

# Table of Contents

|                              |     |
|------------------------------|-----|
| <i>Table of Cases</i>        | ix  |
| <i>Table of Treaties</i>     | xv  |
| <i>List of Abbreviations</i> | xix |

|   |     |
|---|-----|
| <b>1. Introduction</b>  | 1   |
| 1.1 The framework of state responsibility   | 3   |
| 1.2 The international legal regimes applicable to terrorism   | 8   |
| 1.2.1 Regimes of accountability applicable to international terrorism   | 8   |
| 1.2.2 Regimes of substantive law applicable to international terrorism  | 14  |
| 1.3 Defining international terrorism  | 14  |
| 1.3.1 The self-determination debate as a question of regime interaction   | 15  |
| 1.3.2 An emerging definition of 'international terrorism'?  | 18  |
| <b>2. The prohibition of state terrorism and questions of attribution</b>   | 24  |
| 2.1 The prohibition of state terrorism  | 25  |
| 2.1.1 The prohibition of aggression   | 25  |
| 2.1.2 The prohibition of the use of force   | 28  |
| 2.1.3 Non-intervention in the domestic affairs of another state   | 30  |
| 2.1.4 Conclusion  | 33  |
| 2.2 Attribution   | 34  |
| 2.2.1 Organs of the state   | 34  |
| 2.2.2 Instructions, direction or control  | 37  |
| 2.2.3 Complicity revisited  | 45  |
| 2.3 Conclusion  | 61  |
| <b>3. Obligations to prevent and punish acts of international terrorism</b>   | 63  |
| 3.1 The obligation to prevent acts of international terrorism   | 64  |
| 3.1.1 Knowledge   | 66  |
| 3.1.2 Capacity  | 70  |
| 3.1.3 Effect of 9/11 on due diligence obligations as they relate to terrorism   | 75  |
| 3.2 The obligation to extradite or submit for prosecution   | 82  |
| 3.2.1 The substance of the <i>aut dedere aut judicare</i> obligation  | 84  |
| 3.2.2 Immunity of state officials from foreign criminal proceedings   | 91  |
| 3.3 The self-determination debate and the scope of the TSCs   | 104 |
| 3.3.1 Exclusion of acts committed in furtherance of a people's right of self-determination from the scope of the TSCs | 105 |
| 3.3.2 Reservations to the TSCs  | 121 |
| 3.4 Conclusion  | 127 |

|   |     |
|---|-----|
| <b>4. The ICJ's jurisdiction over disputes relating to state responsibility for international terrorism</b>             | 131 |
| 4.1 Optional clause declarations  | 133 |
| 4.2 The Terrorism Suppression Conventions   | 136 |
| 4.2.1 Application of the <i>Bosnia Genocide Case</i> analysis to the TSCs   | 144 |
| 4.2.2 Exclusion from the scope of the TSCs  | 147 |
| 4.3 The existence of a dispute as to the interpretation or application of a TSC   | 173 |
| 4.4 TSC compromissory clauses: conditions of seisin and reservations  | 176 |
| 4.5 Security Council enforcement of ICJ decisions   | 178 |
| 4.6 Conclusion  | 180 |
| <b>5. Measures adopted in response to international terrorism</b>   | 182 |
| 5.1 The adoption of measures in response to international terrorism under general international law                     | 183 |
| 5.1.1 Acts of retorsion   | 184 |
| 5.1.2 Countermeasures   | 185 |
| 5.1.3 Necessity as a circumstance precluding wrongfulness   | 192 |
| 5.1.4 State practice  | 193 |
| 5.2 The adoption of measures in response to international terrorism under sub-systems of international law              | 203 |
| 5.2.1 Diplomatic law  | 203 |
| 5.2.2 World Trade Organization  | 206 |
| 5.2.3 International Civil Aviation Organization   | 218 |
| 5.3 Conclusion  | 227 |
| <b>6. The relationship between individual criminal responsibility and state responsibility in the terrorism context</b> | 230 |
| 6.1 Determinations of individual criminal responsibility as a catalyst  | 232 |
| 6.2 Determinations of individual criminal responsibility as pressure  | 233 |
| 6.2.1 Lockerbie bombing   | 235 |
| 6.2.2 'La Belle' disco bombing  | 236 |
| 6.2.3 UTA 722   | 238 |
| 6.2.4 Rainbow Warrior   | 239 |
| 6.2.5 Ongoing criminal law enforcement processes  | 239 |
| 6.3 Determinations of individual criminal responsibility as satisfaction  | 245 |
| 6.3.1 The state must be responsible for an internationally wrongful act   | 246 |
| 6.3.2 The wrongdoing state must be the prosecuting state  | 247 |
| 6.3.3 No independent obligation to punish   | 248 |
| 6.4 An international criminal jurisdiction for terrorist offences   | 251 |
| 6.4.1 The League of Nations Terrorism Convention  | 252 |
| 6.4.2 Draft Code of Offences against the Peace and Security of Mankind  | 254 |
| 6.4.3 International Criminal Court  | 256 |
| 6.5 Conclusion  | 263 |
| <b>7. Conclusions</b>   | 264 |
| <i>Bibliography</i>   | 269 |
| <i>Index</i>  | 291 |