^{223}\) G.A. Res. 40/61, supra note 122, art. 1.

\(^{224}\) Scheideman, supra note 52, at 269.

\(^{225}\) Hoye, supra note 62, at 110-11.

\(^{226}\) Vienna Convention, supra note 201, art. 53, 1155 U.N.T.S. at 344; Case Concerning the Legality of Use of Force (Yugoslavia v. U.S.), 1999 I.C.J. 916, 965 (June 2); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 cmt. k (1987).


\(^{229}\) RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 cmt. n (1987).
In *Alejandre v. Republic of Cuba*, the United States District Court for the Southern District of Florida noted that the terrorist act of extrajudicial killing implicated a *jus cogens* principle. In addition, the court classified terrorist airplane hijackings as piracy, thereby also defining such terrorist activity as a *jus cogens* violation. As the *Alejandre* case illustrates, historically *jus cogens* has not incorporated terrorism as a distinct classification. Instead, courts and scholars have reasoned that the *jus cogens* peremptory norms of piracy, torture, or extrajudicial killing encompass terrorism.

However, when drafting the Vienna Convention on the Law of Treaties, the parties purposefully chose ambiguous wording, so as to reflect the changing nature of *jus cogens* norms. *Jus cogens* principles are dynamic and thus expand over time to reflect new norms accepted by the international community as nonderogable. Therefore, as terrorism gains attention in the international community as a threat to peace and a “shock [to] the conscience of humanity,” it will likely gain the designation of a peremptory norm. Indeed, many scholars now recognize that terrorism has evolved to occupy its own position as a *jus cogens* principle of international law.

However, scholars disagree as to whether *jus cogens* norms proscribe State sponsorship of terrorism. Nonetheless, international peremptory norms also encompass the United Nations prohibition of the use of force. Consequently, any use of force by a State through support or sponsorship of terrorism seemingly violates not only the U.N. Charter, but also *jus cogens* principles. Because State sponsorship and support of terrorism contravene the U.N. Charter, as clarified through subsequent resolutions, such State action also violates *jus cogens* fundamental norms of international law.


231. *Id.* at 1252.


I. The Law of State Responsibility

In addition to the U.N. Charter and other primary sources of international law, the Law of State Responsibility provides guidance for attributing responsibility to States who act to sponsor or support terrorism. Adopted by General Assembly resolution in 2002, the Draft Articles on the Law of State Responsibility provide consequences for States responsible for committing international wrongs. However, the Articles require the international community to attribute the wrongful act to the State before it can impose accountability. According to the Draft Articles, a wrongful act is attributed to a State if the conduct is carried out by the State’s organs, by figures of authority acting in their official capacity, by individuals or groups “under the direction or control of” the State, or if the State “adopts [conduct] as its own.” Because attribution is limited to control by the State, a State is thereby responsible under the Draft Articles only for State terrorism and State sponsorship of terrorism. The Draft Articles prohibit State support of a terrorist group where it essentially adopts the group’s conduct through propaganda or other political support to claim or benefit from the wrongful acts.

The Draft Articles also specifically hold a State responsible for aiding or assisting, directing and controlling, or coercing terrorist activity if that support is provided to another State that conducts terrorist activity. Therefore, although acts carried out by terrorist organizations may fall under the category of international wrongs, the Articles specifically limit State responsibility to supplying other States with terrorist support.

Regardless of the limitation imposed by the Draft Articles, general international law principles of State responsibility provide that States assume responsibility for all violations of international law. Therefore, where States violate primary international law, such as the U.N. Charter, treaty law,
and customary international law, they may be held responsible for sponsorship and support of terrorism under traditional principles of state responsibility.

IV. Difficulties Raised by the Application of International Law to State-Sponsored Terrorism

A. States Intentionally Conceal Their Role in Terrorist Activities

Despite the numerous sources of international law that provide a sound basis for imposing responsibility on States for sponsoring, supporting, or acquiescing to terrorism, the reality of holding States accountable presents a more significant problem. Indeed, "[f]or years States have supplied funds, arms, and sanctuary to known terrorist organizations without being treated as having responsibility for the terrorist actions."248 This reflects the fact that States purposely use terrorism to induce political change without recognition.249 Indeed, the sole purpose of a State’s use of terrorist activity is to evade exposure.250 States intentionally avoid responsibility for terrorist attacks by supporting terrorism, rather than attacking other States themselves.251 By providing assistance to groups outside their territory and using other means to evade accountability,252 States may actually avoid detection to a greater extent than the terrorist organizations that benefit from their support.253

