

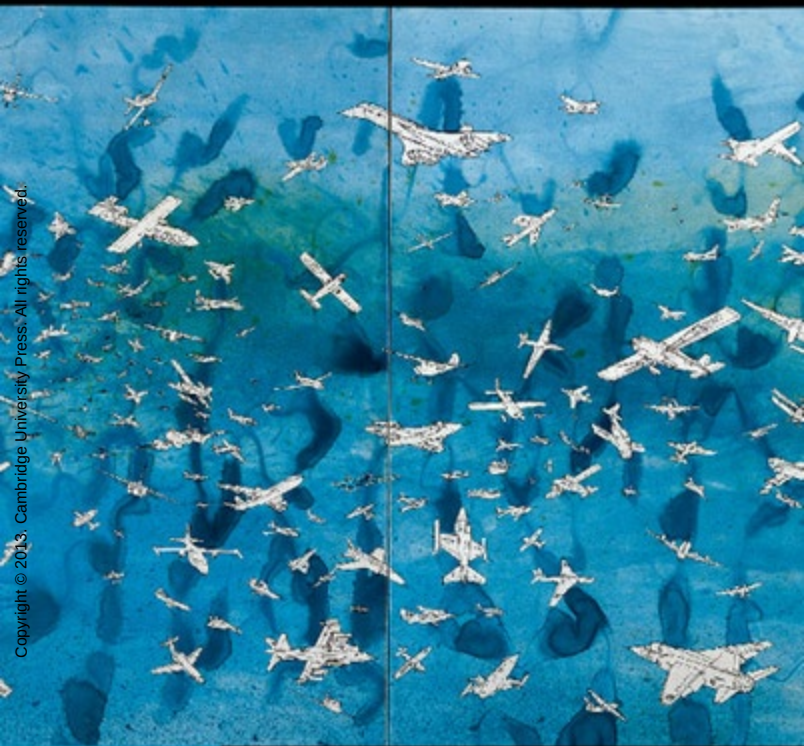
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State Responsibility

The General Part



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various sectoral conventions are now fairly widely ratified.¹¹⁶ And in any event the obligation on states not to permit the use of their territory for acts contrary to the rights of other states is a customary norm binding on all states, as is the prohibition on the use of force.

For these reasons it is difficult to see the virtue of selectively expanding ARSIWA Article 8 so as to hold states responsible for the independent acts of terrorist groups. In the light of the range of detailed primary norms already prohibiting the sponsorship and support of terrorist acts, the dilution of the *Nicaragua* and *Bosnian Genocide* test of effective control is unnecessary – even counterproductive.

5.5 Attribution and state-owned corporations

Questions surrounding state instruction arise not infrequently in the case of state-owned corporations, which in one sense are under the instruction, direction and control of the state as a principal (and, in some cases, the sole) shareholder.¹¹⁷ But the mere fact that a corporation is owned, partially or even entirely, by a state does not automatically permit the piercing of the corporate veil and the attribution of the conduct of the corporation to the state, unless it is exercising elements of governmental authority pursuant to ARSIWA Article 5.¹¹⁸ In the *Barcelona Traction* case, the International Court acknowledged the general separateness of corporate entities at national level, except in special cases where the ‘corporate veil’ is a mere device or a vehicle for fraud.¹¹⁹

terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

¹¹⁶ See e.g. the TBC, which currently has 164 parties: available at treaties.un.org/.

¹¹⁷ This arises most commonly where a state-owned corporation is engaged in a joint venture with a foreign investor: e.g. *Foremost Tehran Inc. v. Iran*, (1986) 10 Iran–US CTR 228; *American Bell International v. Iran*, (1986) 12 Iran–US CTR 170. For an analysis of the law in this respect as developed by the Iran–US Claims Tribunal, see Caron (1998), 163–73.

¹¹⁸ Crawford, First Report, 42–3. Also Caron (1998), 166. See e.g. *International Technical Products v. Iran*, (1985) 9 Iran–US CTR 206, 238–9; *Flexi-Van Leasing v. Iran*, (1986) 12 Iran–US CTR 335, 348–51.

¹¹⁹ *Barcelona Traction, Light & Power Company, Limited (Belgium v. Spain)*, Second Phase, ICJ Rep. 1970 p. 3, 39:

In accordance with the principle expounded above, the process of lifting the veil, being an exceptional one admitted by municipal law in respect of an institution of its own making, is equally admissible to play a similar role in international law. It follows that on the international plane also there may in principle be special circumstances which justify the lifting of the veil in the interest of shareholders.