In addition to employing tactics to avoid responsibility, States also deny knowledge of, or involvement in, terrorist activity. A State can merely deny providing any support and subsequently defend that claim by using circuitous channels to contribute such assistance. Additionally, States have learned to avoid accountability by legitimizing the existence of the terrorist groups they sponsor or support.254 A State may claim that the assistance it provides goes to a force involved in “freedom fighting,” which often justifies the use of terrorist tactics to achieve the socially valid goal of self-determination.255

248. Sofaer, supra note 9, at 100.
249. Scheideman, supra note 52, at 262.
250. Id.
251. Sofaer, supra note 9, at 94-95; cf. Reisman, supra note 41, at 55.
252. Sofaer, supra note 9, at 100.
253. Id.
254. Id. at 101; cf. Reisman, supra note 41, at 58.
B. Insufficient Evidence Exists to Support an Imposition of Accountability

Obtaining sufficient evidence to prove State accountability also presents a serious problem.256 Many efforts to prove the involvement of a State in terrorist activity lack sufficient evidence because terrorist States typically deny any involvement.257 Where a State merely tacitly approves of terrorist organizations within its territory, the difficulty in obtaining sufficient evidence increases.258 Terrorist groups, which employ decentralized organization and thus divide assignments among numerous branches of the organization, often evade detection themselves.259 Because it is already difficult to establish a link to a specific terrorist group, the transfer of accountability becomes even more tenuous when applied to the State supporting that group.260

Although circumstantial evidence may exist to link a State to terrorism, it is often insufficient when accountability must be proven for two layers of responsible parties. First, sufficient evidence must link the terrorist organization to the act, and second, evidence must show that the State sponsors or supports that group.261 This difficulty is exacerbated by the informality of the relationships between a State and terrorist organizations.262 Where support and sponsorship are made through secret channels and without documentation, it is difficult to obtain sufficient proof that the State assisted the terrorist cell. Even if evidence does exist, the need to keep the evidence and the sources of intelligence secret further limit the ability to hold States accountable.263

In addition, Nicaragua v. United States indicated that holding a State liable for sponsorship of terrorist activity requires significant evidence.264 Following the Nicaragua decision, it is apparent that the International Court of Justice requires sufficient evidence to show that a State actually exercised control

256. Sofaer, supra note 9, at 98.
258. Baker, supra note 257, at 37.
259. Both Abu Nidal and the Palestine Liberation Organization (PLO) are known for such tactics. Sofaer, supra note 9, at 98.
260. Sharp, supra note 17, at 38.
261. Scheideman, supra note 52, at 264.
262. Id.
263. Sofaer, supra note 9, at 105.
264. Id. at 265.

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over a terrorist group before it will hold the State accountable for supporting terrorists.\textsuperscript{265}

However, Abraham Sofaer, legal advisor to the State Department during the Reagan Administration, claims that a State remains accountable for terrorist acts even if insufficient evidence exists to tie the State to a specific act of terrorism.\textsuperscript{266} Based on Sofaer’s reasoning, if a State has engaged in “general and continuing support” of a terrorist organization, evidence of that general support should be sufficient to establish responsibility.\textsuperscript{267} Some scholars disagree, instead finding that terrorist activity can be imputed to a State only if evidence can “directly link[]” that State’s assistance to the harm caused to the victim State.\textsuperscript{268} As a result, although international law provides the basis for holding States accountable, the practical application of the law may often allow States to avoid repercussions.

V. Means to Hold States Responsible for Sponsoring and Supporting Terrorism

While it is beyond the scope of this comment to examine the various remedies available to impose accountability on States, it is nonetheless important to recognize the potential options available to victims — both individuals and States. Consequently, this section provides an overview of the various methods of holding States accountable, from diplomatic means to judicial suits to the use of force.

A. Diplomatic Means

Both individual States and the United Nations have repeatedly used diplomatic means to impose liability on terrorist-supporting States.\textsuperscript{269} Diplomatic means involve both diplomatic and economic sanctions. Among other options, States have the ability to sever diplomatic ties, withdraw recognition of the sponsoring government, impose trade controls, and freeze foreign assets in response to State sponsorship or support of terrorism.\textsuperscript{270} The United States has often employed diplomatic sanctions against terrorist States, tying the strength of the sanctions to the level of terrorist involvement.\textsuperscript{271

\textsuperscript{265} Id.
\textsuperscript{266} Beck & Arend, supra note 44, at 212.
\textsuperscript{267} Id.
\textsuperscript{268} Id. at 219.
\textsuperscript{269} See infra Part V.D.
\textsuperscript{270} Sharp, supra note 17, at 43.
\textsuperscript{271} Abbott, supra note 18, at 309.
Nonetheless, it remains unclear as to whether diplomatic sanctions actually reduce State involvement with terrorist groups.\textsuperscript{272} Those States that resort to using terrorism as an element of foreign policy may have little concern for diplomatic relations with other members of the world community. With respect to economic sanctions, States usually employ economic restrictions and other trade controls in an attempt to reduce the financial ability of sponsoring States to assist terrorism.\textsuperscript{273} Unfortunately, it is far from clear that the imposition of such economic sanctions serve to deter or hinder State sponsorship or support of terrorism.\textsuperscript{274} Furthermore, where other States have already severed ties with terrorist States, there remain no further sanctions to impose.\textsuperscript{275}

\section*{B. Judicial Suits}

Because the choice of forum has a significant effect on the judgment of a suit, it is important to recognize that judicial remedies may involve either international or domestic lawsuits.

\subsection*{1. International Courts}

Based on the positive law concept mandating that States are bound only by those laws to which they agree, international judicial remedies require the consent of the involved States to accept the judgment of the court or other judicial body.\textsuperscript{276} To hold a State accountable through international civil remedies for sponsoring terrorist activity, the State must either waive its sovereign immunity for such claims or agree to the jurisdiction of international courts.\textsuperscript{277} However, it is unlikely that a State sponsor or supporter of terrorism will do either.\textsuperscript{278} Therefore, international suits rarely provide an effective remedy for victim States.

Although the I.C.J. has heard several cases involving State responsibility for terrorism, limits of I.C.J. jurisdiction and application have negatively affected the imposition of State liability. According to the Statute of the International Court of Justice, cases may only involve States, and both States involved in a dispute must consent to the Court's jurisdiction.\textsuperscript{279} Furthermore,
I.C.J. judgments have binding authority only for the parties to the dispute and only in relation to the case before the court. Finally, while the U.N. Security Council has the authority to make recommendations or determine measures to enforce I.C.J. judgments, the U.N. has never enforced a judgment of the court. As a result, the I.C.J. likely provides an inadequate forum for holding State sponsors and supporters of terrorism accountable.

2. Domestic Courts

Because it is also highly unlikely that a suit brought in the domestic courts of the terrorist State will provide any effective remedy, domestic civil remedies are normally limited to suits in the victim State. Therefore, to understand potential remedies, domestic civil suits must be examined through the courts of the victim States.

In the United States, courts have jurisdiction to hear terrorism sponsorship cases only under the Foreign Sovereign Immunities Act (FSIA). Congress created an exception to the FSIA in the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA), which allows private civil suits in U.S. courts against designated State sponsors of terrorism. Under the AEDPA, if an agent of a State, acting within the scope of his duties, causes personal injury or death by taking hostages, sabotaging aircraft, torturing or murdering individuals, or providing “material support or resources” for one of these activities, private individuals have a valid claim for damages. However, the

280. Id. art. 59, 59 Stat. at 1062, 3 Bevans at 1190.
281. U.N. CHARTER art. 94(2).
283. Dellapenna, supra note 41, at 14.
286. Hoye, supra note 62, at 109, 117-18; see Rein v. Socialist People’s Libyan Arab Jamahiriya, 163 F.3d 748 (2d Cir. 1998); Peterson v. Islamic Republic of Iran, 264 F. Supp. 2d 46 (D.D.C. 2003); Eisenfeld v. Islamic Republic of Iran, 172 F. Supp. 2d 1 (D.D.C. 2000). But see Cicippio-Puleo v. Islamic Republic of Iran, 353 F.3d 1024 (D.C. Cir. 2004). On January 16, 2004, the Court of Appeals for the District of Columbia held that AEDPA does not create a private cause of action against foreign State sponsors of terrorism. Id. at 1033. While the Flatow Amendment does provide a private cause of action for terrorist acts, the Court held that suits under the Amendment are limited to “officials, employees, and agents of a state.” Id.
defendant State must have been identified as a terrorism sponsor by either the Export Administration Act of 1979 or the Foreign Assistance Act of 1961.\textsuperscript{288} Currently, only Cuba, Syria, Libya, Iran, Iraq, Sudan and North Korea hold this designation.\textsuperscript{289} An exception to this requirement is made only if the State is labeled a terrorist sponsor as a result of the act giving rise to the suit.\textsuperscript{290} Nonetheless, the AEDPA exception has allowed numerous plaintiffs to obtain substantial judgments against terrorist States.\textsuperscript{291} Unfortunately, even if a plaintiff manages to successfully obtain judgment against a State for supporting terrorism, that party will face an exceedingly difficult challenge in collecting on that judgment.\textsuperscript{292} Few plaintiffs have collected on their judgements awarded under the AEDPA.\textsuperscript{293}

C. Self-Defense Under Article 51 of the U.N. Charter

Article 51 of the U.N. Charter allows States to defend themselves against an armed attack. However, significant debate exists as to what constitutes an armed attack.\textsuperscript{294} Indeed, a member State cannot invoke self-defense if the aggression mounted against it does not rise to the level of an armed attack.\textsuperscript{295} In applying this standard to State support of terrorism, the International Court of Justice, in \textit{Nicaragua v. United States}, found that the provision of arms and training to terrorists did not meet the standard for an armed attack and thus could not justify self-defense.\textsuperscript{296} A State’s assistance to terrorists must therefore exceed this level of participation to satisfy the requirements for justified self-defense under Article 51.\textsuperscript{297} According to the I.C.J., State support of terrorism is normally insufficient to invoke the right to self-defense.

However, some authorities claim that a victim State has the right to respond to all terrorist acts with self-defense regardless of the level of a State’s involvement in terrorism.\textsuperscript{298} Nonetheless, customary international law requires

\begin{itemize}
  \item \textsuperscript{288} \textit{Id.} at 456.
  \item \textsuperscript{289} \textit{Patterns of Global Terrorism:} 2002, \textit{supra} note 14, at 150.
  \item \textsuperscript{290} Murphy, \textit{Foreign Claims}, supra note 287, at 456.
  \item \textsuperscript{292} Dellapenna, \textit{supra} note 41, at 16-17.
  \item \textsuperscript{293} Allison Taylor, \textit{Note, Another Front in the War on Terrorism? Problems with Recent Changes to the Foreign Sovereign Immunities Act}, 45 \textit{Ariz. L. Rev.} 533, 540-42 (2003).
  \item \textsuperscript{294} Schmitt, \textit{supra} note 9, at 387; Sofaer, \textit{supra} note 9, at 93.
  \item \textsuperscript{295} Sofaer, \textit{supra} note 9, at 94.
  \item \textsuperscript{296} \textit{Id.} at 94-95.
  \item \textsuperscript{297} Romano, \textit{supra} note 59, at 1037; \textit{see also} Sharp, \textit{supra} note 17, at 40.
  \item \textsuperscript{298} Beck & Arend, \textit{supra} note 44, at 212.
\end{itemize}
that self-defense meet standards of both necessity and proportionality. Where a State continually sponsors terrorist activity, sufficient necessity may exist for a victim State to respond with the use of force. However, self-defense does not provide an appropriate means of response when a State sponsors a single isolated terrorist act.

D. Historical Attempts to Hold States Accountable for Terrorist Activity

Despite the numerous sources of international law prohibiting States from sponsoring, supporting, or acquiescing to terrorism, the international community has had mixed reactions to actual attempts to hold such States accountable. Accordingly, to properly understand the significance of the primary sources of international law prohibiting sponsorship, support, and acquiescence, it is necessary to examine international reaction to past attempts to hold States accountable.

Economic and diplomatic sanctions have generally received widespread support as a response to State sponsors of terrorism. Indeed, the United Nations has itself adopted sanctions as a weapon against States responsible for supporting and sponsoring terrorism. In 1992, the U.N. Security Council passed Resolution 748 in response to the Libyan government’s refusal to hand over the accused Lockerbie bombers. Resolution 748 marked the first time the Security Council responded to State support of terrorism by imposing sanctions on a government for shielding terrorists. Subsequently, the Security Council also sanctioned the Sudan for its involvement in harboring terrorists. More recently, the Security Council, recognizing the Taliban’s support of Osama bin Laden and the al Qaeda organization, applied diplomatic

299. Sharp, supra note 17, at 42.
300. Id.
301. Id. The United States partly responded to the September 11 terrorist attacks by invading Afghanistan. However, the justification used for the attack relied on al Qaeda’s prominent past involvement in several prominent terrorist attacks. Specifically, al Qaeda had bombed the World Trade Center in 1993, the U.S. embassies in Africa in 1998, and the U.S.S. Cole in 2000. Schmitt, supra note 9, at 395-96.
303. Murphy, Foreign Claims, supra note 287, at 461. The U.N. sanctions placed on Libya for the Lockerbie bombing were finally lifted in September 2003 after Libya accepted responsibility for the acts, agreed to refrain from further terrorism, and promised to compensate the Lockerbie victims’ families. Peter Slevin, U.N. Vote Removes Sanctions on Libya, WASH. POST, Sept. 13, 2003, at A14; see also Bassiouni, Legal Control, supra note 39, at 96.
and economic sanctions against Afghanistan's Taliban regime in 1998 and 2000.\footnote{306}

Like the United Nations, the United States has also used economic and diplomatic sanctions against State supporters and sponsors of terrorism. President Ronald Reagan ended all U.S. economic relations with Libya in response to the 1985 terrorist bombings of two airline offices.\footnote{307} Although Kaddafi denied that Libya played any role in the attacks, the United States argued that Libya supported the Abu Nidal organization responsible for the bombings.\footnote{308} According to President Reagan, Abu Nidal had received direct support from Libya.\footnote{309} In addition, the U.S. position in response to the Lockerbie bombing mirrored that of the United Nations; the United States again imposed economic sanctions on Libya as a result of its role in the bombing.\footnote{310}

In contrast to the widely accepted imposition of economic and diplomatic sanctions, historically the international community has largely criticized the use of force as a response to State sponsors and supporters of terrorism. In 1985, Israel chose to attack the Palestinian Liberation Organization (PLO) headquarters located in Tunisia.\footnote{311} The Security Council approved Resolution 573\footnote{312} by a fourteen to zero vote condemning Israel's use of force.\footnote{313} In 1986, President Reagan authorized an aerial attack on Libyan military targets after the bombing of a West German dance club.\footnote{314} Kaddafi again denied any Libyan involvement in the bombing; however, President Reagan claimed that the United States had "incontrovertible evidence" of Libya's role.\footnote{315} The U.S. response was widely decried in the international community.\footnote{316} In fact, the U.N. General Assembly "condemned" the attack and called it a violation of the U.N. Charter.\footnote{317} The European Economic Community (EEC) expressed its disapproval by choosing an alternative course of action. Rather than resorting to the use of force, the EEC limited staff at Libyan embassies and

\footnotesize{306. Beard, \textit{supra} note 96, at 578, 583.}
\footnotesize{307. Intoccia, \textit{supra} note 74, at 182-83; Reisman, \textit{supra} note 41, at 30.}
\footnotesize{308. Intoccia, \textit{supra} note 74, at 182; Reisman, \textit{supra} note 41, at 30.}
\footnotesize{309. Terry, \textit{supra} note 40, at 181.}
\footnotesize{310. Reisman, \textit{supra} note 41, at 35}
\footnotesize{311. \textit{Id.} at 38.}
\footnotesize{313. Reisman, \textit{supra} note 41, at 38.}
\footnotesize{314. Intoccia, \textit{supra} note 74, at 185.}
\footnotesize{315. \textit{Id.}}
\footnotesize{316. Reisman, \textit{supra} note 41, at 33 (noting that only Great Britain, Israel, South Africa, and Canada accepted the U.S. response); Schmitt, \textit{supra} note 9, at 380-81.}
called for other diplomatic sanctions to hold Libya accountable for the bombing.\textsuperscript{318}

Nonetheless, the international community appears gradually to be accepting the use of force as an appropriate response to State sponsors and supporters of terrorism. For example, the United States utilized force against both the Sudan and Afghanistan after the 1998 bombings of two American embassies in Africa.\textsuperscript{319} Imposition of State accountability and the subsequent justification for firing cruise missiles at Sudanese and Afghani terrorist sites arose from the U.S. claim that those countries “cooperated” with the al Qaeda organization.\textsuperscript{320} In addition, the United States argued that the Sudan and Afghanistan had failed to expel terrorists from their borders.\textsuperscript{321} Rather than focusing solely the Sudanese and Afghan role in the embassy bombings, the United States broadened the scope of its reasoning to include past and potential attacks as well.\textsuperscript{322} Although General Henry Shelton, then-Chairman of the Joint Chiefs of Staff, claimed that U.S. intelligence showed “extensive ties” between the al Qaeda network and the Sudanese government, that intelligence failed to indicate whether the Sudanese government knew that the targeted chemical plant in its territory produced terrorist weaponry.\textsuperscript{323} Subsequently, the United States admitted that it had evidence only of “indirect ties” of terrorist activity to the chemical plant.\textsuperscript{324} Nonetheless, the United States received the support of several States in the international community for its chosen response. Unlike the unanimous opposition to the bombing of Libya in 1986, the international community divided in their reactions.\textsuperscript{325}

Finally, in reaction to the horrific events of September 11, the United States joined with other States to invade Afghanistan in the first stage of the War on Terrorism.\textsuperscript{326} However, the Taliban had provided al Qaeda with little more than safe harbor.\textsuperscript{327} Strangely, the international community nonetheless widely supported the U.S. decision.\textsuperscript{328} It seems therefore that the international community may be moving toward a more expansive view of the acceptable

\textsuperscript{318} Intoccia, supra note 74, at 188.
\textsuperscript{319} Beard, supra note 96, at 562.
\textsuperscript{320} Id.
\textsuperscript{321} Id.
\textsuperscript{322} Reisman, supra note 41, at 48.
\textsuperscript{323} Scheideman, supra note 52, at 257.
\textsuperscript{324} Id. at 258-59.
\textsuperscript{325} Schmitt, supra note 9, at 381 ("Iran, Iraq, Libya, Pakistan, Russia, and Yemen condemned the strikes, while Australia, France, Germany, Japan, Spain, and the United Kingdom supported them."); see Reisman, supra note 41, at 19.
\textsuperscript{326} See Brown, supra note 52, at 2.
\textsuperscript{327} Schmitt, supra note 9, at 399.
\textsuperscript{328} Id.
responses to terrorist support. In addition, the international community appears to accept that States merely acquiescing to terrorist cells nonetheless assume accountability.

While historically few States have had to answer for supporting terrorism, an increase in terrorist activity has led to growing international recognition that States are responsible for terrorism carried out with their support. The current Bush Administration has echoed these views. President Bush promised to hold States that support terrorists as accountable as the terrorist actors themselves when he stated, "[W]e will deal with those who harbor [terrorists] and feed them and house them."\[330\]

VI. Conclusion

With the increase in the destructiveness of terrorism, imposing responsibility on States for acts of terrorism has become a significant issue. Because the efficacy of terrorist organizations often depends on the support provided by States, the peace and security of the international community depends on eliminating State support and sponsorship of terrorism. States have the resources, from money to weapons to power, to help a terrorist group obtain the political change it desires through the use of fear. As a result, it is imperative to ensure that sponsorship and support of terrorism imputes accountability to the responsible State. Without such accountability, States will have unchecked capacity to provide significant resources to terrorist organizations or allow their unhindered use of the State's territory to carry out attacks.

International law provides a sufficient basis to impose responsibility on States through the U.N. Charter and subsequent resolutions providing guidance to the Charter. States also assume accountability for sponsoring and supporting terrorist activity from other sources of international law, including human rights instruments, customary international law, general principles of international law, and fui cogens peremptory norms. Decisions of the I.C.J. have confirmed the imposition of State liability, although to varying degrees — depending on the level of State terrorist support.


Although public policy demonstrates the need to hold States accountable for supporting or sponsoring terrorism, the evidence necessary to prove sponsorship or support is often insufficient. States use terrorism to prevent accountability, and thus expend a great deal of energy avoiding liability. Consequently, the practical application of international law poses a serious concern for consideration. However, where States like Iran have a proven history of supporting and sponsoring terrorism, international law provides the basis for imposing accountability.

By imposing State accountability for providing support to terrorist groups, the international community encourages States to eliminate their involvement in terrorism. In addition, holding States responsible for supporting and sponsoring terrorism serves to deter State assistance, which prevents the massive influx of resources to terrorist organizations and limits their ability to effectively carry out operations. The International Convention for the Suppression of the Financing of Terrorism notes that “the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain.” This principle is equally applicable to other forms of support and sponsorship provided by States to terrorist groups. To make any impact on the War on Terror, it is therefore necessary to target the true terrorists. The international community must invoke international law to hold Big Brother accountable.

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